

CALL TO ORDER – Call to Order, Agenda Review, Conflict Disclosure
REVIEW OF MINUTES – November 9, 2017, November 16, 2017, November 30, 2017
PUBLIC COMMENT – Accept public comment on off agenda items
SHORELINE MASTER PROGRAM AMENDMENT
WALLACE COTTAGES SUBDIVISION - Recommendation
NEW/OLD BUSINESS
ADJOURN

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

Chair J. Mack Pearl called the meeting to order at 7:02 PM. Commissioners in attendance were Jon Quitslund, William Chester, Michael Killion, Lisa Macchio and Don Doman. Kimberly McCormick Osmond was absent and excused. City Staff present were Planning Director Gary Christensen, Senior City Planner Christy Carr, Development Engineer Peter Corelis, Associate City Planner Kelly Tayara and Administrative Specialist Jane Rasely who monitored recording and prepared minutes.

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

REVIEW OF MINUTES – November 9, 2017, November 16, 2017, November 30, 2017

Motion: I move approval of the minutes from meetings of November 9th, November 16th and November 30th, 2017, move that they be approved as distributed.

Quitslund/Chester – Passed Unanimously

PUBLIC COMMENT – Accept public comment on off agenda items

None.

SHORELINE MASTER PROGRAM AMENDMENT

Senior City Planner Christy Carr gave the Commissioners an update on the progress of the Critical Areas Ordinance with City Council and showed where the project pages for it and the Shoreline Management Program could be found on the City's website.

Study session focused on nonconforming existing structures.

Public Comment

MC Halvorsen, Citizen – Spoke about “grandfathered” in.

Ed Rymarz, Citizen – Spoke about considering environmental impacts, high tides and buffer areas (see submitted comments attached).

Dick Haugan, Citizen – Spoke about nonconforming uses and the perception of the public as to what that means (see attached).

Michael Zigich, Citizen – Spoke about nonconforming structures and provided a State document (see attached).

WALLACE COTTAGES SUBDIVISION - Recommendation

Planning Director Gary Christensen reminded the Planning Commission there would be a public hearing for this project at a later date.

Associate City Planner Kelly Tayara and Development Engineer Peter Corelis addressed the Planning Commissioners' questions from the previous meeting held January 25, 2018.

Hayes Gori, Attorney for Applicant – Advocated for moving the process along regardless of what their recommendation would be.

David Smith, Developer – Spoke about why the playground/open space was at the north end of the property.

Chris Van Dyk, Citizen - Spoke about the neighborhood's dissatisfaction was not with the developer but City Staff.

Stephen Crampton, Citizen – Spoke about an under easement versus a surface easement.

Steve Matthews, Citizen – Spoke about directing growth within Winslow and focusing on neighborhood safety.

Vanera Barles, Citizen - Spoke against the project access from Nakata.

Todd McKittrick, Developer for Madison Grove and Madison Landing – Spoke about Duane Lane vacation and developers working together to provide access to Madison Ave N.

Terri Starkman, Citizen – Asked everyone in the room to do the right thing.

NEW/OLD BUSINESS

Mr. Christensen asked if the Planning Commission would have a joint meeting with Design Review Board on February 22, 2018 along with Public Works and Planning staff to begin a dialogue to discuss roles and creating different design guidelines and standards. The tentative schedule was presented.

ADJOURN

The meeting was adjourned at 11:00 PM.

Approved by:


J. Mack Pearl, Chair


Jane Rasely, Administrative Specialist



February 8, 2018 7:00 – 9:00 PM

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CITY OF

Planning Commission Regular Meeting

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- i. Significant native trees are not removed to establish such use, or
- ii. The buffer has been reduced through view provisions of Section 4.1.3.11.
- c. The remaining two-thirds (2/3) of Zone 2 shall be maintained in a native vegetative state.
- d. Planted areas in which fertilizers might be applied-shall be located as far landward of Zone 1, as feasible.

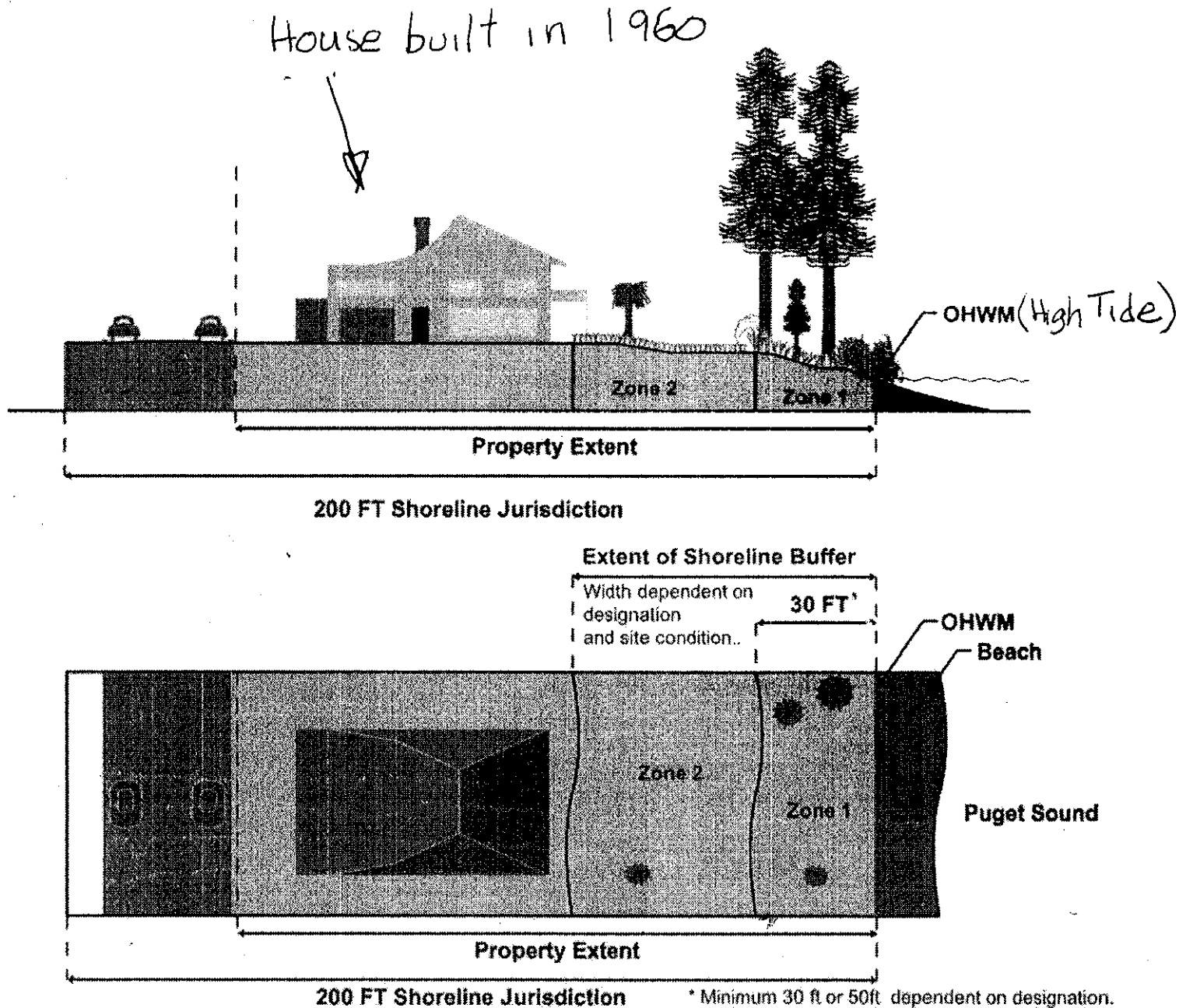


Figure 4-1 Dual Shoreline Buffer SMP - (2014)

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- ii. The buffer has been reduced through view provisions of Section 4.1.3.11.
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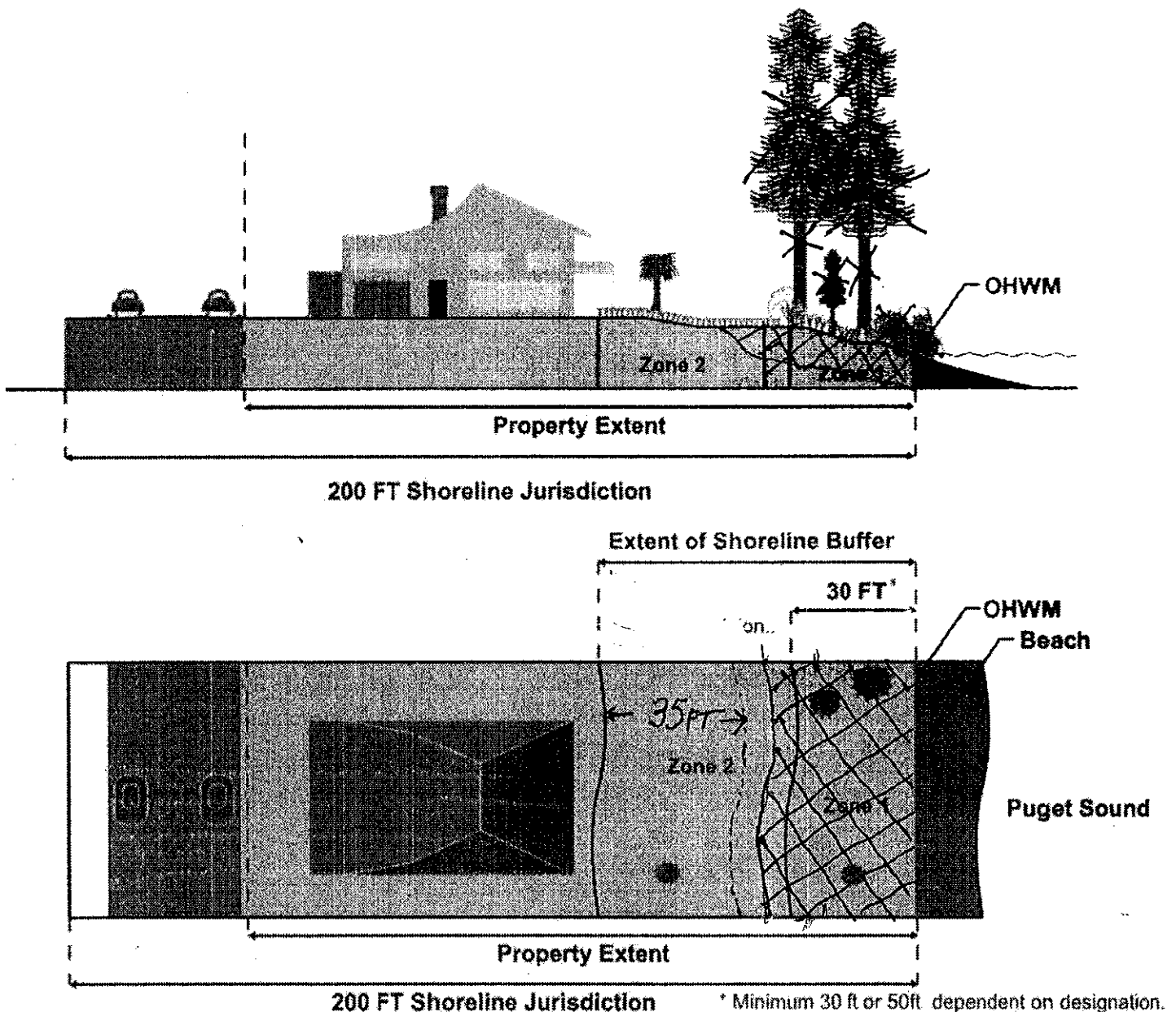


Figure 4-1 Dual Shoreline Buffer

~~XX X~~ impact of rising sealevels and erosion

they be able to get a loan for house repairs or improvements? Will potential buyers be able to get a mortgage? RCW 90.58.620 states that new or amended SMPs approved by Ecology after September 1, 2011 may include provisions that allow "legally established residential structures and appurtenant structures that are used for a conforming use to be considered a conforming structure even though they do not meet SMP standards for setbacks, buffers, yards, area, bulk, height or density" (See SMP Handbook, starting on page 6 for background). During its update process, the City did not use this optional approach to nonconforming structures. If the City wants to consider this optional approach, a new strategy for regulating existing structures needs to be developed. Note, some provisions for nonconforming structures may no longer apply, which could necessitate the requirement for a shoreline variance in some circumstances.

3. **Vegetation management – Existing landscaping ("established yard"):** Staff, shoreline property owners and vegetation maintenance providers continue to struggle with what can or cannot be done in terms of existing landscaping. There are endless variations on what shoreline property owners may consider their "yard" and what constitutes "normal or routine maintenance" or "ongoing maintenance." Clarity is needed as to if/when/which vegetation management provisions apply to existing landscaping.
4. **Vegetation management – other:** A number of vegetation management regulations need to be simplified and clarified, and with that, some policy direction is needed. Examples include: removal of significant trees, "1/3-2/3" provision where a structure is allowed to encroach into up to 1/3 of Zone 2 of the shoreline buffer with the remaining 2/3 of Zone 2 (and all of Zone 1) planted with native vegetation.
5. **Consistency with no net loss standard:** The current conditions of the shorelines, including existing development, are the starting point or baseline for determining no net loss. Regulations and provisions need to be reviewed for consistency with the no net loss standard. For example, do any vegetation management regulations result in "restoration" vs. "mitigation" for identified impacts. Examples of means to achieve the no net loss standard would also be helpful for project applicants and qualified professionals completing site specific impact analysis reports to "demystify" the concept of no net loss.
6. **Integration of other codes/policies (stormwater, climate change):** The City's stormwater regulations have been updated since the SMP update (BIMC 15.20). These should be integrated. A direct discharge criteria should be considered and consistency with the Single-Family Mitigation Manual should needs improvement. The Planning Commission may want to consider acknowledging sea level rise and climate change impacts.
7. **Specific regulations or performance standards:** While staff does not recommend any changes to current thresholds or performance standards, the Planning Commission may want to review and consider revisions to specific regulations. Any revisions would likely trigger the need to review and update background documents (e.g., Cumulative Impacts Analysis). Examples include:
 - a. Limits/requirements on bulkhead repair/replacement (SMP Section 6.2)
 - b. Prohibition of docks (SMP Section 6.3)
 - c. Buffer widths (SMP Section 4.1.3; Table 4-3)
 - d. Limit on liveaboards (SMP Section 5.3)
 - e. New construction limit lines for Manzanita and Fletcher Bays (Special Area Maps)

sound
water levels
and decreasing
buffers

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IMPLIES "CONFORMING"

Dick Haugan
2-8-18

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.

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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).

INTERPRETATION

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

4.0 General (Island-wide) Policies and Regulations

Introduction

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.

4.0.1 Regulations - General

1. All new shoreline uses and shoreline modification activities, including those that do not require a Shoreline Substantial Development Permit, must conform to all applicable goals, policies, shoreline designations (including the shoreline designation map), and regulations and use tables provided in this Master Program.
2. Shoreline modification activities must be in support of an allowable shoreline use which conforms to the provisions of the Master Program. Except as otherwise noted, all shoreline modification activities not associated with a legally existing or approved shoreline use are prohibited.
3. Shoreline uses, modification activities, and conditions listed as “prohibited” in Table 4-1 shall not be eligible for consideration as a Shoreline Variance or Shoreline Conditional Use Permit.
4. Uses, modification activities, and conditions that are not “prohibited” and not listed in Table 4-1 shall be reviewed through the Shoreline Conditional Use process.
5. The policies listed in the Master Program shall provide broad guidance and direction and shall be used by the Director in interpreting the “regulations.”
6. BIMC Title 18 Zoning or its successor also apply to shoreline parcels.
7. ~~Where provisions of this Master Program or other provision in BIMC conflict, the more restrictive provisions shall apply unless specifically stated otherwise.~~
8. The use table (Table 4-1), shoreline setback table (Table 4-2), and the shoreline buffer table (Table 4-3) provide regulatory use and dimensional provisions for each shoreline designation.
9. An increase in the dimensional height standard (Table 4-2) for essential public facilities shall be reviewed through a Shoreline Conditional Use. Submittal requirements are in Section 4.1.2.9(2).
10. Submittal requirements for all shoreline development permits or shoreline exemptions are in BIMC Title 2 and the Administrative Manual.

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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.

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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.

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6.0 SHORELINE MODIFICATION POLICIES AND REGULATIONS

6.1 General Shoreline Modification Provisions

6.1.1 Applicability

Shoreline modifications are generally related to construction of a physical element such as residential development, a dike, bulkhead, dredged basin, pier or fill, but they can include other actions such as clearing, grading, application of chemicals, or vegetation removal. Shoreline modifications usually are undertaken in support of or in preparation for a shoreline use; for example, fill (shoreline modification) required for a ferry terminal (industrial use) or dredging (shoreline modification) to allow for a marina (boating facility use).

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The provisions in this section apply to all shoreline modifications within the shoreline jurisdiction. They also apply to projects in which the chief intent is to protect the shoreline of a particular property for which the permit applies such as shoreline stabilization, flood control projects, and flood control programs. Shoreline modification proposals will be reviewed under the "no net loss" provisions of Section 4.1.2, Environmental Impacts; Section 4.0, General (Island-wide) Policies and Regulations; and may also be reviewed under Section 4.1.3, Vegetation Management; Section 4.1.5, Critical Areas; Section 4.1.6, Water Quality and Stormwater Management; Section 4.1.7, Flood Hazard Management; Appendix B; and BIMC Chapter 15.18, Land Clearing, when applicable. Other portions of this Program may also apply.

6.1.2 Goal

Manage shoreline modifications and flood protection to avoid, minimize or mitigate adverse impacts and assure that individually and cumulatively, shoreline modifications do not result in a net loss of ecological function.

6.1.3 Policies

1. Allow structural shoreline modifications only where it is demonstrated to be necessary to support or protect an allowed primary structure and primary appurtenances, or a legally existing principal use that is in danger of loss or substantial damage or are necessary for reconfiguration of the shoreline for mitigation or enhancement purposes.
2. Reduce the adverse effects of shoreline modifications and, as much as possible, limit shoreline modifications in number and extent.
3. Allow only shoreline modifications that are appropriate to the specific type of shoreline and environmental conditions for which they are proposed.
4. Give preference to those types of shoreline modifications that have a lesser impact on ecological functions and ecosystem-wide processes. Require mitigation of identified impacts resulting from shoreline modifications.

Chapter 14

Legally Existing Uses and Development

Phase 3, Task 3.4 and 3.5

Shoreline Master Program Planning Process

Introduction

Many of Washington's 28,000 miles of shorelines are developed. Container ships dock and unload at port facilities. Marinas provide in-water and dry storage for recreational and commercial boats. Public parks offer swimming beaches and boat docks. Single family homes and multifamily buildings offer their residents sunset views and quick access to the water. Commercial buildings feature retail shops and restaurants.

Uses and development that are within shoreline jurisdiction (see SMP Handbook Chapter 5) fall under the authority of the Shoreline Management Act (SMA), which is enacted through local Shoreline Master Programs (SMP). As local governments update their SMPs and approve new regulations, questions arise about what will happen to existing structures and uses along shorelines.



Figure 1: The Spokane County SMP considers legally established residential structures like these on Newman Lake as conforming, even though they may not meet standards for buffers, setbacks, yards, area, height, bulk or density. See "[Optional Approach](#)" later in this document. (Washington Coastal Atlas photo.)

Legally existing uses and development may continue

Existing legally established structures and uses are typically allowed to continue with the approval of updated SMPs. That means they can continue to exist, be used, maintained and repaired. That's the case even if the updated SMPs include regulations that would not allow new uses or development to be configured or built exactly as existing ones.

For example, under updated SMPs, new buildings may need to be further away from the water, new development projects may need to retain some vegetation onsite, or new aquaculture projects may need to be a specific distance from aquatic vegetation. However, existing legal development and uses can remain in place. Homeowners can continue to live in their houses and grow vegetables in their gardens. Shellfish operations can continue to grow seafood.



Figure 2: The Waterfront Tavern bar and grill on the Whatcom Waterway in Bellingham is a legal nonconforming use and structure.

Ecology and local governments do not expect most existing development and uses to be eliminated from the shoreline after new SMP regulations are adopted. In some cases, existing buildings may be expanded, although there may be limits to the size of the addition, the total square footage, or new impervious surfaces. Local governments may determine that certain development should be eliminated – for example, dilapidated buildings in hazard areas such as steep eroding slopes, older uses that are not compatible with surrounding uses, or abandoned structures.

If uses and development are abandoned, they cannot be brought back into use without conforming to the current regulations. Abandonment should be defined in the SMP. The SMP also should direct how illegal or abandoned uses and structures should be legalized through permits or eliminated through enforcement actions. See additional discussion on [abandonment](#).

There are different ways to address continuance and expansion of buildings, structures and uses that don't quite meet the new SMP regulations. This guidance discusses ways local SMPs can address existing development.

No net loss starts with existing uses and development

The updated SMPs must include policies and regulations to achieve “no net loss” of shoreline ecological functions. The current conditions of the shorelines, including existing development, are the starting point or baseline for determining no net loss.

It will be important to know what shoreline development looks like when options for managing existing development are considered. Are shoreline lots big or small? Are lots mostly covered by impervious surfaces? Are there big lawns? Is native vegetation present? Is the shoreline armored with bulkheads? Are there in-water uses? Keep in mind that shoreline jurisdiction includes both land and water, and nonconforming uses and development may be in either or both areas.

The no net loss goal needs to be part of the decision-making process regarding future development – new development and expansion or renovation of existing development. Local governments need to consider how the impacts of future development will be mitigated.

Cities with densely developed shorelines may have fewer opportunities for achieving no net loss than cities or counties with less developed shorelines. With a densely developed shoreline, large buffers or setbacks may not be appropriate or feasible for various reasons -- small lots cannot accommodate them; large buffers would include many structures and impervious surfaces that interfere with buffer functions; regulations regarding structures within buffers could be complicated.

Mitigating expansion

If the SMP allows existing uses and structures to expand, how will the impacts of the expansion be mitigated? How will no net loss be achieved?

- Is there room on the lots to plant native vegetation?
- Are rain gardens and other low impact development techniques feasible to mitigate stormwater impacts?
- Do wind and wave conditions allow for removal of bulkheads?
- Are there sites within the city for off-site mitigation if no space is available onsite? In some small cities, there are limited opportunities for off-site mitigation.

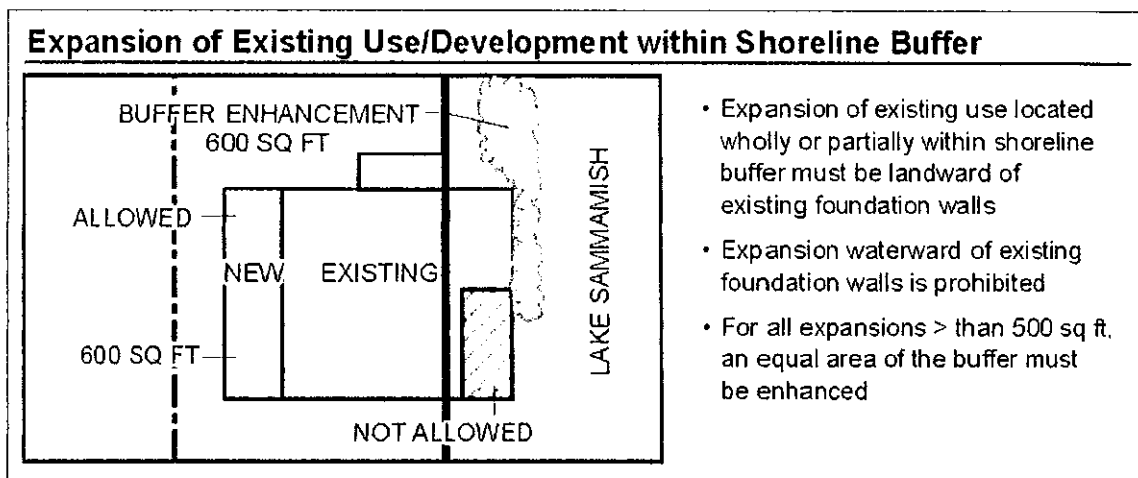


Figure 3: The City of Issaquah allows expansion of existing uses and development within the Lake Sammamish shoreline buffer only landward of existing foundation walls. Buffers must be enhanced for expansions greater than 500 square feet.

If new impacts cannot be avoided or mitigated, the no net loss standard may be difficult to achieve. Ecology cannot approve draft SMPs unless policies and regulations are designed to achieve no net loss.

Traditional and optional approach

SMPs, like zoning codes, have typically categorized uses and structures that are not consistent with new regulations as “nonconforming” development. During the past few years, some local governments have opted to classify existing structures as conforming even though new SMP regulations would typically create nonconforming structures. This section discusses both the traditional and optional approach.

As with all significant SMP decisions, local governments should keep a record of their decisions regarding the chosen approach and why that approach was chosen. This is part of building a good record discussed in Chapter 3, “Shoreline Master Program Updates.” Providing a record of decisions will help during Ecology’s review process.

Traditional approach

Traditionally, uses and structures that are not consistent with the new regulations have been categorized as “nonconforming” development. Nonconforming uses and development were lawfully constructed or established, but do not conform to current land use regulations or standards. The regulation of nonconforming uses and development is an established concept, beginning early in the 20th century, when municipalities started enacting zoning regulations.

After the SMA became law and SMPs were developed, the concept of nonconforming uses and development carried over to shorelines regulations. Not all of the SMPs adopted in the 1970s and early 1980s included clear provisions for nonconforming development. To ensure clarity,

Ecology adopted nonconforming development regulations in 1986 in the former WAC 173-14. The regulations were revised and then incorporated in the updated WAC 173-27-080 in 1996 and revised again in 2017.

WAC 173-27-080 applies at the local level only if the local SMP does not address nonconforming development.

The term, “nonconforming use” often includes both uses and development or structures. This guidance refers to use, development or structures, and lots.

- A **use** is nonconforming if it does not conform to current regulations. Examples include a commercial use within an area designated for residential uses, or a mining operation in a shoreline environment that allows mining, but the operation does not comply with current regulations for best management practices.
- A **development or structure** is nonconforming if it is located or configured in ways that do not meet current standards. A common example along shorelines is a single-family residence that does not meet current setback standards. In these cases, the **use** is consistent with the shoreline regulations, but the **structure** does not meet one or more standards in the existing regulations. Piers and docks that are larger than the current regulations allow also are examples of nonconforming structures.
- **Lots** that were legally established prior to the effective date of the current SMP and do not conform to the current lot size standards also are nonconforming.

Many SMPs define nonconforming structures, uses and lots; address expansion, changes in use, and rebuilding after fire or natural disaster; and set timelines for permitting, reconstruction and abandonment.

Although a well-established concept in land use, regulating nonconforming uses and development sometimes is a contentious issue during SMP updates. The word “nonconforming” has raised concerns and confusion among property owners. Home owners seem to be the most worried about having a “nonconforming” label on their property. Their concerns and questions include:

- Can they repair and maintain their house?
- Will homeowners insurance cost more?
- Will they be able to get a loan for house repairs or improvements?
- Will potential buyers be able to get a mortgage?

Other property or business owners wonder if they can continue the existing use, such as a retail shop, or will they need to close and move. Can aquaculture sites that have not been cultured or farmed for a year or more continue as aquaculture operations?

Nonconforming uses and development are discussed in more detail later in this document.

Optional approach

Some local governments are using different approaches as they update their SMPs. They would allow existing structures, particularly single family residences, to continue as conforming structures even though new shoreline setbacks, buffers, and other regulations in their Shoreline Master Programs would typically create nonconforming structures.

Non-traditional approaches to existing structures include:

- Excluding the footprint of the existing structures from the buffer or setback. Depending on the size of the buffer, it may wrap around the sides and rear of the structure but will not include the structure. On some urban shorelines, significant amounts of trees and vegetation exist behind houses, away from the water. Larger buffers may be appropriate in these areas.
- Stating in the SMP that certain structures, such as single family residences, or all legally-established existing structures, are conforming structures.

Nontraditional approaches for existing development must be:

- Limited to legally established structures only.
- Not applied to uses that would not be allowed under the new SMP. Such uses should not be included in a nontraditional approach for existing development.
- Not applied to over water residences, except for floating homes that were legally established or permitted prior to January 1, 2011, and floating on-water residences, as discussed below. New over water residences are not allowed under the SMP Guidelines. Therefore, existing over water residences other than floating homes and floating on-water residences established according to the SMA are nonconforming uses and nonconforming structures.

Amendments to the SMA

The State Legislature in recent years responded to concerns of shoreline residential property owners about the potential nonconforming status of their property and approved bills regarding residential structures. The bills amended the SMA.

1) RCW 90.58.620 states that new or amended SMPs approved by Ecology after September 1, 2011 may include provisions that allow:

- (a) Legally established residential structures and appurtenant structures that are used for a conforming use to be considered a conforming structure even though they do not meet SMP standards for setbacks, buffers, yards, area, bulk, height or density;

City of Bainbridge Island -- SMP Amendment
Existing Development Comparison

Existing Shoreline Master Program

Action	Regulations for Single-Family (Primary) Structures
Repair	Changes to the structure that would alter or increase the nonconformity are not permitted
Replacement (Intentionally Demolished)	- Existing structures may be maintained, repaired, renovated, or remodeled (note: does <u>not</u> say "replaced") - If moved, the structure shall be made to conform to regulations of this program
Replacement (Destroyed by Natural Cause)	- 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 replacement structure shall not warrant new shoreline stabilization for the life of the new structure - The replacement structure meets geologically hazard provision for existing development in Section 4.1.5, Regulations – Nonconforming Uses, and Appendix B - If an existing primary residential structure is damaged or destroyed as described by natural causes, the existing primary residential structure configuration may be altered or expanded (per regulations below)
Expansion	General requirements (applies to all structures): - Any vertical or horizontal extension of a wall must meet current requirements - Adding to the footprint of an existing structure is permitted as long as the addition meets current requirements - No further encroachment into buffers permitted unless allowed in SMP or through an approved variance Primary structures: - 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: - The allowed building area for Point Monroe District - The allowed building area for encumbered lots - For structures not meeting above; twenty five percent (25%) of the existing building footprint.
Expansion on/in steep slope	Redevelopment of existing structures: - If an existing structure is damaged or is intentionally demolished the new structure must meet all the provisions of a new structure. - 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).
Residential accessory structures	If an existing residential accessory structure is damaged, destroyed or intentionally demolished, the reconstruction shall be in conformance with all standards of the Program (note: accessory structures are often intentionally demolished to replace in whole or part as "repair," e.g., rotten deck or stairs) An existing <u>essential</u> single family residential accessory structure may be reconstructed as follows: - Replacement structure is the same bulk dimension as the existing structure. - Replacement structure may be located within Zone 2 provided mitigation occurs in accordance with 4.1.2.5 – Revegetation Standards. - Attached decks essential to a single-family residence may be replaced in the same location. - 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.

Existing Critical Areas Ordinance

Action	Regulations
General provisions – buildings	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. 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: • There is no change in the footprint of the building; • The remodel is entirely inside the existing building; • There is no further encroachment into the buffers required pursuant to this chapter unless a variance is first approved; or • Any expansion of the building footprint is exclusively on the sides that do not touch the buffers.
General provisions – structures other than buildings	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. 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: • There is no change in the location of the improvement; • Any alteration of the improvement is entirely inside of the existing boundaries of the improvement; • There is no further encroachment into the buffers unless a variance is first approved; or • Any increase in the area of the improvement is exclusively on the sides that do not touch the buffers. • Alterations permitted by this section shall not be exempt from applicable city review or permit requirements or other applicable city codes.
Expansion on/in steep slope	Included in exemptions: Structural alteration to an existing legally constructed structure that does not increase the structural footprint and is determined by the city engineer as having a minimal potential for increasing landslide hazard

Proposed Critical Areas Ordinance

Action	Regulations
General provisions – buildings	Structures and related improvements that were legally built or vested prior to the effective date of Ordinance No. 2018-01 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. Existing buildings that were legally built or vested prior to the effective date of Ordinance No. 2018-01 may be altered only one time within the lifetime of the structure and: • The expansion of the footprint is outside a landslide hazard area or landslide hazard area setback unless required for safety or seismic upgrades; • 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; • 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. • Cantilevers over critical areas are not allowed; • The expansion of the footprint at ground level does not exceed 500 square feet; • Any expansion of the footprint is used only as indoor living space or to accommodate accessibility; • Any expansion of the footprint is no closer to the critical area than the existing footprint; and • 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.
General provisions – structures other than buildings	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. 2018-01 may be altered if: • Any alteration is in substantially the same location as the original property improvement; • 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; • Any expansion of the footprint is no closer to the critical area than the existing footprint; and • 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.

Existing Zoning Ordinance

Action	Regulations
General provisions – buildings	A nonconforming structure may remain and be used; provided, that: • Changes to the structure that would alter or increase the nonconformity are not permitted. • Any vertical or horizontal extension of a nonconforming wall must meet the applicable standards. • Adding to the footprint of a nonconforming structure is permitted as long as the addition meets the requirements of BIMC Title 18 (Zoning) • If moved, the structure shall be made to conform to regulations of this code • 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
General provisions – structures other than buildings	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.

PRSM PROPOSED SUBSTANTIVE CHANGES TO SMP

Document protected by ER408 confidentiality and nondisclosure agreement dated September 24, 2015

Issue	PRSM Position	Rationale for Change	Relevant SMP Sections (partial list)
1.Existing development required to meet new SMP standards and declared non-conforming	Revise the SMP to state unambiguously that lawfully established homes existing prior to the adoption of the new SMP do not become non-conforming as a result of failure to meet the requirements in the new SMP.	The SMP states that it is <i>not</i> retroactive and applies only to new development, but this not-retroactive statement is trumped by the “most restrictive” clause. Our legal review indicates that the SMP makes almost all existing homes non-conforming because they do not meet at least one of the numerous standards of the new SMP. They are non-conforming--notwithstanding the SMP provisions allowing repair, alteration, and some expansion. The City could have chosen to exempt existing homes from the requirement to adhere to the new SMP standards. State law explicitly provided the option to treat existing homes as conforming without regard to the new standards. Non-conforming status disadvantages shoreline homeowners because it may result in higher costs for insuring and borrowing and reduce the value of the property-- basically because the insurer, banker, or buyer cannot be certain that the City will continue to overlook the non-conforming status, even if it is doing so at the present time under the current City administration. Non-conforming status does <i>not</i> enhance the City’s ability to ensure that standards are met when major external changes are made to existing homes. Rather, the only power that the City gains from making existing shoreline homes non-conforming is the power to phase them out.	1.3.5.2. “The provisions of the [SMP] apply to new development and activities and are <i>not</i> retroactive.” [Emphasis added.] 4.0.1.7. “Where provisions of this Master Program or other provisions in BIMC conflict, the more restrictive provisions shall apply unless specifically stated otherwise.” Definition (p237). Existing Development is defined as “Legally established structures which do not conform to the provisions in the 1996 Shoreline Master Program, as amended by ordinance 2013- on xx xx, 2013.” Definition (p 248). Nonconforming development is defined as “lawfully constructed or established but no longer conforms to the applicable shoreline provisions [...] or its successor.”

PRSM PROPOSED SUBSTANTIVE CHANGES TO SMP *(continued)*

Issue	PRSM Position	Rationale for Change	Relevant SMP Sections (partial list)
1.Existing development required to meet new SMP standards and declared non-conforming <i>(continued)</i>		The City has publicly denied that it intends to phase out homes on the shoreline over time (<i>Inside Bainbridge</i> , 7/17/15). However, this denial conflicts with the reality that the new SMP standards apply to existing homes, making them nonconforming and giving rise to a wide-spread belief in the shoreline community that the City's intent is to phase out shoreline homes over time as part of an effort to return the shoreline to a primitive state.	References in 4.2.1 to <i>the nonconformity</i> " imply that property is nonconforming. For example (4.2.1.3), "Lawfully constructed structures, established uses...shall be allowed provided to be repaired...provided that the alteration does not increase <i>the nonconformity</i> ." [Emphasis added].

Issue	PRSM Position	Rationale for Change	Relevant SMP Sections (partial list)
2. Existing Development required to meet new buffer standards	Revise the SMP to state unambiguously that the standards on depth of shoreline buffers apply only to new development/re-development and not to the repair and maintenance of existing development.	The SMP states that its provisions apply to new development and activities and are <i>not</i> retroactive. However, it also states (Table 4-3) that the shoreline buffers apply to both developed and undeveloped property. Therefore, under the most restrictive clause, the buffer standards apply to both developed and undeveloped property. Moreover, the City is now applying the buffer standards to all property. In addition, there are numerous problems with the SMP buffer standards. The first class of problems pertains to their complexity and vagueness. The shoreline buffer is divided into two Zones, for which the restrictions differ materially. For a given property, the total buffer depth is affected by at least seven factors: 1) Upland designation and possibly aquatic designation as assigned by the City, 2) Type of local shoreline environment, e.g., lagoon, rocky shore, 3) Height of bank at shoreline, 4) Extent of native vegetation along the shoreline and into the interior of the property, 5) View setbacks, 6) Depth of the property, and 7) whether the property is developed or not. Depending on all of these factors, the required buffer depth ranges from 30 feet (urban areas only) to 200 feet or more from the mean high water mark. It can be extremely difficult—if not impossible—for the homeowner to determine the buffer depth for his or her property. Coverage by native vegetation is especially problematic as it is extremely vague and subject to change. The methodology for determining 65% native vegetation canopy area is not described and its determination seems to require expertise that the typical homeowner does not have. Moreover, the shoreline designation and the boundary of Zone 1 can change as vegetation grows or dies. Further, in some circumstances, the City Administrator may decide to expand the buffer further.	1.3.5.2. “The provisions of the [SMP] apply to new development and activities and are <i>not</i> retroactive.” [Emphasis added.] 4.0.1.7. “Where provisions of this Master Program or other provisions in BIMC conflict, the more restrictive provisions shall apply unless specifically stated otherwise.” Table 4.3, Shoreline Buffer Standards Table. This table explicitly states that the buffer standards apply to developed lots as well as undeveloped lots.

PRSM PROPOSED SUBSTANTIVE CHANGES TO SMP (*continued*)

Issue	PRSM Position	Rationale for Change	Relevant SMP Sections (partial list)
2. Existing Development required to meet new buffer standards (<i>continued</i>)		This discretion, along with the complexity and vagueness, severely compromise the City's ability to consistently interpret and administer the SMP. The City can reduce its exposure to inconsistent interpretation and administration by limiting the shoreline buffers to new development/re-development—consistent with the SMP declaration that it does not apply retroactively. The second class of problems with the SMP pertains to the evidence that the City presented in support of the buffer standards. State law requires that the City consider the best available scientific evidence. By far the best available scientific evidence was evidence for Bainbridge Island itself, which the City had collected in conjunction with the Battelle Marine Sciences Laboratory. This study found essentially <i>no</i> impact from shoreline development on the quality and diversity of this island's shoreline environment (Williams et al. 2004).† The City wholly ignored those findings and instead relied heavily on research on fresh-water streams in forested areas—a totally different environment than residential areas on salt water shorelines.‡ Study of the applicability of the <i>concepts</i> used in the fresh-water research to salt-water shorelines was appropriate. However, the City directly applied the fresh-water <i>results</i> to salt-water shores.	

Issue	PRSM Position	Rationale for Change	Relevant SMP Sections (<i>partial list</i>)
3. Removal of downed hazard tree	In light of the health issues associated with having a downed tree near a residence, the City should not prevent any homeowner—including a shoreline homeowner—from removing a downed tree. Further, the types of wildlife for which downed trees are habitat are <i>not</i> water obligate species; therefore, it is inequitable to place the burden of retaining downed trees on shoreline homeowners, but not all other homeowners.	Downed trees pose a health hazard because of health risks associated with the wildlife that commonly reside in such trees. Raccoons carry round worms in their feces. Children and pets are especially susceptible to ingesting the eggs of these worms when playing in the dirt near a raccoon latrine and may die or suffer severe impairments, which vary depending on which of their organ systems are affected by the worms (e.g., blindness, paralysis). Rodents (e.g., rats, squirrels) carry plague, which can be fatal if left untreated. Recently, there was an outbreak of plague in Yosemite traced to rodents near the camp grounds. (http://www.inquisitr.com/2348399/second-yosemite-plague-victim-diagnosed/). Also, wild animals such as raccoons, skunks, bats, and foxes can contract rabies and infect people or pets. (http://www.cdc.gov/rabies/.) The types of wildlife that reside in downed trees on the shore are <i>not</i> water obligate species. Therefore, is it particularly inequitable to expose shoreline families to health risks that are not borne by families who live in the interior of the island given that the interior is also appropriate habitat for the types of wildlife of interest here. Even one case of a wildlife-borne disease in a shoreline family that was required to retain a downed tree exposes the City to unnecessary financial risk as well as to community dismay and anger—not to mention the possible tragedy for the family.	4.1.3.4.3.c.i.A “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;” B-2.8.b (page 272). “Habitat needs <i>may</i> require leaving the fallen tree in the riparian corridor or maintaining a high stump for wildlife habitat.” [Emphasis added.] 4.1.3.6.4 a.”New lawns are not permitted in Zone 1. b. In Zone 2, one-third (1/3) of the area may be planted in a combination of grass lawns and approved structures provided: i.Significant native trees are not removed to establish such use, or ii. The buffer has been reduced through view provisions...”

PRSM PROPOSED SUBSTANTIVE CHANGES TO SMP *(continued)*

Issue	PRSM Position	Rationale for Change	Relevant SMP Sections (partial list)
3. Removal of downed hazard tree <i>(continued)</i>		In addition, mitigation is not appropriate for removing a downed hazard tree since the fact that the tree has become a hazard is almost always an act of God, not of a homeowner. Nevertheless, if the City insists on mitigation for downing and removing a hazard tree, it could enhance wildlife habitat at another location away from family homes. Further, there is an inconsistency between the SMP regulations and the regulations for Critical Areas in that the latter provides some flexibility with respect to removal of the downed tree, while the former provides no flexibility whatsoever.	

Issue	PRSM Position	Rationale for Change	Relevant SMP Sections (partial list)
4. Some re-vegetation standards require restoration; some mitigation is irrelevant or disproportionate to impact. These standards trump maintenance of existing residential landscaping.	Numerous provisions in the SMP effectively require <i>restoration</i> of native vegetation, or require mitigation that is substantially out of proportion to, or unrelated, to an impact. These sections should be revised so that restoration is not required and mitigation meets the relevant (nexus) and proportionality tests established by the United States Supreme Court.	The Washington Shoreline Management Act (SMA) requires localities to establish standards to ensure no net loss to the shoreline environment. While voluntary restoration is allowed under the SMA, mandatory restoration is not. The City of Bainbridge Island exceeds the authority granted to it under the SMA in that its new SMP includes various provisions requiring restoration. The U.S. Supreme Court has ruled that the conditions that local governments place on land use permits must be connected to that government's regulatory interest ("nexus" requirement, <i>Nollan v. California Coastal Commission</i>, 1987) and must be roughly proportional to the impacts of the development on that land (<i>Dolan v. City of Tigard</i>, 1994). The nexus and proportionality requirements were recently reaffirmed by the U.S. Supreme Court (<i>Koontz v. St. Johns River Water Management District</i>, 2013). While only parts of the SMP relate to permitting, almost all of it relates to land use. Prudence suggests that the City ensure that the legal standards of nexus and proportionality are met with respect to the standards of the SMP, including the vegetation standards.	4.1.3.5.5.a. " New vegetation planted in the Shoreline Buffer... unless otherwise provided for in zone-specific requirements in 4.1.3.6 (6) shall be: Native species using a native plant-community approach of multi-storied, diverse plant species..." The SMP does not associate this with any impact; thus, it is difficult to see how it meets the nexus and proportionality tests. Rather, it appears to be required restoration of a native forest plant community. 4.1.2.5.3. 'If the Shoreline Buffer is altered or reduced pursuant to provisions of Section 4.1.3, Vegetation Management or Section 4.2.1 Nonconforming Uses, Non-Conforming Lots, and Existing Development, the following shall occur in Zone 1: a. Retain existing native vegetation; b. Plant the <i>entire area</i> of Zone 1. Obtain 65% vegetation canopy coverage within 10 years." [Emphasis added.]

PRSM PROPOSED SUBSTANTIVE CHANGES TO SMP *(continued)*

Issue	PRSM Position	Rationale for Change	Relevant SMP Sections (partial list)
4. Some re-vegetation standards require restoration; some mitigation is irrelevant or disproportionate to impact. These standards trump maintenance of existing residential landscaping. <i>(continued)</i>		The vegetation restoration requirements place unwarranted health and safety risks on shoreline families. The planting that is required is dense and forest-like (“multi-storied, diverse plant species that are native to Central Puget Lowland marine riparian zone” (4.1.3.5.5). Living in a forested area imposes a safety risk from fire. For fire safety, the Fire Department of the City of Bainbridge Island, along with many other fire departments, recommends mowed grass in a 100 feet perimeter around a residence (www.firewise.org). Such a perimeter is incompatible with the replanting requirements of the SMP, as well as the prohibitions on new lawns (4.1.3.6.4). Living in a forested area also increases the likelihood of human-wildlife conflict, with associated health risks. Some of these health risks are discussed above with respect to downed hazard trees. Another health risk is the increased likelihood of contracting Lyme Disease via a bite from a Western Deer Tick. The U.S. Centers for Disease Control and Prevention recommends avoiding areas of forest and brush where deer, rodents, and ticks are common and a 3 foot barrier of wood chips followed by a 9 foot barrier of lawn to separate forest/brush from play areas, patios, and gardens (http://www.cdc.gov/lyme/prev/in_the_yard.html). By requiring dense forest-like replanting and prohibiting new lawns, the City endangers the health and safety of shoreline families. The City also puts itself at legal risk if a shoreline home burns in a forest fire or a member of a shoreline family contracts Lyme Disease near his or her home.	Section 4.1.2.5.3 requires restoration of vegetation in all of Zone 1 regardless of the extent of alteration or reduction of the Shoreline buffer, which does not appear to meet the proportionality test. Further, we note that alternation of the shoreline buffer via further encroachment of a structure, under a variance (4.2.1.6.1) would also require replanting the entire area of Zone 1—a requirement that does not appear to meet the nexus test since alteration of the structure would not necessarily affect plantings and generally would not affect plantings in Zone 1 as residences are not allowed to encroach into Zone 1.

Issue	PRSM Position	Rationale for Change	Relevant SMP Sections <i>(partial list)</i>
4. Some re-vegetation standards require restoration; some mitigation is irrelevant or disproportionate to impact. These standards trump maintenance of existing residential landscaping. <i>(continued)</i>		Further, under the most restrictive clause, the requirements for vegetation re-planting trump the provision that allows maintenance of existing residential landscaping. The City recently affirmed the existing-landscape provision, writing "Vegetation management standards do not apply retroactively to existing lawfully established uses and developments, including maintenance of existing residential landscaping, such as lawns and gardens." <i>(Inside Bainbridge, 7/17/15)</i>.	4.1.2.5.5. "When mitigation is required for shoreline stabilization projects due to site disturbance, the required planting plan shall also include the following... a. Replant 75% of the shoreline area located along the upland edge of the shoreline stabilization structure to a minimum of ten (10) feet... c. Include plantings equivalent to one tree per ever [sic] 20 linear feet of shoreline and one shrub per ever [sic] five linear feet... Section 4.1.2.5.5 requires planting of dense trees and shrubs in a substantial area regardless of the extent and nature of site disturbance, which does not appear to meet the proportionality test.

PRSM PROPOSED SUBSTANTIVE CHANGES TO SMP (*continued*)

Issue	PRSM Position	Rationale for Change	Relevant SMP Sections (<i>partial list</i>)
5. Structures appurtenant to single family use in shoreline buffer and boating facilities and overwater structures and boating	Consistent with the SMP statement that it is not retroactive, revise the SMP to allow the continued existence and ongoing repair of structures in the shoreline buffer that are appurtenant to single family use, regardless of square footage, as they existed when the new SMP was adopted. And, revise the SMP to allow the continued existence and ongoing repair of boating facilities and overwater structures as they existed when the new SMP was adopted.	As indicated above, the SMP (1.3.5.2) states that its provisions apply to new development and activities and are <i>not</i> retroactive. Nevertheless, the SMP explicitly prohibits or severely limits the extent of <i>existing</i> structures appurtenant to single family use in the shoreline buffer. These prohibitions and restrictions are retroactive.	4.1.3.8.3. "Non-habitable structures appurtenant to a single-family use, such as a boat house, deck/patio, and/or stairway may be allowed consistent with the following standards, except that all structures are prohibited in Zone 1 when upland of a Priority Aquatic—Category A designation. b. For Shoreline Buffer areas, the total square footage of all buildings or structures must not exceed 400 square feet or 10% of the Shoreline buffer, whichever is less. c. For Shoreline Buffer areas, only 10% of total allowed square footage or 300 feet, whichever is less, can be located in Zone 1, except when upland of Priority Aquatic B, the total allowable square footage is 5% of Zone 1 or 150 square feet, whichever is less.

Issue	PRSM Position	Rationale for Change	Relevant SMP Sections (partial list)
5. Structures appurtenant to single family use in shoreline buffer and boating facilities and overwater structures (continued)		The City recently expressed its position that overwater structures including docks are “prohibited in areas where critical ecological and/or physical limitations exist to avoid adverse impacts to shoreline ecological functions and ecosystem-wide processes.” (<i>Inside Bainbridge</i>, 7/17/2015). However, the prohibition of many types of overwater structures upland of Priority Aquatic areas and in the Natural upland designation is inconsistent with the allowance of commercial aquaculture in these and some other shoreline designations, including in priority aquatic areas. If the shoreline environment is threatened by private overwater structures then surely it is threatened by commercial aquaculture to at least the same extent—if not more so. Given glaring inconsistencies such as this, it is hard to trust the City’s assertions that limitations on private overwater structures are needed to protect the environment. Trust is made even more difficult because the City provided no evidence of harm to the Bainbridge Island shoreline environment as a result of shoreline residential development and ignored strong, scientific evidence indicating that no harm had been done.	Table 4-1. Overwater structures, For example, docks are not allowed in Priority Aquatic Category A. Table 4-1. Natural Resource Development. For example, commercial aquaculture is allowed priority aquatic areas. Table 4-1. Public Park/Recreational Development, For example, public stairways are allowed in all upland shoreline designations, without regard for aquatic designation—as are public appurtenant structures that support a water oriented passive recreational use. Public appurtenant structures are not defined, but the definition of public access mentions viewing platforms, decks and towers.

PRSM PROPOSED SUBSTANTIVE CHANGES TO SMP (*continued*)

Issue	PRSM Position	Rationale for Change	Relevant SMP Sections (<i>partial list</i>)
6. Repair of Existing Bulkheads	Consistent with the SMP statement that it is not retroactive, revise the SMP to allow repair of existing bulkheads as frequently as needed and to the extent needed, including repair of more than 50%. Repair involving more than 50%--including cumulative repair of more than 50%--should not be treated as a replacement.	Bulk heads are prevalent around Bainbridge Island; they protect homes and property. Weather conditions can cause bulkhead failure, and more than 50% of bulkhead length may be compromised in a single weather event. Further, a bulkhead might no longer adequately serve its purpose when considerably less than 50% of its length has been compromised. Under the SMP, replacement of bulkheads is prohibited in some situations and severely limited in others. Replacement with hard stabilization is strenuously discouraged, even when the existing stabilization is similarly hard; it is prohibited in some upland designations and in priority aquatic designations. Failure to allow complete repair of bulkheads or replacement as often as needed, in effect, punishes shoreline homeowners for acts of God. As indicated above, the SMP states that its provisions apply to new development and activities and are <i>not</i> retroactive. Nevertheless, the SMP severely restricts the repair of <i>existing</i> bulkheads—in effect, these prohibitions and restrictions are retroactive. Prohibition of, or severe restrictions on, replacement of a damaged bulkhead is inconsistent with the no net loss standard and instead constitutes required restoration, which is not allowed under state law.	6.2.7.2.b. "Damaged structural stabilization may be repaired up to 50 percent (50%) of the linear length within a five (5) year period. Repair area that exceeds fifty percent (50%) shall be considered a replacement. Stabilization repair applications shall consider cumulative approvals of each successive application within a five year period." 6.2.7.2.a. "Existing shoreline stabilization which no longer adequately serves its intended purpose shall be considered a replacement." 6.2.6.3 "Hard structural stabilization, including hard portions of hybrid stabilization, shall be limited to the areas of the site where the stabilization is demonstrated to be necessary, according to Section 6.2 Shoreline Stabilization."

PRSM PROPOSED SUBSTANTIVE CHANGES TO SMP (*continued*)

Issue	PRSM Position	Rationale for Change	Relevant SMP Sections (partial list)
6. Repair of Existing Bulkheads (<i>continuing</i>)		The best scientific evidence does <i>not</i> support the SMP's prohibitions and restrictions on bulkheads. Much of the research on shoreline stabilization is <i>not</i> relevant to bulkheads that hug the shore; it pertains to structures that are waterward of the mean high water mark. PRSM analyzed data on bulkhead presence on Bainbridge Island, data collected by the City in conjunction with the Battelle Memorial Institute, Marine Sciences Laboratory (Williams et al. 2004). [†] We found no impact of existing bulkheads on the quality and diversity of the Bainbridge Shoreline environment.	6.2.4.4 Regulations—Prohibited. “Shoreline stabilization proposed on shores where valuable geo-hydraulic or biological processes are sensitive to interference or critical to shoreline conservation, such as: feeder bluffs, barrier estuaries, barrier lagoons, wetlands, or accretion shore forms such as sand spits, hooks, bars, or barrier beaches. Except that stabilization proposals to protect a primary family residence, primary appurtenance, or primary public or transportation facilities may be allowed on feeder bluffs and spits provide [sic] provisions of this program are met.” 6.2.5.2 “Soft-treatment stabilization shall be used to the maximum extent feasible.” 6.2.5.3. “New or replacement shoreline stabilization measures are a conditional use for the following: a. Proposed shoreline stabilization is adjacent to a feeder bluff. b. The nearest adjacent existing shoreline stabilization is greater than one hundred (100) feet of the subject property.”

PRSM PROPOSED SUBSTANTIVE CHANGES TO SMP *(continued)*

Issue	PRSM Position	Rationale for Change	Relevant SMP Sections (partial list)
6. Repair of Existing Bulkheads <i>(continued)</i>			6.2.8.1 When evaluating the need for new, expanded or replacement stabilization measures, the applicant shall provide an analysis from a qualified professional that examines and implements preferred alternatives in the following sequence: a. No action (allow the shoreline to retreat without intervention) b. Non-structural measures such as vegetation enhancement or addressing upland drainage concerns. c. Increase building setbacks and/or relocate structures to a feasible location and/or elevate the structures d. Implement flexible/natural materials and methods, beach nourishment, protective berms, bioengineered stabilization, or other soft-treatment measures. e. Hybrid measures f. Exclusively hard stabilization measures.”

Issue	PRSM Position	Rationale for Change	Relevant SMP Sections (partial list)
7. Prohibition of motorized vessels in Priority Aquatic— Category B	Allow use of motorized vessels in Priority Aquatic , Category B	Motorized vessels have long plied the waters that are now designated Priority Aquatic-Category B. It is inconsistent with the no net loss provisions of the state SMA to prohibit such vessels. The City has recently stated that “the use of motor boats is not forbidden in Fletcher Bay, Eagle Harbor, Port Madison, Port Monroe, or Blakely Harbor.” (<i>Inside Bainbridge</i>, 7/17/15). If the City’s intent is to allow motorized vessels in Priority Aquatic Category A and B areas—including the mud flat areas of the harbors and bays specifically listed above--it should revise SMP according.	3.3.2.7.3 Priority Aquatic Category A Management Policies. ...“Motorized vessels should not be allowed.”

PRSM PROPOSED SUBSTANTIVE CHANGES TO SMP (continued)

Issue	PRSM Position	Rationale for Change	Relevant SMP Sections (partial list)
8. Remodeling/ Replacement of Residence	Revise the SMP to allow expansions of more than 25% of existing footprint without regard to fire or other casualty, to allow more than one enlargement or expansion in the lifetime of a development, and to allow a building height of 35 feet. Delete from the SMP the requirement that replacement of a damaged home must be accompanied by a warrant that new shoreline stabilization will not be need for the life of the new structure.	Restriction of rebuilding to 25% of the existing building footprint is arbitrary. It is grossly inequitable to those with cabins or small homes as the value of their property can be materially reduced due to this restriction on rebuilding. It is extremely harsh to allow only one enlargement or expansion in the lifetime of a development (assuming development is used here to mean existing primary residential structure). A residential structure can easily have a lifetime of 100 years or more. Permission to rebuild a damaged structure to its <i>prior bulk dimension</i> is conditioned on ensuring that new shoreline stabilization is not needed for the life of the new structure a condition that seems to violate the nexus test.	4.2.1.6.3.2."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 in the lifetime of the development, and the expansion shall not exceed: i. The allowed building area for Point Monroe District... ii. The allowed building area for encumbered lots... iii. For structures not meeting i or ii, twenty five (25%) of the existing building footprint. Table 4-2, Dimensional Standards Table. Upland residential height limit is 30 feet (page 61).

Issue	PRSM Position	Rationale for Change	Relevant SMP Sections (partial list)
8. Remodeling/ Replacement of Residence <i>(continued)</i>			4.2.1.6.1.2. "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 ... and Section 4.2.1.5... a.This provision shall not apply 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 hazardous provision for existing development in Section 4.1.5..."

NOTES

† Williams GD, Thom RM, Evans NR. Bainbridge Island Nearshore Habitat Characterization & Assessment, Management Strategy Prioritization, and Monitoring Recommendations. Prepared for the City of Bainbridge Island. Battelle Memorial Institute, Marine Sciences Laboratory, Sequim Washington. November 2004.

‡ Brennan J, Culverwell H, Gregg R, Granger P. Protection of Marine Riparian Functions in Puget Sound, Washington. Prepared for Washington Department of Fish and Wildlife. Washington Sea Grant. Seattle Washington June 15, 2009.

PRSM RESPONSE TO CITY PROPOSED REVISIONS TO SMP

Document protected by ER408 confidentiality and nondisclosure agreement dated September 24, 2015

Proposed Provisions for Limited Amendment. City of Bainbridge Island				PRSM Comments/Position
Topic*	Code Section*	Revision	Rationale/Discussion	
1.Shoreline buffers	Table 4-3 (page 66)	Add footnote #3: All lots with a depth of <200 feet are Category B lots regardless of geomorphic class.	Internal inconsistency between Category A and Category B lots; lots with depth < 200 feet cannot be Category A.	PRSM agrees with the proposed revision with addition of specific statement that the most restrictive clause does not apply and the recognition that factors other than the geomorphic class affect the depth of the shoreline buffer. The issue in this section, in our view, is not internal inconsistency but rather the workings of the most restrictive clause. Ensuring that lots <200 feet deep shall have the narrower shoreline buffer, requires an explicit statement in the footnote that the most restrictive clause does not apply. Also, the term “geomorphic class” does not encompass all the possibilities, e.g., percentage native vegetation coverage is not a geomorphic class.
2.Shoreline buffers	Table 4-3 (page 66)	See Figure 4-1.	Missing reference to figure.	PRSM agrees.
3.Shoreline buffers	Table 4-3 (page 66)	--	For high bluff properties, if buffer is measured from the top of the bluff, what is the area between Zone 1 (30 feet from OHWM) and the top of the bluff?	Footnote 1 in table 4-3 refers to the <i>total</i> of zone 1 and zone 2. PRSM’s understanding is that Zone 1 starts at OHWM as usual and Zone 2 starts 30 feet from OHWM and continues to 50 feet from the top of the bluff or the extent of the standard buffer, whichever is greater.
4.Internal reference	4.1.2.4.4 (page 71)	The site-specific analysis shall be prepared in accordance with the guidance provided in the City’s Administrative Manual.	Section 4.1.2.9 is referenced; does not exist. The City included guidance for the site-specific impact analysis is an update to the Administrative Manual, effective October 8, 2015.	PRSM agrees that 4.1.2.9 does not exist. However, the code section cited by the City seems to be incorrect. The SMP language in 4.1.2.4.3 is: “the site-specific analysis shall be prepared in accordance with section 4.1.2.9, submittal requirements—site-specific impact analysis and mitigation plan.”
5.Internal reference	4.1.2.5.1 (page 71)	Minimum requirements for planting plans can be found in the City’s Administrative Vegetation Management Manual.	References “City’s Administrative Vegetation Management Manual;” does not exist. Simple guidelines for planting plans can be included in the Administrative Manual as part of the limited update.	PRSM agrees that the cited manual seems to be unavailable. The City might consider providing a comprehensive list of plants (native and non-native with the same ecological functions) approved for planting in the shoreline buffer without City approval, including ground covers, ferns, perennials, shrubs, and trees.

PRSM RESPONSE TO CITY PROPOSED REVISIONS TO SMP (continued)

Proposed Provisions for Limited Amendment. City of Bainbridge Island				PRSM Comments/Position
Topic*	Code Section*	Revision	Rationale/Discussion	
6.Vegetation re-planting	4.1.2.5.1 (page 71)	Vegetation replanting is required for all development, uses or activities within the 200-foot shoreline jurisdiction that either alters existing native vegetation or any vegetation in the required Shoreline Buffer or Vegetation Management Areas, whether a permit is required or not.	Needs clarification that replanting (mitigation) is required for <u>any</u> vegetation in buffer and <u>only native</u> vegetation outside buffer.	PRSM disagrees; this section should not be interpreted as requiring replanting of native vegetation outside the shoreline buffer. As written, this section of the SMP does NOT require replanting outside of shoreline buffer; rather, it requires replanting inside the buffer if development, uses, activities in the shoreline jurisdiction, including outside the buffer, alter vegetation in the shoreline buffer or Vegetation Management Area. For example, if sediment from construction outside the buffer damaged plants inside the buffer. The City's proposed clarification expands the meaning of the SMP. PRSM opposes replanting requirements outside of the shoreline buffer. PRSM also disagrees with the language in the City's rationale equates replanting with mitigation. Further, there is a need to clarify what is meant by "alter" and to define Vegetation Management Area. (Below the City cites the need for a definition of "alteration.")
6.Vegetation re-planting	4.1.2.5.3 (page 72)	If the Shoreline Buffer is altered or reduced pursuant to provisions of Section 4.1.3, Vegetation Management or Section 4.2.1 Nonconforming Uses, Non-conforming Lots, and Existing Development, the following shall occur in Zone 1: a. Retain existing native vegetation b. Plant the entire area of Zone 1. Obtain 65% vegetation canopy coverage within 10 years.	"Altered or reduced" means <u>any alteration to buffer—needs clarification for reduction in depth pursuant to view provisions.</u>	PRSM agrees with the need for clarification regarding alteration or reduction for view. This section does not specify that replanting in entirety of Zone 1 must be with <i>native</i> vegetation (that is, in 4.1.2.5.3 b). Agreement on definitions or clarifications that may be adopted by the City in the future depends on their content.

Proposed Provisions for Limited Amendment. City of Bainbridge Island				PRSM Comments/Position
Topic*	Code Section*	Revision	Rationale/Discussion	
7.Shoreline structure view setback line—decks	4.1.2.11 (section does not exist)	“...the shoreline setback line is determined by drawing a line from the most water ward point of the adjoining primary structure...”	It is not clear whether or not attached decks are allowed to encroach into the shoreline structure view setback. Clarify that attached decks greater than 30 inches high cannot encroach.	PRSM agrees with need for clarification on decks encroaching into the view setback The reference to code section appears incorrect; there is no section 4.1.2.11. Skips from 4.1.2.8 (page 74) to 4.1.3 (page 75). Agreement on definitions or clarifications that may be adopted by the City in the future depends on their content.

Proposed Provisions for Limited Amendment. City of Bainbridge Island				PRSM Comments/Position
Topic*	Code Section*	Revision	Rationale/Discussion	
8.Significant trees	4.1.3.5.6 (page 80)	Significant trees located outside the Shoreline Buffer or Site-specific Vegetation Management Area but within the shoreline jurisdiction, shall be retained unless allowed to be removed under the exceptions of other provisions of this program provided: a. The Administrator may require alterations to a site plan in order to retain significant trees outside the Shoreline Buffer or Vegetation Management Area. This may include minor adjustments to the location of building footprints, the location of driveways and access ways, or the location of walkways, easements, or utilities.	Need provision to allow for limited significant tree removal.	PRSM agrees with the need to provide for limited removal of significant trees from the shoreline buffer. PRSM’s position is that shoreline property owners should have the same opportunity for removal of significant trees as owners of non-shoreline property.

Proposed Provisions for Limited Amendment. City of Bainbridge Island				PRSM Comments/Position
Topic*	Code Section*	Revision	Rationale/Discussion	
9. Significant trees	4.1.3.7.c (Page 84)	Vegetation Removal Related to Construction. Tree or vegetation removal within the Shoreline Buffer or Site-Specific Vegetation Management Area that is associated with new construction may be allowed, but must retain significant trees and shall meet the requirements of Section 4.1.2, Environmental Impacts, including replanting provisions.	Need provision to allow for limited significant tree removal.	See Topic 8.
10. Vegetation alteration—buffer encroachment	4.1.3.6.4.b (page 82)	The following zone specific planting regulations apply to the Shoreline Buffer: a. New lawns are not permitted in Zone 1 b. In Zone 2, one third (1/3) of the area may be planted in a combination of lawn grasses and approved structures: provided i. Significant native trees are not removed to establish such use, or ii. The buffer has been reduced through view provisions of Section 4.1.3.11.	Clarification is needed to provide guidance and consistency regarding: (1) whether encroachment into Zone 2 of the shoreline buffer is limited to a maximum of one-third (1/3) of the area, (2) what is intended by a combination of grass lawns and approved structures, (3) the vegetation requirements for the remaining two-thirds (2/3) of the shoreline buffer.	PRSM agrees with the need for clarification of this section but disagrees with the City's proposed clarification and believes that additional issues require clarification. The disagreement is that PRSM believes that the third phrase of the City's proposed clarification should read "Zone 2" rather than "shoreline buffer." The additional clarifications needed involve: (1) The intent of ii under b, (2) How are "lawns" and "lawn grasses" defined? (3) How are non-grass lawns treated? There is also a need to clarify that replacing an existing lawn does not constitute planting a new lawn. Agreement on definitions or clarifications that may be adopted by the City in the future depends on their content.

Proposed Provisions for Limited Amendment. City of Bainbridge Island				PRSM Comments/Position
Topic*	Code Section*	Revision	Rationale/Discussion	
11.Vegetation alteration	4.1.3.7.1.a (page 84)	Existing landscape areas may be retained within the Shoreline Buffer or Site-Specific Vegetation Management Area. However, any changes from the existing landscape to a different landscaping use or activity will require that the modified area with the provisions of 4.1.3, Vegetation Management, and the intent of providing native vegetation to maintain ecological functions and processes.	Needs clarification. Any changes too vague/broad.	PRSM agrees with need for clarification of “any, but believes other issues also require clarification. Specifically, this section mentions “landscaping use” which implies a much narrower definition of use than residential/commercial etc. However, the SMP does not define “use.” Agreement on definitions or clarifications that may be adopted by the City in the future depends on their content.
12.Vegetation alteration	4.1.3.8 (page 86)	Minor clearing, grading, or construction may be allowed within the Shoreline Buffer or Site-specific Vegetation Management Plan for a residential development with approval of the Administrator pursuant to Section 4.1.3.7(1)(a), and only for the following activities as prescribed below and pursuant to Section 4.1.4 Land Modification.	Needs clarification.	PRSM agrees with need for clarification of minor clearing, grading, and construction. There is also need for a clarification of minor filling. Agreement on definitions or clarifications that may be adopted by the City in the future depends on their content.

Proposed Provisions for Limited Amendment. City of Bainbridge Island				PRSM Comments/Position
Topic*	Code Section*	Revision	Rationale/Discussion	
13.Vegetation alteration	4.1.3.8.1 (page 86)	Maintenance of existing residential landscaping is allowed subject to Sections 4.1.3.5(8) and 4.1.3.7.2. One (1) hand installed pervious trail to shoreline not more than four (4) feet in width, which may include hand installed steps, and shall be designed to minimize environmental impacts. No significant trees shall be removed. The trail may be wider when required for handicapped or public access. For single-family residential development, trimming is limited to two (2) feet on either side of the trail.	Needs clarification.	PRSM agrees with the need for clarification of this section, several aspects of which are unclear. The first sentence of the section states that it pertains to maintenance of existing landscapes, but the remainder of the section seems to pertain to new landscaping, specifically to the development of trails. It is unclear what is meant by “designed to minimize environmental impacts.” How is “trimming” defined? (It is not in SMP Definitions (8.0).) Nor is “pruning” in the SMP Definitions (8.0). Part of the section, beginning “One (1) hand installed...” is not a complete sentence. Is some text missing from this section? There is also a need to clarify that trimming vegetation within the shoreline buffer is not limited to two feet of a trail as it is permitted under other provisions of the SMP. Agreement on definitions or clarifications that may be adopted by the City in the future depends on their content.

Proposed Provisions for Limited Amendment. City of Bainbridge Island				PRSM Comments/Position
Topic*	Code Section*	Revision	Rationale/Discussion	
14.Geologically hazardous areas	4.1.5.8.3 (page 108)	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 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, 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).	No permit pathway for development on marine bluff. Trams should be allowed on unstabilized feeder bluffs.	PRSM agrees.

PRSM RESPONSE TO CITY PROPOSED REVISIONS TO SMP
(continued)

Proposed Provisions for Limited Amendment. City of Bainbridge Island				PRSM Comments/Position
Topic*	Code Section*	Revision	Rationale/Discussion	
15. Clarification-- Geologically hazardous areas	Appendix B-9 (E.2 page 293)	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 alternation 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).	No definition of redevelopment or alteration (see new definitions, below); overall confusing language.	PRSM agrees with the need for definitions and clarification of this section. There are several unclear aspects of this section. Neither “redevelopment” nor “alteration” is defined in Glossary for SMP as a whole (beginning page 224) or for Appendix B (beginning page 264). Does section (a) refer to intentional damage or any damage, including damage beyond control of homeowner? The second part of this section (b) is not a sentence. In general, Appendix B is extremely difficult to follow in part due to poor formatting. The City may want to consider reformatting Appendix B as a public service. Agreement on definitions or clarifications that may be adopted by the City in the future depends on their content.
16. Geologically hazardous areas—vegetation	4.1.5.8.4 (page 108)	All alterations to the vegetation within a geologically hazardous area shall provide a Bluff Management Plan developed by a qualified professional(s) to address vegetation management for slope stability and ecological functions and processes for a ten year period.	Should not include pruning; should have some threshold/removal of a single tree should not trigger need for bluff management plan.	PRSM agrees that pruning should not be considered alternation and notes that neither “pruning” nor “trimming” is defined in SMP Definitions (8.0) or Appendix B Definitions (B-1). PRSM agrees that removal of a single tree should not trigger a requirement for a bluff management plan, but notes that that removal of a plant of any size—not just a tree—now triggers such a requirement. Agreement on definitions or clarifications that may be adopted by the City in the future depends on their content.

PRSM RESPONSE TO CITY PROPOSED REVISIONS TO SMP *(continued)*

Proposed Provisions for Limited Amendment. City of Bainbridge Island				PRSM Comments/Position
Topic*	Code Section*	Revision	Rationale/Discussion	
17.Nonconforming Uses, Nonconforming Lots, and Existing Development	4.2.1.1 (page 121)	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.	What about structures built between 1996-2014?	PRSM assumes that the revised SMP is an amendment to the initial master program of 1996 and that this topic reflects a misunderstanding on the part of the City.
18.Correction--General Provisions—Nonconforming Structures	4.2.1.6.1 (page 123)	General Provisions—Existing Structures	Nonconforming Structures” intended to say “Existing Development”	PRSM agrees. This is issue is also included on the PRSM list of suggestions for “technical” changes to the SMP. PRSM notes the importance of stating that the most restrictive clause does not apply in this as in many other instances.
19.Correction—Renovations or remodels	4.2.1.6.1.c (page 124)	Renovations or remodels are entirely contained within the building	Not practicable.	PRSM agrees. This is issue is also included on the PRSM list of suggestions for “technical” changes to the SMP.

Proposed Provisions for Limited Amendment. City of Bainbridge Island				PRSM Comments/Position
Topic*	Code Section*	Revision	Rationale/Discussion	
20.Internal consistency— Reconstruction of Damaged Existing Primary Structure	4.2.1.6.1.2 (page 124)	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.	Internally inconsistent because having to meet geologically hazard provisions for existing development may result in not being able to build to prior bulk dimensions.	PRSM agrees that this section is problematic, but would characterize the problems as arising from the most restrictive clause. PRSM raised a related issue in its list of suggestions for “technical” changes to the SMP, specifically, allowance of addition of square footage in the course of reconstruction following a casualty, rather than restriction to same bulk dimension. Agreement on definitions or clarifications that may be adopted by the City in the future depends on their content.

Proposed Provisions for Limited Amendment. City of Bainbridge Island				PRSM Comments/Position
Topic*	Code Section*	Revision	Rationale/Discussion	
21.Internal reference (incorrect)	4.2.1.6.1.2.c (page 124)	The replacement structure meets geologically hazard provision for existing development in Section 4.1.5, Regulations—Nonconforming Uses and Appendix B.	Section 4.1.5 Regulations—Nonconforming Uses, does not exist.	PRSM believes that the reference is problematic for several reasons. Section 4.1.5 does exist, but it is titled “Critical Areas”. Section 4.1.5.7 (under Critical Areas) is entitled, Regulations—Geologically Hazardous Areas; this section refers to Appendix B but also describes additional standards for marine bluffs specified in 4.1.5.8 and 4.1.5.9. Clarification is needed. Agreement on definitions or clarifications that may be adopted by the City in the future depends on their content.

Proposed Provisions for Limited Amendment. City of Bainbridge Island				PRSM Comments/Position
Topic*	Code Section*	Revision	Rationale/Discussion	
22.Clarification	4.2.1.6.3.2 (page 124)	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.	Needs clarification because of the use of terms with no definition and overall poor sentence structure. It is “development area” in Section 5.9.6(2)	PRSM agrees on the need for definition and clarification. Among the undefined terms are: altered, configuration, encumbered lot, lifetime. The term “development” is defined, but that definition pertains to “construction or exterior alteration of structures” and thus seems to refer entirely to the construction phase, which section 4.2.1.6.3.2 seems to use “development” to refer to a residential structure at any stage of its life. PRSM agrees that Section 5.9.6(2) uses the term “development area” not “building area”. Agreement on definitions or clarifications that may be adopted by the City in the future depends on their content.

PRSM RESPONSE TO CITY PROPOSED REVISIONS TO SMP (continued)

Proposed Provisions for Limited Amendment. City of Bainbridge Island				PRSM Comments/Position
Topic*	Code Section*	Revision	Rationale/Discussion	
24.Definition	Various	Alteration—borrow from BIMC 18 non-conforming structure—less than 50% demolition	No definition currently provided in the SMP.	PRSM agrees that “alteration” is not defined in SMP. Nor is “change” defined. Agreement on definitions or clarifications that may be adopted by the City in the future depends on their content.
25.Definition	Various	Redevelopment—borrow from BIMC nonconforming structure –50% or greater demolition.	No definition currently provided in the SMP.	PRSM agrees that “redevelopment” is not defined in SMP, but finds the suggested definition problematic. PRSM’s position is that repair of 50% or greater should <i>not</i> be equated with new development/re-development on the grounds that the restrictions on development/re-development are so severe that re-development may not be possible. Agreement on definitions or clarifications that may be adopted by the City in the future depends on their content.
26.Definition	5.9.5.8.c (page 184)	Average Lot Width Measurement. In determining allowed setback for this subsection, lot width shall be measured as depicted BIMC Chapter 18.12, Dimensional Standards.	BIMC 18.12 does not allow for “average.”	Section 5.9.5.8 pertains to Regulations for Residential <i>Subdivisions</i> (Single-Family and Multifamily, including ADU). PRSM has not taken positions on issues pertaining solely to new development.
27. Mitigation manual—impervious surfaces		TBD	Provide alternative(s) to rain garden for mitigating new impervious surface area. Single option is too restrictive—not practicable on steep slopes (over 1/3 of shoreline properties).	PRSM agrees that alternatives to rain gardens should be provided. Agreement on definitions or clarifications that may be adopted by the City in the future depends on their content.

PRSM RESPONSE TO CITY PROPOSED REVISIONS TO SMP
(continued)

Proposed Provisions for Limited Amendment. City of Bainbridge Island				PRSM Comments/Position
Topic*	Code Section*	Revision	Rationale/Discussion	
26.Hazard tree removal	Various	TBD	Need clarification for if/when mitigation is required and type/amount required. No ratio (e.g., 3:1) provided for hazard tree removal. Is geotech report and/or arborist report needed after the fact?	PRSM agrees with the need for clarification regarding hazard tree removal. Due to the health and safety issues associated retention of a hazard tree in place or as a downed tree, PRSM believes that shoreline homeowners should be allowed to fell a tree that has been determined by arborist to be hazardous and to remove the downed tree without requirement for mitigation. Agreement on definitions or clarifications that may be adopted by the City in the future depends on their content.

*Topic numbers and page numbers added by PRSM for convenience.

Proposed SMP Amendments – Master List
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Issue/Topic		Page/Section	Suggested Change	Rationale/Discussion
Topics agreed to with no need for further discussion				
1	Nonuse of nonconforming structure	4.2.1.5	Make clear that nonuse of a nonconforming structure is not limited in time as is nonuse of a nonconforming use.	Agree.
2	Changes in designations	3.4.5	Make clear that there are no automatic changes in shoreline designations.	Agree.
3	Citations to sections that do not exist	2.3.1 4.1.2.9	Eliminate all such instances.	Agree.
4	Development in critical areas		Make clear the SMP does not prohibit new residential development in all critical areas.	The critical areas goals, policies and regulations (Section 4.1.5 and Appendix B) apply to all critical areas. Development in all critical areas must meet the regulations in these sections. The SMP does not outright prohibit new residential development in all critical areas. Regulations are specific to the type of critical area (geotechnical, wetland, etc.).
5	Suitability of docks and piers	6.3.1	Suitable location for docks and piers is limited to consideration of regulations in Section 6.3	Can consider striking #2: The proposal is suitably located and designed and that all potential impacts have been recognized and mitigated; and Other applicable sections of the code ensure that docks and piers are suitably located and designed. This language is duplicative.
6	Vegetation change		The SMP should make clear there is no need for City approval to remove any vegetation and replace it with another.	Agree.
7	Applicability of goals and policies to development	4.0.1	Amend SMP to make clear that development must comply with regulations and not the more broadly worded goals, policies and designations.	Agree.
8	Nonconforming use	4.2.1.3.5	Eliminate description as being “restricted” if it is in fact prohibited	
9	Residential use at Point Monroe		Clarify that residential structures at Point Monroe are not nonconforming uses.	Agree.
10	Potential increase in buffers by 50%	Page 286	Eliminate ability of shoreline administrator to increase buffers by 50% for wildlife habitat or plant species purposes.	Does not apply to shoreline buffer.
11	Re-establishment of nonconforming uses restricted	4.2.1.3.5	Change as follows: “Once discontinued, re-establishment of nonconforming uses located in the shoreline jurisdiction shall be restricted <u>as provided in Section 4.2.1.3.5.</u> ”	Agree, except correct section is 4.2.1.5. Change as follows: “Once discontinued, re-establishment of nonconforming uses located in the shoreline jurisdiction shall be restricted as provided in Section 4.2.1.5.”

Proposed SMP Amendments – Master List
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	Issue/Topic	Page/Section	Suggested Change	Rationale/Discussion
12	Shoreline buffers	Table 4-3 (page 66)	Add footnote #3: All lots with a depth of <200 feet are Category B lots regardless of geomorphic class.	PRSM agrees with the proposed revision with addition of specific statement that the most restrictive clause does not apply and the recognition that factors other than the geomorphic class affect the depth of the shoreline buffer. The issue in this section, in our view, is not internal inconsistency but rather the workings of the most restrictive clause. Ensuring that lots <200 feet deep shall have the narrower shoreline buffer, requires an explicit statement in the footnote that the most restrictive clause does not apply. Also, the term “geomorphic class” does not encompass all the possibilities, e.g., percentage native vegetation coverage is not a geomorphic class.
13	Shoreline buffers	Table 4-3 (page 66)	See Figure 4-1.	PRSM agrees.
14	Shoreline buffers	Table 4-3 (page 66)	--	Footnote 1 in table 4-3 refers to the <i>total</i> of zone 1 and zone 2. PRSM’s understanding is that Zone 1 starts at OHWM as usual and Zone 2 starts 30 feet from OHWM and continues to 50 feet from the top of the bluff or the extent of the standard buffer, whichever is greater.
15	Internal reference	4.1.2.4.4 (page 71)	The site-specific analysis shall be prepared in accordance with the guidance provided in the City’s Administrative Manual.	PRSM agrees that 4.1.2.9 does not exist. However, the code section cited by the City seems to be incorrect. The SMP language in 4.1.2.4.3 is: “the site-specific analysis shall be prepared in accordance with section 4.1.2.9, submittal requirements—site-specific impact analysis and mitigation plan.”
16	Internal reference	4.1.2.5.1 (page 71)	Minimum requirements for planting plans can be found in the City’s Administrative Vegetation Management Manual.	PRSM agrees that the cited manual seems to be unavailable. The City might consider providing a comprehensive list of plants (native and non-native with the same ecological functions) approved for planting in the shoreline buffer without City approval, including ground covers, ferns, perennials, shrubs, and trees.
17	Nonconforming Uses, Nonconforming Lots, and Existing Development	4.2.1.1 (page 121)	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.	PRSM assumes that the revised SMP is an amendment to the initial master program of 1996 and that this topic reflects a misunderstanding on the part of the City.
18	Correction—Renovations or remodels	4.2.1.6.1.c (page 124)	Renovations or remodels are entirely contained within the building	PRSM agrees. This is issue is also included on the PRSM list of suggestions for “technical’ changes to the SMP.
19	Definition	5.9.5.8.c (page 184)	Average Lot Width Measurement. In determining allowed setback for this subsection, lot width shall be measured as depicted BIMC Chapter 18.12, Dimensional Standards.	

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Issue/Topic	Page/Section	Suggested Change	Rationale/Discussion
Topics agreed to with need for further discussion/shared language			
20	Nonconforming development	Page 237	Delete definition of “existing development” and replace “existing development” in section 4.2 with “nonconforming development.” Can discuss language: (1) New or amended master programs approved by the department on or after September 1, 2011, may include provisions authorizing: (a) Residential structures and appurtenant structures that were legally established and are used for a conforming use, but that do not meet standards for the following to be considered a conforming structure: Setbacks, buffers, or yards; area; bulk; height; or density;
21	Most restrictive provision applies	4.0.1.7 1.3.4.5	Replace “more restrictive shall apply” to “more specific provision shall apply” Replace “provide more protection to the shoreline area shall apply” with “the more specific provision shall apply.” A more specific regulation may not result in no net loss of ecological functions and processes. Where provisions of this Master Program or other provision in BIMC conflict, the more restrictive provisions <u>which results in greater ecological functions and processes</u> shall apply unless specifically stated otherwise. Replace “provide more protection to the shoreline area shall apply” with “<u>result in greater ecological functions and processes shall apply.</u>”
22	Permission to clear	4.1.4.3	Limit requirement for a clearing permit to specified number of square feet of clearing and specified volume of grading. 1. All clearing <u>greater than 200 square feet and/or grading</u> not associated with an approved development, use or activity, unless specifically provided for in this program. 2. <u>All grading with a combined volume greater than 25 cubic yards not associated with an approved development, use or activity, unless specifically provided for in this program.</u>
23	Human activity	Page 224	From definition of “activity” replace “human activity” with “shoreline modification activity.” Agree.
24	Vegetation management	4.1.4.4	Eliminate the prohibition of “all clearing” unless associated with an approved use or activity. Exempt from City approval any landscaping outside the buffer and exempt from City approval any landscaping within the buffer as long as native plants are used. Provide reference to the Kitsap County native plant list. Clearing within shoreline jurisdiction associated with an existing legal use shall be limited to the extent necessary and require a clearing permit only if the cleared area is within the shoreline buffer and greater than 200 square feet. 1. Clearing and/or grading within shoreline jurisdiction shall require an approved clearing or grading permit in association with an existing legal use or a new permitted or allowed shoreline use or development. Such activities shall meet the mitigation and revegetation provisions in Section 4.1.2, Environmental Impacts and Section 4.1.3, Vegetation Management.

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Issue/Topic	Page/Section	Suggested Change	Rationale/Discussion
			<u>1. Normal and routine maintenance of residential landscaping shall not require a clearing permit unless the cleared area is within the shoreline buffer and greater than 200 square feet.</u> <u>2. Grading within shoreline jurisdiction associated with an existing legal use shall be limited to the extent necessary and require a clearing permit only if greater than a combined volume of greater than 25 cubic yards.</u> <u>3. Clearing and/or grading associated with a new shoreline use or development shall meet the mitigation and revegetation provisions in Section 4.1.2, Environmental Impacts and Section 4.1.3, Vegetation Management.</u> 4.1.4.4.2-4 stay the same, but are renumbered. The Kitsap County native plant list is included in Appendix A of the Single Family Residence Shoreline Mitigation Manual.
25	Retroactivity	4.1.3.1	Change retroactivity language in SMP to mimic SMA guidelines so that “unless changes or alterations are proposed” language is eliminated. Or edit to “unless there is a change to a different use, as in a change from residential to commercial or physical expansion of a structure that would increase the nonconformity.” Agree – can discuss/refine language “unless there is a change to a different use, as in a change from residential to commercial or physical expansion of a structure that would increase the nonconformity.”
26	Hazard trees	4.1.3.4.3.c.i	Eliminate requirement that felled hazard trees be left on site.
27	Compatibility with adjacent properties	Page 224	Define “adjacent” as adjoining or across the street rather than the more vague “near or close” Can discuss/refine definition. “Adjacent” used over 120 times in SMP; need to understand implications of change.
28	Revegetation standards	4.1.2	Section 4.1.2 only applies to new development or new uses. Can discuss ideas to clarify applicability. Needs to apply to any shoreline modification activity not specifically exempt.
29	Removal of vegetation	4.1.3.4.3.a	Replace “trimming” of vegetation less than three inches to “removal” of vegetation less than three inches. Maintenance trimming, such as <u>trimming, limbing or pruning</u>, of vegetation with a main stem or supporting structure branches or limbs which is less than three (3) inches in diameter; except that tree topping or other vegetation removal of the plant is not exempt <u>unless specifically allowed by this Program.</u>
30	Revegetation standards	4.1.3.5.8	Strike “Minor vegetation removal outside the shoreline buffer” requires “replanting ... pursuant to Section 4.1.2.5” Unclear on request. Declare existing residential development as conforming pursuant to RCW 90.58.620(1).

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	Issue/Topic	Page/Section	Suggested Change	Rationale/Discussion
31	Need for compatibility with adjacent uses	3.2.2.6 3.2.3.1	Spell out that the purpose of the regulations is compatibility and that compatibility apart from the regulations is not required.	Agree.
32	Mandatory retention of “significant trees”	4.1.3.5.6	How does one know what a “significant tree” is?	Definition omitted from SMP update. Will use significant tree definition from zoning code for consistency (10” dbh evergreen, 12” dbh deciduous).
33	Weeding, etc.	4.1.3.4.3	Change the exemption for permits as follows “ Maintenance trimming <u>Removal</u> 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.”	
34	Revegetation standards apply only to new development	4.1.2.1	Change the applicability section to read: “All <u>new</u> shoreline development and activity shall be located, designed, constructed and managed in a manner...”	
35	Expansion of nonconforming homes	4.2.1.6.3.2	“Enlargement or expansion of the building configuration <u>within the shoreline buffer...</u> ” Allow enlargement of nonconforming structures as long as enlargement does not increase the nonconformity; i.e., the enlargement is landward of the buffers.	Existing language permits enlargement landward of the existing building footprint.
36	Vegetation re-planting	4.1.2.5.1 (page 71)	Vegetation replanting is required for all development, uses or activities within the 200-foot shoreline jurisdiction that either alters existing native vegetation or any vegetation in the required Shoreline Buffer or Vegetation Management Areas, whether a permit is required or not.	PRSM disagrees; this section should not be interpreted as requiring replanting of native vegetation outside the shoreline buffer. As written, this section of the SMP does NOT require replanting outside of shoreline buffer; rather, it requires replanting inside the buffer if development, uses, activities in the shoreline jurisdiction, including outside the buffer, alter vegetation in the shoreline buffer or Vegetation Management Area. For example, if sediment from construction outside the buffer damaged plants inside the buffer. The City’s proposed clarification expands the meaning of the SMP. PRSM opposes replanting requirements outside of the shoreline buffer. PRSM also disagrees with the language in the City’s rationale equates replanting with mitigation. Further, there is a need to clarify what is meant by “alter” and to define Vegetation Management Area. (Below the City cites the need for a definition of “alteration.”)
37	Vegetation re-planting	4.1.2.5.3 (page 72)	If the Shoreline Buffer is altered or reduced pursuant to provisions of Section 4.1.3, Vegetation Management or Section 4.2.1 Nonconforming Uses, Non-conforming Lots,	PRSM agrees with the need for clarification regarding alteration or reduction for view. This section does not specify that replanting in entirety of Zone 1 must be with <i>native</i> vegetation (that is, in 4.1.2.5.3 b).

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			and Existing Development, the following shall occur in Zone 1: a. Retain existing native vegetation b. Plant the entire area of Zone 1. Obtain 65% vegetation canopy coverage within 10 years.	Agreement on definitions or clarifications that may be adopted by the City in the future depends on their content.
38	Shoreline structure view setback line—decks	4.1.2.11 (section does not exist)	“...the shoreline setback line is determined by drawing a line from the most water ward point of the adjoining primary structure...”	PRSM agrees with need for clarification on decks encroaching into the view setback The reference to code section appears incorrect; there is no section 4.1.2.11. Skips from 4.1.2.8 (page 74) to 4.1.3 (page 75). Agreement on definitions or clarifications that may be adopted by the City in the future depends on their content.
39	Significant trees	4.1.3.5.6 (page 80)	Significant trees located outside the Shoreline Buffer or Site-specific Vegetation Management Area but within the shoreline jurisdiction, shall be retained unless allowed to be removed under the exceptions of other provisions of this program provided: a. The Administrator may require alterations to a site plan in order to retain significant trees outside the Shoreline Buffer or Vegetation Management Area. This may include minor adjustments to the location of building footprints, the location of driveways and access ways, or the location of walkways, easements, or utilities.	PRSM agrees with the need to provide for limited removal of significant trees from the shoreline buffer. PRSM’s position is that shoreline property owners should have the same opportunity for removal of significant trees as owners of non-shoreline property.
40	Significant trees	4.1.3.7.c (Page 84)	Vegetation Removal Related to Construction. Tree or vegetation removal within the Shoreline Buffer or Site-Specific Vegetation Management Area that is associated with new construction may be allowed, but must retain significant trees and shall meet the requirements of Section 4.1.2, Environmental Impacts, including replanting provisions.	
41	Vegetation alteration—	4.1.3.6.4.b (page 82)	The following zone specific planting regulations apply to the Shoreline Buffer: a. New lawns are not permitted in Zone 1	PRSM agrees with the need for clarification of this section but disagrees with the City’s proposed clarification and believes that additional issues require clarification. The disagreement is that PRSM believes that that the third phrase of the City’s proposed clarification should read “Zone 2” rather than

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	buffer encroachment		b. In Zone 2, one third (1/3) of the area may be planted in a combination of lawn grasses and approved structures: provided i. Significant native trees are not removed to establish such use, or ii. The buffer has been reduced through view provisions of Section 4.1.3.11.	“shoreline buffer.” The additional clarifications needed involve: (1) The intent of ii under b, (2) How are “lawns” and “lawn grasses” defined? (3) How are non-grass lawns treated? There is also a need to clarify that replacing an existing lawn does not constitute planting a new lawn. Agreement on definitions or clarifications that may be adopted by the City in the future depends on their content.
42	Vegetation alteration	4.1.3.7.1.a (page 84)	Existing landscape areas may be retained within the Shoreline Buffer or Site-Specific Vegetation Management Area. However, any changes from the existing landscape to a different landscaping use or activity will require that the modified area with the provisions of 4.1.3, Vegetation Management, and the intent of providing native vegetation to maintain ecological functions and processes.	PRSM agrees with need for clarification of “any, but believes other issues also require clarification. Specifically, this section mentions “landscaping use” which implies a much narrower definition of use than residential/commercial etc. However, the SMP does not define “use.” Agreement on definitions or clarifications that may be adopted by the City in the future depends on their content.
43	Vegetation alteration	4.1.3.8 (page 86)	Minor clearing, grading, or construction may be allowed within the Shoreline Buffer or Site-specific Vegetation Management Plan for a residential development with approval of the Administrator pursuant to Section 4.1.3.7(1)(a), and only for the following activities as prescribed below and pursuant to Section 4.1.4 Land Modification.	PRSM agrees with need for clarification of minor clearing, grading, and construction. There is also need for a clarification of minor filling. Agreement on definitions or clarifications that may be adopted by the City in the future depends on their content.
44	Vegetation alteration	4.1.3.8.1 (page 86)	Maintenance of existing residential landscaping is allowed subject to Sections 4.1.3.5(8) and 4.1.3.7.2. One (1) hand installed pervious trail to shoreline not more than four (4) feet in width, which may include hand installed steps, and shall be designed to minimize environmental impacts. No significant trees shall be removed. The trail may be wider when required for handicapped or public access. For single-family residential development, trimming is limited to two (2) feet on either side of the trail.	PRSM agrees with the need for clarification of this section, several aspects of which are unclear. The first sentence of the section states that it pertains to maintenance of existing landscapes, but the remainder of the section seems to pertain to new landscaping, specifically to the development of trails. It is unclear what is meant by “designed to minimize environmental impacts.” How is “trimming” defined? (It is not in SMP Definitions (8.0).) Nor is “pruning” in the SMP Definitions (8.0). Part of the section, beginning “One (1) hand installed...” is not a complete sentence. Is some text missing from this section? There is also a need to clarify that trimming vegetation within the shoreline buffer is not limited to two feet of a trail as it is permitted under other provisions of the SMP. Agreement on definitions or clarifications that may be adopted by the City in the future depends on their content.
45	Geologically hazardous areas	4.1.5.8.3 (page 108)	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;	PRSM agrees.

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			b. Minor development for public access (e.g., public trails, stairs, or view points) may be allowed, provided that environmental impacts are mitigated and 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, 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).	
46	Clarification-- Geologically hazardous areas	Appendix B-9 (E.2 page 293)	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 alternation 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).	PRSM agrees with the need for definitions and clarification of this section. There are several unclear aspects of this section. Neither “redevelopment” nor “alteration” is defined in Glossary for SMP as a whole (beginning page 224) or for Appendix B (beginning page264). Does section (a) refer to intentional damage or any damage, including damage beyond control of homeowner? The second part of this section (b) is not a sentence. In general, Appendix B is extremely difficult to follow in part due to poor formatting. The City may want to consider reformatting Appendix B as a public service. Agreement on definitions or clarifications that may be adopted by the City in the future depends on their content.
47	Geologically hazardous areas— vegetation	4.1.5.8.4 (page 108)	All alterations to the vegetation within a geologically hazardous area shall provide a Bluff Management Plan developed by a qualified professional(s) to address vegetation management for slope stability and ecological functions and processes for a ten year period.	PRSM agrees that pruning should not be considered alternation and notes that neither “pruning” nor “trimming” is defined in SMP Definitions (8.0) or Appendix B Definitions (B-1). PRSM agrees that removal of a single tree should not trigger a requirement for a bluff management plan, but notes that that removal of a plant of any size—not just a tree—now triggers such a requirement. Agreement on definitions or clarifications that may be adopted by the City in the future depends on their content.
48	Correction-- General Provisions— Nonconforming Structures	4.2.1.6.1 (page 123)	General Provisions—Existing Structures	PRSM agrees. This is issue is also included on the PRSM list of suggestions for “technical” changes to the SMP. PRSM notes the importance of stating that the most restrictive clause does not apply in this as in many other instances.
49	Internal consistency— Reconstruction	4.2.1.6.1.2 (page 124)	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	PRSM agrees that this section is problematic, but would characterize the problems as arising from the most restrictive clause. PRSM raised a related issue in its list of suggestions for “technical” changes to

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	of Damaged Existing Primary Structure		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.	the SMP, specifically, allowance of addition of square footage in the course of reconstruction following a casualty, rather than restriction to same bulk dimension. Agreement on definitions or clarifications that may be adopted by the City in the future depends on their content.
50	Internal reference (incorrect)	4.2.1.6.1.2.c (page 124)	The replacement structure meets geologically hazard provision for existing development in Section 4.1.5, Regulations—Nonconforming Uses and Appendix B.	PRSM believes that the reference is problematic for several reasons. Section 4.1.5 does exist, but it is titled “Critical Areas”. Section 4.1.5.7 (under Critical Areas) is entitled, Regulations—Geologically Hazardous Areas; this section refers to Appendix B but also describes additional standards for marine bluffs specified in 4.1.5.8 and 4.1.5.9. Clarification is needed. Agreement on definitions or clarifications that may be adopted by the City in the future depends on their content.
51	Clarification	4.2.1.6.3.2 (page 124)	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.	PRSM agrees on the need for definition and clarification. Among the undefined terms are: altered, configuration, encumbered lot, lifetime. The term “development” is defined, but that definition pertains to “construction or exterior alteration of structures” and thus seems to refer entirely to the construction phase, which section 4.2.1.6.3.2 seems to use “development” to refer to a residential structure at any stage of its life. PRSM agrees that Section 5.9.6(2) uses the term “development area” not “building area”. Agreement on definitions or clarifications that may be adopted by the City in the future depends on their content.
52	Existing development—redevelopment	4.2.1.7.1 (page 126)	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	PRSM agrees that clarification is needed. In addition to the issues for clarification raised by the City, several terms are not defined, including “legal nonconforming lot” and “significantly encumbered.” Neither these terms nor closely related terms (e.g., unencumbered) are in the SMP dictionary.

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			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 drain fields) and landscaping; or	Agreement on definitions or clarifications that may be adopted by the City in the future depends on their content.
53	Existing development— redevelopment (continued)		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;”	
54	Definition	Various	Redevelopment and alteration—borrow from BIMC nonconforming structure –50% or greater demolition.	
55	Mitigation manual— impervious surfaces		TBD	
56	Hazard tree removal	Various	TBD	PRSM agrees with the need for clarification regarding hazard tree removal. Due to the health and safety issues associated retention of a hazard tree in place or as a downed tree, PRSM believes that

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				shoreline homeowners should be allowed to fell a tree that has been determined by arborist to be hazardous and to remove the downed tree without requirement for mitigation. Agreement on definitions or clarifications that may be adopted by the City in the future depends on their content.
Topics for further discussion				
57	Restriction on square footage increases in development	4.2.1.6.1.1 4.2.1.6.3.2(a)(iii)	Delete subsection (c)(iii): “Renovations or remodels are entirely contained within the building.” When limiting increases to nonconforming structures to 25%, add language that allows increases at least to 2500 square feet.	Agree. Can discuss expansion thresholds. Is request for an expansion of up to 2,500 square feet or a resulting total footprint of 2,500 square feet?
58	Geotech for replacement bulkheads		Eliminate implied requirement that a geotech report is necessary for a replacement bulkhead to be consistent with SMA guidelines.	SMA guidelines require geotech report for new bulkheads: “The need to protect primary structures from damage due to erosion is demonstrated through a geotechnical report. The damage must be caused by natural processes, such as tidal action, currents, and waves.” SMA guidelines provide: “An existing shoreline stabilization structure may be replaced with a similar structure if there is a demonstrated need to protect principal uses or structures from erosion caused by currents, tidal action, or waves.” A geotechnical report is needed to address the need to prevent potential damage to a primary structure through the use of shoreline stabilization measures and demonstrate that the damage is caused by tidal action, currents, and waves. Note: Kitsap County also requires geotech report for replacement structures.
59	Home height limitations	Page 49	Limit residential height to 35 feet as in SMA instead of 30 feet.	There was no change in height limits in SMP update. Thirty feet has been the standard since 1996.
60	Agriculture	Page 225	Eliminate prohibition on growing vegetables for family use, but allow vegetables, herbs, fruits, nuts and flowers for family use	Existing agriculture for family use may remain in place and may be permitted outside the shoreline buffer. New agriculture for family use is not permitted within the shoreline buffer.

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61	Assurances re “restoration area”	4.1.2.7	Make clear that restoration areas and assurances only apply to situations involving SMP violations and enforcement.	Assurances are required when mitigation is required. Mitigation is required for vegetation alteration/disturbance as a result of permitted activities, not just in the cases of violations.
62	Motorized vessels	3.3.2.7.3	Eliminate “motorizes vessels should not be allowed.”	This language supports the purpose of the shoreline designation. It is not a regulation.

Sub Committee on Policy and Planning (compiled list from PRSM Proposed Sub Committee Change to SMP)

Issue	PRSM Position	Rationale for Change	Relevant SMP Sections (partial list)
1.Existing development required to meet new SMP standards and declared non-conforming	Revise the SMP to state unambiguously that lawfully established homes existing prior to the adoption of the new SMP do not become non-conforming as a result of failure to meet the requirements in the new SMP.	The SMP states that it is <i>not</i> retroactive and applies only to new development, but this not-retroactive statement is trumped by the “most restrictive” clause. Our legal review indicates that the SMP makes almost all existing homes non-conforming because they do not meet at least one of the numerous standards of the new SMP. They are non-conforming--notwithstanding the SMP provisions allowing repair, alteration, and some expansion. The City could have chosen to exempt existing homes from the requirement to adhere to the new SMP standards. State law explicitly provided the option to treat existing homes as conforming without regard to the new standards. Non-conforming status disadvantages shoreline homeowners because it may result in higher costs for insuring and borrowing and reduce the value of the property-- basically because the insurer, banker, or buyer cannot be certain that the City will continue to overlook the non-conforming status, even if it is doing so at the present time under the current City administration. Non-conforming status does <i>not</i> enhance the City’s ability to ensure that standards are met when major external changes are made to existing homes. Rather, the only power that the City gains from making existing shoreline homes non-conforming is the power to phase them out.	1.3.5.2. “The provisions of the [SMP] apply to new development and activities and are <i>not</i> retroactive.” [Emphasis added.] 4.0.1.7. “Where provisions of this Master Program or other provisions in BIMC conflict, the more restrictive provisions shall apply unless specifically stated otherwise.” Definition (p237). Existing Development is defined as “Legally established structures which do not conform to the provisions in the 1996 Shoreline Master Program, as amended by ordinance 2013- on xx xx, 2013.” Definition (p 248). Nonconforming development is defined as “lawfully constructed or established but no longer conforms to the applicable

			shoreline provisions [...] or its successor.”
Issue	PRSM Position	Rationale for Change	Relevant SMP Sections (partial list)
1.Existing development required to meet new SMP standards and declared non-conforming <i>(continued)</i>		The City has publicly denied that it intends to phase out homes on the shoreline over time (<i>Inside Bainbridge</i> , 7/17/15). However, this denial conflicts with the reality that the new SMP standards apply to existing homes, making them nonconforming and giving rise to a wide-spread belief in the shoreline community that the City’s intent is to phase out shoreline homes over time as part of an effort to return the shoreline to a primitive state.	References in 4.2.1 to <i>the nonconformity</i> ” imply that property is nonconforming. For example (4.2.1.3), “Lawfully constructed structures, established uses...shall be allowed provided to be repaired...provided that the alteration does not increase <i>the nonconformity</i> .” [Emphasis added].

Issue	PRSM Position	Rationale for Change	Relevant SMP Sections (partial list)
2. Existing Development required to meet new buffer standards	Revise the SMP to state unambiguously that the standards on depth of shoreline buffers apply only to new development/re-development and not to the repair and maintenance of existing development.	The SMP states that its provisions apply to new development and activities and are <i>not</i> retroactive. However, it also states (Table 4-3) that the shoreline buffers apply to both developed and undeveloped property. Therefore, under the most restrictive clause, the buffer standards apply to both developed and undeveloped property. Moreover, the City is now applying the buffer standards to all property. In addition, there are numerous problems with the SMP buffer standards. The first class of problems pertains to their complexity and vagueness. The shoreline buffer is divided into two Zones, for which the restrictions differ materially. For a given property, the total buffer depth is affected by at least seven factors: 1) Upland designation and possibly aquatic designation as assigned by the City, 2) Type of local shoreline environment, e.g., lagoon, rocky shore, 3) Height of bank at shoreline, 4) Extent of native vegetation along the shoreline and into the interior of the property, 5) View setbacks, 6) Depth of the property, and 7) whether the property is developed or not. Depending on all of these factors, the required buffer depth ranges from 30 feet (urban areas only) to 200 feet or more from the mean high water mark. It can be extremely difficult—if not impossible—for the homeowner to determine the buffer depth for his or her property. Coverage by native vegetation is especially problematic as it is extremely vague and subject to change. The methodology for determining 65% native vegetation canopy area is not described and its determination seems to require expertise that the typical homeowner does not have. Moreover, the shoreline designation and the boundary of Zone 1 can change as vegetation grows or dies. Further, in some circumstances, the City Administrator may decide to expand the buffer further.	1.3.5.2. “The provisions of the [SMP] apply to new development and activities and are <i>not</i> retroactive.” [Emphasis added.] 4.0.1.7. “Where provisions of this Master Program or other provisions in BIMC conflict, the more restrictive provisions shall apply unless specifically stated otherwise.” Table 4.3, Shoreline Buffer Standards Table. This table explicitly states that the buffer standards apply to developed lots as well as undeveloped lots.

Issue	PRSM Position	Rationale for Change	Relevant SMP Sections (partial list)
2. Existing Development required to meet new buffer standards <i>(continued)</i>		This discretion, along with the complexity and vagueness, severely compromise the City’s ability to consistently interpret and administer the SMP. The City can reduce its exposure to inconsistent interpretation and administration by limiting the shoreline buffers to new development/re-development—consistent with the SMP declaration that it does not apply retroactively. The second class of problems with the SMP pertains to the evidence that the City presented in support of the buffer standards. State law requires that the City consider the best available scientific evidence. By far the best available scientific evidence was evidence for Bainbridge Island itself, which the City had collected in conjunction with the Battelle Marine Sciences Laboratory. This study found essentially <i>no</i> impact from shoreline development on the quality and diversity of this island’s shoreline environment (Williams et al. 2004).† The City wholly ignored those findings and instead relied heavily on research on fresh-water streams in forested areas—a totally different environment than residential areas on salt water shorelines.‡ Study of the applicability of the <i>concepts</i> used in the fresh-water research to salt-water shorelines was appropriate. However, the City directly applied the fresh-water <i>results</i> to salt-water shores.	

Issue	PRSM Position	Rationale for Change	Relevant SMP Sections (partial list)
3. Removal of downed hazard tree	In light of the health issues associated with having a downed tree near a residence, the City should not prevent any homeowner—including a shoreline homeowner—from removing a downed tree. Further, the types of wildlife for which downed trees are habitat are <i>not</i> water obligate species; therefore, it is inequitable to place the burden of retaining downed trees on shoreline homeowners, but not all other homeowners.	Downed trees pose a health hazard because of health risks associated with the wildlife that commonly reside in such trees. Raccoons carry round worms in their feces. Children and pets are especially susceptible to ingesting the eggs of these worms when playing in the dirt near a raccoon latrine and may die or suffer severe impairments, which vary depending on which of their organ systems are affected by the worms (e.g., blindness, paralysis). Rodents (e.g., rats, squirrels) carry plague, which can be fatal if left untreated. Recently, there was an outbreak of plague in Yosemite traced to rodents near the camp grounds. (http://www.inquisitr.com/2348399/second-yosemite-plague-victim-diagnosed/). Also, wild animals such as raccoons, skunks, bats, and foxes can contract rabies and infect people or pets. (http://www.cdc.gov/rabies/.) The types of wildlife that reside in downed trees on the shore are <i>not</i> water obligate species. Therefore, is it particularly inequitable to expose shoreline families to health risks that are not borne by families who live in the interior of the island given that the interior is also appropriate habitat for the types of wildlife of interest here. Even one case of a wildlife-borne disease in a shoreline family that was required to retain a downed tree exposes the City to unnecessary financial risk as well as to community dismay and anger—not to mention the possible tragedy for the family.	4.1.3.4.3.c.i.A “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;” B-2.8.b (page 272). “Habitat needs <i>may</i> require leaving the fallen tree in the riparian corridor or maintaining a high stump for wildlife habitat.” [Emphasis added.] 4.1.3.6.4 a.”New lawns are not permitted in Zone 1. b. In Zone 2, one-third (1/3) of the area may be planted in a combination of grass lawns and approved structures provided: i.Significant native trees are not removed to establish such use, or ii. The buffer has been reduced through view provisions...”

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Issue	PRSM Position	Rationale for Change	Relevant SMP Sections (partial list)
3. Removal of downed hazard tree (continued)		In addition, mitigation is not appropriate for removing a downed hazard tree since the fact that the tree has become a hazard is almost always an act of God, not of a homeowner. Nevertheless, if the City insists on mitigation for downing and removing a hazard tree, it could enhance wildlife habitat at another location away from family homes. Further, there is an inconsistency between the SMP regulations and the regulations for Critical Areas in that the latter provides some flexibility with respect to removal of the downed tree, while the former provides no flexibility whatsoever.	

Issue	PRSM Position	Rationale for Change	Relevant SMP Sections (partial list)
4. Some re-vegetation standards require restoration; some mitigation is irrelevant or dis-proportional to impact. These standards trump maintenance of existing residential landscaping.	Numerous provisions in the SMP effectively require <i>restoration</i> of native vegetation, or require mitigation that is substantially out of proportion to, or unrelated, to an impact. These sections should be revised so that restoration is not required and mitigation meets the relevant (nexus) and proportionality tests established by the United States Supreme Court.	The Washington Shoreline Management Act (SMA) requires localities to establish standards to ensure no net loss to the shoreline environment. While voluntary restoration is allowed under the SMA, mandatory restoration is not. The City of Bainbridge Island exceeds the authority granted to it under the SMA in that its new SMP includes various provisions requiring restoration. The U.S. Supreme Court has ruled that the conditions that local governments place on land use permits must be connected to that government’s regulatory interest (“nexus” requirement, <i>Nollan v. California Coastal Commission</i>, 1987) and must be roughly proportional to the impacts of the development on that land (<i>Dolan v. City of Tigard</i>, 1994). The nexus and proportionality requirements were recently reaffirmed by the U.S. Supreme Court (<i>Koontz v. St. Johns River Water Management District</i>, 2013). While only parts of the SMP relate to permitting, almost all of it relates to land use. Prudence suggests that the City ensure that the legal standards of nexus and proportionality are met with respect to the standards of the SMP, including the vegetation standards.	4.1.3.5.5.a. “ New vegetation planted in the Shoreline Buffer... unless otherwise provided for in zone-specific requirements in 4.1.3.6 (6) shall be: Native species using a native plant-community approach of multi-storied, diverse plant species...” The SMP does not associate this with any impact; thus, it is difficult to see how it meets the nexus and proportionality tests. Rather, it appears to be required restoration of a native forest plant community. 4.1.2.5.3. ‘If the Shoreline Buffer is altered or reduced pursuant to provisions of Section 4.1.3, Vegetation Management or Section 4.2.1 Nonconforming Uses, Non-Conforming Lots, and Existing Development, the following shall occur in Zone 1: a. Retain existing native vegetation; b. Plant the <i>entire area</i> of Zone 1. Obtain 65% vegetation canopy coverage within 10 years.” [Emphasis added.]

Issue	PRSM Position	Rationale for Change	Relevant SMP Sections (partial list)
4. Some re-vegetation standards require restoration; some mitigation is irrelevant or disproportionate to impact. These standards trump maintenance of existing residential landscaping. <i>(continued)</i>		The vegetation restoration requirements place unwarranted health and safety risks on shoreline families. The planting that is required is dense and forest-like (“multi-storied, diverse plant species that are native to Central Puget Lowland marine riparian zone” (4.1.3.5.5). Living in a forested area imposes a safety risk from fire. For fire safety, the Fire Department of the City of Bainbridge Island, along with many other fire departments, recommends mowed grass in a 100 feet perimeter around a residence (www.firewise.org). Such a perimeter is incompatible with the replanting requirements of the SMP, as well as the prohibitions on new lawns (4.1.3.6.4). Living in a forested area also increases the likelihood of human-wildlife conflict, with associated health risks. Some of these health risks are discussed above with respect to downed hazard trees. Another health risk is the increased likelihood of contracting Lyme Disease via a bite from a Western Deer Tick. The U.S. Centers for Disease Control and Prevention recommends avoiding areas of forest and brush where deer, rodents, and ticks are common and a 3 foot barrier of wood chips followed by a 9 foot barrier of lawn to separate forest/brush from play areas, patios, and gardens (http://www.cdc.gov/lyme/prev/in_the_yard.html). By requiring dense forest-like replanting and prohibiting new lawns, the City endangers the health and safety of shoreline families. The City also puts itself at legal risk if a shoreline home burns in a forest fire or a member of a shoreline family contracts Lyme Disease near his or her home.	Section 4.1.2.5.3 requires restoration of vegetation in all of Zone 1 regardless of the extent of alteration or reduction of the Shoreline buffer, which does not appear to meet the proportionality test. Further, we note that alternation of the shoreline buffer via further encroachment of a structure, under a variance (4.2.1.6.1) would also require replanting the entire area of Zone 1—a requirement that does not appear to meet the nexus test since alteration of the structure would not necessarily affect plantings and generally would not affect plantings in Zone 1 as residences are not allowed to encroach into Zone 1.

Issue	PRSM Position	Rationale for Change	Relevant SMP Sections (partial list)
4. Some re-vegetation standards require restoration; some mitigation is irrelevant or disproportionate to impact. These standards trump maintenance of existing residential landscaping. (continued)		Further, under the most restrictive clause, the requirements for vegetation re-planting trump the provision that allows maintenance of existing residential landscaping. The City recently affirmed the existing-landscape provision, writing “Vegetation management standards do not apply retroactively to existing lawfully established uses and developments, including maintenance of existing residential landscaping, such as lawns and gardens.” (Inside Bainbridge, 7/17/15).	4.1.2.5.5. “When mitigation is required for shoreline stabilization projects due to site disturbance, the required planting plan shall also include the following... a. Replant 75% of the shoreline area located along the upland edge of the shoreline stabilization structure to a minimum of ten (10) feet... c. Include plantings equivalent to one tree per ever [sic] 20 linear feet of shoreline and one shrub per ever [sic] five linear feet... Section 4.1.2.5.5 requires planting of dense trees and shrubs in a substantial area regardless of the extent and nature of site disturbance, which does not appear to meet the proportionality test.

Issue	PRSM Position	Rationale for Change	Relevant SMP Sections (partial list)
5. Structures appurtenant to single family use in shoreline buffer and boating facilities and overwater structures and boating	Consistent with the SMP statement that it is not retroactive, revise the SMP to allow the continued existence and ongoing repair of structures in the shoreline buffer that are appurtenant to single family use, regardless of square footage, as they existed when the new SMP was adopted. And, revise the SMP to allow the continued existence and ongoing repair of boating facilities and overwater structures as they existed when the new SMP was adopted.	As indicated above, the SMP (1.3.5.2) states that its provisions apply to new development and activities and are <i>not</i> retroactive. Nevertheless, the SMP explicitly prohibits or severely limits the extent of <i>existing</i> structures appurtenant to single family use in the shoreline buffer. These prohibitions and restrictions are retroactive.	4.1.3.8.3. “Non-habitable structures appurtenant to a single-family use, such as a boat house, deck/patio, and/or stairway may be allowed consistent with the following standards, except that all structures are prohibited in Zone 1 when upland of a Priority Aquatic—Category A designation. b. For Shoreline Buffer areas, the total square footage of all buildings or structures must not exceed 400 square feet or 10% of the Shoreline buffer, whichever is less. c. For Shoreline Buffer areas, only 10% of total allowed square footage or 300 feet, whichever is less, can be located in Zone 1, except when upland of Priority Aquatic B, the total allowable square footage is 5% of Zone 1 or 150 square feet, whichever is less.

Issue	PRSM Position	Rationale for Change	Relevant SMP Sections (partial list)
5. Structures appurtenant to single family use in shoreline buffer and boating facilities and overwater structures (continued)		The City recently expressed its position that overwater structures including docks are “prohibited in areas where critical ecological and/or physical limitations exist to avoid adverse impacts to shoreline ecological functions and ecosystem-wide processes.” (<i>Inside Bainbridge</i>, 7/17/2015). However, the prohibition of many types of overwater structures upland of Priority Aquatic areas and in the Natural upland designation is inconsistent with the allowance of commercial aquaculture in these and some other shoreline designations, including in priority aquatic areas. If the shoreline environment is threatened by private overwater structures then surely it is threatened by commercial aquaculture to at least the same extent—if not more so. Given glaring inconsistencies such as this, it is hard to trust the City’s assertions that limitations on private overwater structures are needed to protect the environment. Trust is made even more difficult because the City provided no evidence of harm to the Bainbridge Island shoreline environment as a result of shoreline residential development and ignored strong, scientific evidence indicating that no harm had been done.	Table 4-1. Overwater structures, For example, docks are not allowed in Priority Aquatic Category A. Table 4-1. Natural Resource Development. For example, commercial aquaculture is allowed priority aquatic areas. Table 4-1. Public Park/Recreational Development, For example, public stairways are allowed in all upland shoreline designations, without regard for aquatic designation—as are public appurtenant structures that support a water oriented passive recreational use. Public appurtenant structures are not defined, but the definition of public access mentions viewing platforms, decks and towers.

Issue	PRSM Position	Rationale for Change	Relevant SMP Sections (partial list)
6. Repair of Existing Bulkheads	Consistent with the SMP statement that it is not retroactive, revise the SMP to allow repair of existing bulkheads as frequently as needed and to the extent needed, including repair of more than 50%. Repair involving more than 50%--including cumulative repair of more than 50%--should not be treated as a replacement.	Bulk heads are prevalent around Bainbridge Island; they protect homes and property. Weather conditions can cause bulkhead failure, and more than 50% of bulkhead length may be compromised in a single weather event. Further, a bulkhead might no longer adequately serve its purpose when considerably less than 50% of its length has been compromised. Under the SMP, replacement of bulkheads is prohibited in some situations and severely limited in others. Replacement with hard stabilization is strenuously discouraged, even when the existing stabilization is similarly hard; it is prohibited in some upland designations and in priority aquatic designations. Failure to allow complete repair of bulkheads or replacement as often as needed, in effect, punishes shoreline homeowners for acts of God. As indicated above, the SMP states that its provisions apply to new development and activities and are <i>not</i> retroactive. Nevertheless, the SMP severely restricts the repair of <i>existing</i> bulkheads—in effect, these prohibitions and restrictions are retroactive. Prohibition of, or severe restrictions on, replacement of a damaged bulkhead is inconsistent with the no net loss standard and instead constitutes required restoration, which is not allowed under state law.	6.2.7.2.b."Damaged structural stabilization may be repaired up to 50 percent (50%) of the linear length within a five (5) year period. Repair area that exceeds fifty percent (50%) shall be considered a replacement. Stabilization repair applications shall consider cumulative approvals of each successive application within a five year period." 6.2.7.2.a. "Existing shoreline stabilization which no longer adequately serves its intended purpose shall be considered a replacement." 6.2.6.3 "Hard structural stabilization, including hard portions of hybrid stabilization, shall be limited to the areas of the site where the stabilization is demonstrated to be necessary, according to Section 6.2 Shoreline Stabilization."
Issue	PRSM Position	Rationale for Change	Relevant SMP Sections (partial list)

6. Repair of Existing Bulkheads <i>(continuing)</i>		The best scientific evidence does <i>not</i> support the SMP’s prohibitions and restrictions on bulkheads. Much of the research on shoreline stabilization is <i>not</i> relevant to bulkheads that hug the shore; it pertains to structures that are waterward of the mean high water mark. PRSM analyzed data on bulkhead presence on Bainbridge Island, data collected by the City in conjunction with the Battelle Memorial Institute, Marine Sciences Laboratory (Williams et al. 2004).† We found no impact of existing bulkheads on the quality and diversity of the Bainbridge Shoreline environment.	6.2.4.4 Regulations—Prohibited. “Shoreline stabilization proposed on shores where valuable geo-hydraulic or biological processes are sensitive to interference or critical to shoreline conservation, such as: feeder bluffs, barrier estuaries, barrier lagoons, wetlands, or accretion shore forms such as sand spits, hooks, bars, or barrier beaches. Except that stabilization proposals to protect a primary family residence, primary appurtenance, or primary public or transportation facilities may be allowed on feeder bluffs and spits provide [sic] provisions of this program are met.” 6.2.5.2 “Soft-treatment stabilization shall be used to the maximum extent feasible.” 6.2.5.3. “New or replacement shoreline stabilization measures are a conditional use for the following: a. Proposed shoreline stabilization is adjacent to a feeder bluff. b. The nearest adjacent existing shoreline stabilization is greater than one hundred (100) feet of the subject property.”
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Proposed SMP Amendments – Master List
ER 408 – Protected Document – Do Not Disclose

Issue	PRSM Position	Rationale for Change	Relevant SMP Sections (partial list)
6. Repair of Existing Bulkheads (continued)			6.2.8.1 When evaluating the need for new, expanded or replacement stabilization measures, the applicant shall provide an analysis from a qualified professional that examines and implements preferred alternatives in the following sequence: a. No action (allow the shoreline to retreat without intervention) b. Non-structural measures such as vegetation enhancement or addressing upland drainage concerns. c. Increase building setbacks and/or relocate structures to a feasible location and/or elevate the structures d. Implement flexible/natural materials and methods, beach nourishment, protective berms, bioengineered stabilization, or other soft-treatment measures. e. Hybrid measures f. Exclusively hard stabilization measures.”

Proposed SMP Amendments – Master List
ER 408 – Protected Document – Do Not Disclose

Issue	PRSM Position	Rationale for Change	Relevant SMP Sections (partial list)
7. Prohibition of motorized vessels in Priority Aquatic— Category B	Allow use of motorized vessels in Priority Aquatic , Category B	Motorized vessels have long plied the waters that are now designated Priority Aquatic-Category B. It is inconsistent with the no net loss provisions of the state SMA to prohibit such vessels. The City has recently stated that “the use of motor boats is not forbidden in Fletcher Bay, Eagle Harbor, Port Madison, Port Monroe, or Blakely Harbor.” (<i>Inside Bainbridge</i>, 7/17/15). If the City’s intent is to allow motorized vessels in Priority Aquatic Category A and B areas—including the mud flat areas of the harbors and bays specifically listed above--it should revise SMP according.	3.3.2.7.3 Priority Aquatic Category A Management Policies. ...“Motorized vessels should not be allowed.”

Issue	PRSM Position	Rationale for Change	Relevant SMP Sections (partial list)
8. Remodeling/ Replacement of Residence	Revise the SMP to allow expansions of more than 25% of existing footprint without regard to fire or other casualty, to allow more than one enlargement or expansion in the lifetime of a development, and to allow a building height of 35 feet. Delete from the SMP the requirement that replacement of a damaged home must be accompanied by a warrant that new shoreline stabilization will not be need for the life of the new structure.	Restriction of rebuilding to 25% of the existing building footprint is arbitrary. It is grossly inequitable to those with cabins or small homes as the value of their property can be materially reduced due to this restriction on rebuilding. It is extremely harsh to allow only one enlargement or expansion in the lifetime of a development (assuming development is used here to mean existing primary residential structure). A residential structure can easily have a lifetime of 100 years or more. Permission to rebuild a damaged structure to its <i>prior bulk dimension</i> is conditioned on ensuring that new shoreline stabilization is not needed for the life of the new structure a condition that seems to violate the nexus test.	4.2.1.6.3.2."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 in the lifetime of the development, and the expansion shall not exceed: i. The allowed building area for Point Monroe District... ii. The allowed building area for encumbered lots... iii. For structures not meeting i or ii, twenty five (25%) of the existing building footprint. Table 4-2, Dimensional Standards Table. Upland residential height limit is 30 feet (page 61).

Issue	PRSM Position	Rationale for Change	Relevant SMP Sections (partial list)
8. Remodeling/ Replacement of Residence <i>(continued)</i>			4.2.1.6.1.2. "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 ... and Section 4.2.1.5... a.This provision shall not apply 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 hazardous provision for existing development in Section 4.1.5..."

NOTES

† Williams GD, Thom RM, Evans NR. Bainbridge Island Nearshore Habitat Characterization & Assessment, Management Strategy Prioritization, and Monitoring Recommendations. Prepared for the City of Bainbridge Island. Battelle Memorial Institute, Marine Sciences Laboratory, Sequim Washington. November 2004.

‡ Brennan J, Culverwell H, Gregg R, Granger P. Protection of Marine Riparian Functions in Puget Sound, Washington. Prepared for Washington Department of Fish and Wildlife. Washington Sea Grant. Seattle Washington June 15, 2009.

Chapter 4

No Net Loss of Shoreline Ecological Functions

All phases Shoreline Master Program Planning Process

Introduction

The Shoreline Management Act (SMA) provides a broad policy framework for protecting the natural resources and ecology of the shoreline environment. The SMP Guidelines establish the standard of “no net loss” of shoreline ecological functions as the means of implementing that framework through shoreline master programs. WAC 173-26-186(8) directs that master programs “include policies and regulations designed to achieve no net loss of those ecological functions.” (The specific sections of the Guidelines addressing the NNL requirement are included at the end of this chapter.)

RCW 90.58.020: The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration, and preservation... This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life...

The SMP Guidelines, adopted in 2003, constitute the first actual rule (WAC) in Washington State to incorporate the no net loss requirement. The concept of no net loss in this State originated with earlier efforts to protect wetlands. In 1989, Governor Booth Gardner signed an Executive Order establishing a statewide goal regarding wetlands protection. "It is the interim goal...to achieve no overall net loss in acreage and function of Washington's remaining wetlands base. It is further the long-term goal to increase the quantity and quality of Washington's wetlands resource base." (E.O. 89-10).

What does no net loss mean?

Over time, the existing condition of shoreline ecological functions should remain the same as the SMP is implemented. Simply stated, the no net loss standard is designed to halt the introduction of new impacts to shoreline ecological functions resulting from new development. Both protection and restoration are needed to achieve no net loss. Restoration activities also may result in improvements to shoreline ecological functions over time.

Local governments must achieve this standard through both the SMP planning process and by appropriately regulating individual developments as they are proposed in the future. No net loss

should be achieved over time by establishing environment designations, implementing SMP policies and regulations that protect the shoreline, and restoring sections of the shoreline. Based on past practice, current science tells us that most, if not all, shoreline development produces some impact to ecological functions. However, the recognition that future development will occur is basic to the no net loss standard. The challenge is in maintaining shoreline ecological functions while allowing appropriate new development, ensuring adequate land for preferred shoreline uses and public access. With due diligence, local governments can properly locate and design development projects and require conditions to avoid or minimize impacts.

No net loss incorporates the following concepts:

- The existing condition of shoreline ecological functions should not deteriorate due to permitted development. The existing condition or baseline is documented in the shoreline inventory and characterization. (See Chapter 7.) Shoreline functions may improve through shoreline restoration.
- New adverse impacts to the shoreline environment that result from planned development should be avoided. When this is not possible, impacts should be minimized through mitigation sequencing.
- Mitigation for development projects alone cannot prevent all cumulative adverse impacts to the shoreline environment, so restoration is also needed.

Practices that help achieve no net loss

The following SMP update practices will help to meet the no net loss requirement:

- **Locate, design and mitigate development within a watershed context.** During the SMP update process, use the characterization of ecosystem processes and functions to identify the best areas for future development and mitigation. The characterization can provide important information regarding areas that have a high potential for restoration and can be used for offsite mitigation. Such an approach can use a combination of onsite and offsite mitigation that helps restore critical processes and generates a greater “lift” in ecosystem functions.
- **Prohibit uses** that are not water-dependent or preferred shoreline uses. For example, office and multi-family housing buildings are not water-dependent or preferred uses. There is no requirement to provide a place for all types of uses within shoreline jurisdiction.
- **Require that all future shoreline development**, including water-dependent and preferred uses, is carried out in a manner that limits further degradation of the shoreline environment. No uses or activities, including preferred uses, are exempt from the requirement to protect shoreline ecological functions.
- **Require buffers and setbacks.** Vegetated buffers and building setbacks from those buffers reduce the impacts of development on the shoreline environment.
- **Establish appropriate shoreline environment designations.** The environment designations must reflect the inventory and characterization. A shoreline landscape that is relatively unaltered should be designated Natural and protected from any use that would

degrade the natural character of the shoreline. (In practice, this would avoid future impacts, the first objective of no net loss.) New shoreline development in such environs is limited, resulting in avoidance of new impacts.)

- **Establish strong policies and regulations.** Policies and regulations will define what type of development can occur in each shoreline environment designation, determine the level of review required through the type of shoreline permit, and set up mitigation measures and restoration requirements.
- **Develop policies and requirements for restoration.** These should be consistent with the shoreline restoration plan prepared during the SMP planning process.
- **Recommend actions outside shoreline jurisdiction.** The master program or an SMP supporting document can recommend actions for properties that are outside shoreline jurisdiction but have impacts on shorelands. For example, the SMP could call for improved stormwater treatment of runoff from roads, or replacement of septic systems with sewers. Recommending these actions could help create awareness of problems and provide support for them, although outside the authority of the SMP. Such recommendations could be included in the shoreline management strategy or in a brief chapter within the SMP. This would also satisfy the SMA adjacent lands policy (RCW 90-58.340) that local governments are obligated to meet.
- **In all cases, require mitigation sequencing.** The SMP must include regulations that require developers to follow mitigation sequencing: avoid impacts, minimize impacts, rectify impacts, reduce impacts over time, compensate for impacts, monitor impacts and take corrective measures. Avoiding impacts means not taking an action or part of an action in order to prevent impacts to ecological functions. Impacts can be avoided in many different ways: structures may be sited further from properly functioning shoreline areas; different landscaping plants or techniques may be used; a less impactful use may be substituted; or a proposal may be redesigned altogether.

How to demonstrate no net loss

Local governments demonstrate no net loss at two levels -- through the comprehensive SMP update planning process and over time, during the project review and permitting processes (in other words, during SMP implementation).

No net loss in the SMP planning process

The following graphic provides a visual description of the role of the SMP update in achieving no net loss. Through mitigation and restoration, a jurisdiction would achieve no net loss of shoreline ecological functions.

SMP updates: Achieving no net loss of ecological function

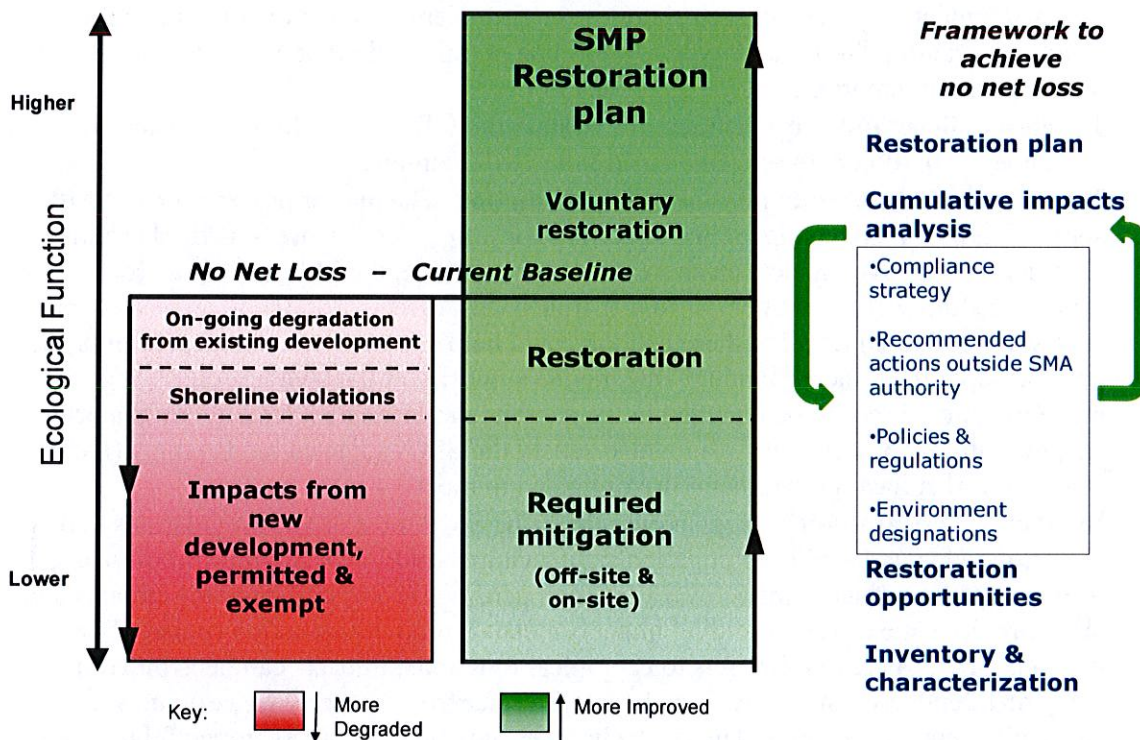


Figure 4-1: During the SMP update process, local governments should use existing shoreline conditions as the baseline for measuring no net loss of shoreline ecological functions.

Local governments show that their updated SMP will result in no net loss of ecological function by completing several tasks in the comprehensive SMP update process, including:

- **Shoreline inventory and characterization.** The shoreline inventory documents shoreline baseline conditions and the characterization analyzes shoreline functions and processes. (See SMP Handbook Chapter 7.
- **Shoreline use analysis.** The use analysis estimates the future demand for shoreline space and potential use conflicts over a minimum 20-year planning period and projects future trends.
- **Shoreline management recommendations.** Management recommendations translate the inventory and characterization findings into SMP policies, regulations, environment designations and protection strategies for each shoreline planning unit.
- **Restoration plan.** The restoration plan includes restoration opportunities, priorities and timelines for shoreline restoration.
- **Cumulative impacts analysis.** This analysis assesses the cumulative impacts on shoreline ecological functions from “reasonably foreseeable future development” allowed by the SMP, considering at a minimum habitat, hydrology and water quality functions.

Analyzing cumulative impacts is necessary to identify and compensate for the total predictable, incremental effects on shoreline functions after applying mitigation measures and restoration.

- **No net loss summary.** This narrative provides an overall picture of how the jurisdiction will meet the NNL requirement. This “executive summary” will explain how information from the supporting documents listed above was applied in developing and revising policies and regulations within the updated SMP. The summary should compare the conclusions of the supporting documents with the environment designations and use regulations to demonstrate how these provisions avoid, reduce, and mitigate reasonably foreseeable impacts in order to achieve NNL. This summary should provide a general chronology of the update while providing reference to the specific chronology captured in the SMP checklist. The purpose of this summary and other supporting documents is to ensure that the SMP environment designations, policies, regulations and shoreline restoration plan are based on the findings of the inventory and characterization and the cumulative impacts analysis and will achieve NNL. Documentation of this information will also provide a record of the jurisdiction’s decisions on SMP policies and regulations in relation to NNL.

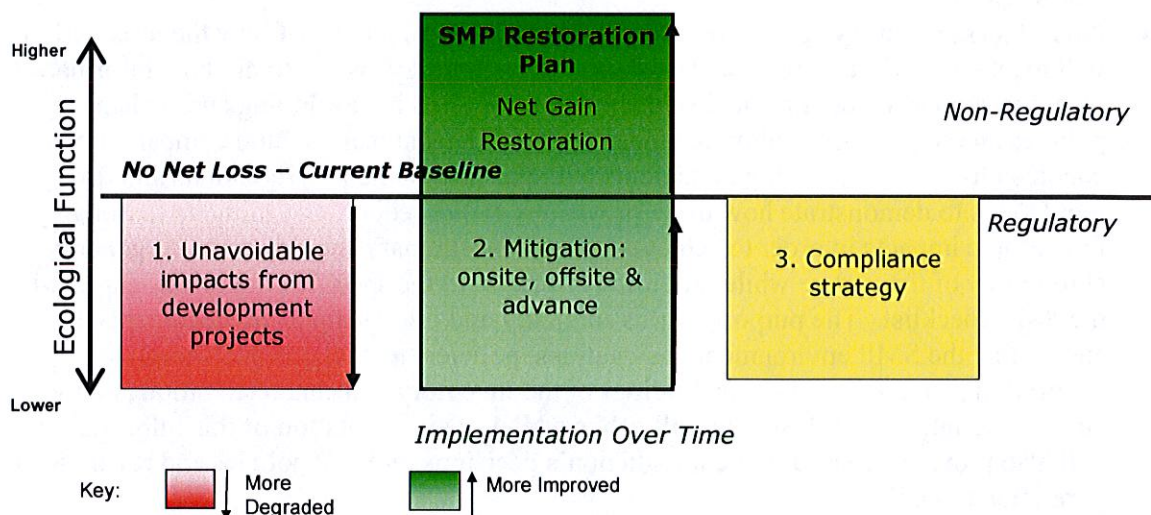
To approve a comprehensive SMP update, Ecology’s Director must formally conclude that the proposed SMP, when implemented over its planning horizon, typically 20 years, will result in “no net loss of ecological functions necessary to sustain shoreline natural resources.” This conclusion will be based upon the documents listed above, a completed SMP submittal checklist and supporting map portfolio.

No net loss in the permit process

When the SMP goes into effect, careful and thorough implementation will be necessary to achieve no net loss. For example, if the SMP prohibits office buildings and condominiums in the Conservancy environment, then your jurisdiction should not approve these uses in that environment. The cumulative impacts analysis would have shown that no net loss would be achieved if office buildings and condominiums are prohibited in the Conservancy environment. Allowing offices and condominiums under this scenario would result in a loss of shoreline functions.

When implementing the updated SMP, no net loss principles (first avoiding, then minimizing and compensating for ecological impacts) are applied again as individual shoreline project applications are reviewed and approved, conditioned, or denied. The following graphic demonstrates how the no net loss requirement is partially achieved during the permit process.

Achieving no net loss of ecological functions at the project level



1. Impacts from shoreline development projects, after mitigation and restoration measures. SMP should encourage appropriate use of innovative measures such as clustering, TDRs, site specific BMPs, etc. to reduce impacts.

2. On-site, off-site and advance mitigation. SMPs should lay out the conditions when off-site mitigation will be allowed or preferred. Innovative techniques such as wetland banking (advance mitigation) should be addressed in SMPs. SMP restoration plans should help identify priority sites and types of sites for the most effective off-site restoration activities.

3. A compliance strategy should include a mechanism to document project review actions and a method to periodically evaluate the cumulative effects of authorized shoreline development. The compliance strategy should include inspection of development projects, and identify priorities for enforcement to improve protection of the most significant shoreline features and functions.

Figure 4-2: SMPs must include regulations that require developers to follow mitigation sequencing. Restoration will also be needed in order to achieve no net loss.

During the planning process, incomplete information about a potential future development and its impacts limits your ability to address no net loss. To close this information gap, unanticipated development impacts are identified through more detailed, site-specific information received at the permit review level.

Project review completes the Guidelines' combined planning and permit review framework for achieving no net loss. It assures that unanticipated impacts will still be subject to a cumulative impacts evaluation as applications for shoreline exemptions, conditional uses, and shoreline permits are reviewed.

One way to comply with the SMP Guidelines requirement is to apply an established mitigation sequence such as that in the State

WAC 173-26-201(3)(d)(iii): For development projects that may have unanticipated or uncommon impacts that cannot be reasonably identified at the time of master program development, the master program policies and regulations should use the permitting or conditional use permitting processes to ensure that all impacts are addressed and that there is no net loss of ecological function of the shoreline after mitigation.

Environmental Policy Act (*SEPA* - *WAC 197-11-768*) on a case-by-case basis during project review.

Another way is through a conditional use permit (CUP). CUPs are automatically required for unanticipated types of development (“unclassified” uses). The SMP also may require CUPS for developments in which the impacts cannot be fully known at the planning level. Through the CUP review process, “consideration shall be given to the cumulative impact of additional requests for like actions in the area” [*WAC 173-27-160(2)*].

Potential no net loss indicators

Local planners working on SMP updates have asked for a tool to measure no net loss. In response, Ecology staff scientists and planners, with input from several state agencies and local governments, developed a list of potential No Net Loss indicators for Shoreline Master Programs (Table 4-1, below). This table of indicators can be used by local governments to help track the status of shoreline functions. Tracking several indicators can help to meet the “no net loss” of shoreline ecological functions standard of the SMP Guidelines.

The table shows 15 potential indicators and the type of measurement for each, such as acres, linear feet, number, percent cover, etc. The table shows the shoreline functions – water quality, water quantity and habitat – that are affected by the indicator, as well as specific impairments related to the indicator. Other columns include limitations for using the indicators, where the indicators are best used, and the availability of data. The indicators are limited to the area within shoreline jurisdiction where SMP regulations are implemented.

Measuring and continuing to track these indicators can give you a picture of shoreline conditions and ecological functions. The indicators can be measured to track loss or gain. For example, the length of shoreline stabilization may increase or decrease, or the acreage of riparian vegetation may increase or decrease. As conditions change over time, you may need to make changes to your SMP if tracking the indicators shows that your community is not achieving “no net loss” of shoreline ecological functions.

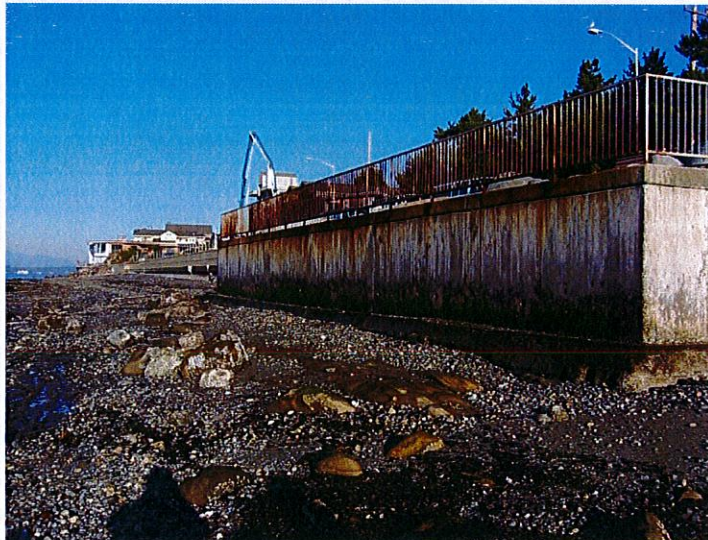


Figure 4-3: The linear length or area of bulkheads may be used as an indicator of no net loss of shoreline ecological functions. Photo by Hugh Shipman.

TABLE 4-1: POTENTIAL NO NET LOSS INDICATORS for SHORELINE MASTER PROGRAMS

Indicator (all in shoreline jurisdiction)	Functions affected - key categories - water quality, water quantity and habitat	Type of Impairment**	Limitations of indicator	Where	Is data available or reasonable to obtain
Forest cover: <u>Acres</u> converted from forest land to other land uses.	Water quality-sediment, nutrients & toxic filtration, conversion, and/or retention; temperature regulation. Water quantity-flow regulation. Habitat-structure for habitat life needs; input of organics & LWM*.	Reduces forest buffers and decreases filtering, conversion, and/or retention of pollutants from surface & subsurface flow; increases quantity of pollutants to aquatic habitats. Alters the delivery and timing of water to aquatic areas, increasing quantity of water delivered to aquatic habitats during high and low flows, which affects habitat structures. Increases water temperature. Loss of nesting sites, rearing, refuge & foraging areas.	Doesn't identify future land use. May be difficult to determine acres in shoreline jurisdiction without finer scale analysis.	Rural.***	Details of application available from DNR and local government. Class IV forest practice applications. CCAP data.
Shoreline stabilization: <u>Linear</u> <u>length</u> or area of bulkheads, revetments, bioengineering, seawalls, groins, retaining walls,	Habitat-Riparian and aquatic habitat, sediment supply. Input of organics, prey base, & LWM. Structure for habitat life needs.	Interrupts habitat-forming processes, such as beaches & channel migration, by impacting sediment supply and transport. Loss of nesting sites, rearing, refuge & foraging areas. Loss of prey base with	Combines different types of stabilization measures into one general category; impacts may vary.	Rural, urban.	Is data available from local government, including permits & SDP exempt projects? Can locals track over time? HPA information can supplement other data, but is not sufficient on

TABLE 4-1: POTENTIAL NO NET LOSS INDICATORS for SHORELINE MASTER PROGRAMS

Indicator (all in shoreline jurisdiction)	Functions affected - key categories - water quality, water quantity and habitat	Type of Impairment**	Limitations of indicator	Where	Is data available or reasonable to obtain
gabions. (Includes decrease in length, change to soft structure.)		associated loss of riparian vegetation.			its own. Detailed aerial photos may also show stabilization changes.
Marine & freshwater riparian vegetation: <u>Linear measurement</u> of mature native riparian vegetation of a given width (buffer width) or <u>percent cover</u> of different vegetation classes.	Water quality-sediment, phosphorus & toxic filtration, conversion, and/or retention; temperature regulation. Water quantity-flow regulation. Habitat-input of organics, prey base, & LWM. Structure for habitat life needs.	Removes capacity of riparian vegetation to filter surface flows, sediment, phosphorous and toxics; subsurface removal or conversion of nitrogen, pathogens. Increases overland and subsurface flows. Increases water temperature. Reduces prey base. Loss of LWM that provides instream structure. Loss of nesting sites, rearing, refuge & foraging areas.	No permit, so no record of change. Focused project needed to track. Useful only if a baseline exists. Methodology needs to be able to measure change. May be difficult to measure over short time frame.	Rural, urban.	Can locals measure and track? Use sample areas, aerial photos. Puget Sound LIDAR consortium has some data.
<u>Acres</u> of permanently protected areas, with no or limited development: Public ownership, current use/PBRS, conservation	Water quality-sediment, phosphorus & toxic filtration, conversion, and/or retention; temperature regulation. Water quantity-flow regulation.	Loss of nesting sites, rearing, refuge & foraging areas.	How measure degree of protection? Limit to protected areas with no development? Difficult to connect with specific functions.	Rural, urban.	Need info on ownership, PBRS, easements. Other info available from county auditor and assessor? Land trusts. NRCS and state agencies are also

TABLE 4-1: POTENTIAL NO NET LOSS INDICATORS for SHORELINE MASTER PROGRAMS

Indicator (all in shoreline jurisdiction)	Functions affected - key categories - water quality, water quantity and habitat	Type of Impairment**	Limitations of indicator	Where	Is data available or reasonable to obtain
easements, fee ownerships, NGOs.	Habitat- Riparian and aquatic habitat, sediment supply. Input of organics, prey base, & LWM. Structure for habitat life needs.				sources for permanently protected lands.
Piers/docks/floats, overwater structures: <u>Number</u> of structures, <u>square footage</u> of new and replacement. Or track grating, piling, construction materials.	Habitat. Water quality-toxics.	Increase in predation, reduction in light and aquatic vegetation and simplification of food web.	All docks not same - i.e. grating, materials vary, location affects impacts. New docks partially mitigate impacts.	Rural, urban.	Is data available from local government, including permits and SDP exempt projects? Can locals track over time? Use DNR data - number of and area over water. HPA information can supplement other data, but is not sufficient on its own. Good to monitor late spring/early summer.
Road lengths (<u>feet</u>) within 200 feet of water body.	Water quantity. Water quality. Habitat- connectivity.	Intercepts and changes timing of flows to aquatic habitat. Increases sediment and toxics.	Is there much new road development in shoreline jurisdiction?	Rural, urban.	Data available from DNR, local governments and WSDOT. CCAP data needs analysis to provide relevant information.
<u>Number</u> of road crossings of water bodies -bridges, culverts.	Habitat - Instream functions. Water quality.	Simplifies stream habitat structure, increases channel confinement and interrupts habitat forming processes.	Is there much new road development in shoreline jurisdiction? Distinguishing between fish friendly crossings	Rural, urban.	Culvert inventories vary in quality. WDFW has fish passage barrier data, but it is incomplete. Remote sensing data? SHIAPP

TABLE 4-1: POTENTIAL NO NET LOSS INDICATORS for SHORELINE MASTER PROGRAMS

Indicator (all in shoreline jurisdiction)	Functions affected - key categories - water quality, water quantity and habitat	Type of Impairment**	Limitations of indicator	Where	Is data available or reasonable to obtain
		Increases delivery of pollutants.	and others. Combining broad range of activities.		data? CCAP data needs analysis to provide relevant information.
Water quality: 303(d) <u>list</u>. All water quality parameters such as temperature, dissolved oxygen, fecal coliform, heavy metals, toxics, organics and biological indices (e.g., Biological Index of Biotic Integrity). Shellfish listings <u>closures</u>.	Water quality.	Impairment is specific to type of listed 303(d) issue (e.g. increased temperature, low dissolved oxygen, increased fecal coliform, heavy metals and toxic organics.)	How relate to functions? Some impacts from outside shoreline jurisdiction. Only impaired waters are listed & measured; no WQ improvement project in place. No criteria to remove from list. Sampling methodology changes, not always comparable. Marine & fresh water lists updated in alternating 2-year cycles. Some impacts from outside shoreline jurisdiction and municipality. Emergency closures updated regularly. Uneven data. Changes may be too frequent for NNL purposes. Limited to	Rural, urban.	Accessible data from Ecology. Is water body on or off list? In some cases, only a portion (e.g., reach) of a water body is listed. 303(d) - comprehensive, Dept of Health Shellfish Program.

TABLE 4-1: POTENTIAL NO NET LOSS INDICATORS for SHORELINE MASTER PROGRAMS

Indicator (all in shoreline jurisdiction)	Functions affected - key categories - water quality, water quantity and habitat	Type of Impairment**	Limitations of indicator	Where	Is data available or reasonable to obtain
			fecal coliform. Reflects impacts on human health, not shellfish health.		
Levees/dikes: <u>Linear feet</u> , floodplain area gained from levee setbacks.	Water quality -sediment removal, temperature regulation. Water quantity-water storage, flooding. Habitat-structure for habitat life needs (e.g., low LWM, stream bed aggradation, river mouth progradation).	Impairs natural flooding regime. Reduces floodplain sediment retention, denitrification and hyporheic functions. Decreases groundwater storage and base flows. Interferes with formation of habitat structure such as distributary channels in tidal and riparian and in-channel and off-channel habitat in freshwater settings. Removes habitat structure for nesting, rearing, refuge and foraging.	Can change in habitat quality as a result of levee/dikes be easily measured? Various types and locations of levees & dikes are lumped together. Types of openings in levees and dikes vary; impacts may vary.	Rural, urban.	Measure increase/decrease in lineal feet, quality of levee related to riparian vegetation & slope. Is data from local governments or FEMA?
Floodplain area: <u>Acres</u> allowed to flood -tidal and river (lack of flood control and lack of other structures such as houses.)	Water quality - removal of toxics, sediment, phosphorous and pathogens through adsorption, filtration and retention. Removal of nitrogen through	Impairment similar to that for levees & dikes with loss of floodplain from diking & filling.	Availability of data, maintenance of data.	Rural, urban.	Do local governments measure this for shoreline inventory? FEMA floodplain info available.

TABLE 4-1: POTENTIAL NO NET LOSS INDICATORS for SHORELINE MASTER PROGRAMS

Indicator (all in shoreline jurisdiction)	Functions affected - key categories - water quality, water quantity and habitat	Type of Impairment**	Limitations of indicator	Where	Is data available or reasonable to obtain
	denitrification. Temperature regulation. Water quantity - water storage and flow regulation and reduction in downstream flooding. Habitat - formation of habitat structure from LWM, vegetation communities and sediment type/channel configuration that support habitat life needs. Input of organics and prey base.				
Number of bald eagle & osprey nests & roosts & great blue heron rookeries.	Habitat - structure for habitat life needs.	Indicator of impaired habitat.	More suitable for counties than cities.	Rural.	WDFW data - most up- to-date for eagles.
Percent cover of invasive species in riparian zones.	Habitat - Riparian and aquatic habitat, sediment supply. Input of organics & LWM. Structure for habitat life needs.	Overwhelms native plants, compromising ecosystem. Potential effect on physical structure and food web dynamics.	Requires field work. May be useful if data set is available. Use Noxious Weeds list to define invasive species?	Rural, urban.	Is data available? Conservation districts? WA Invasive Species Council? (working on baseline assessment due in May 2011)
Impervious surface <u>area</u> .	Water quality - removal of toxics, sediment, phosphorous and	Reduces vegetative buffers and decreases filtering of	Covered by other indicators? Percentage increase in developed	Urban	Aerial photos or other remote sensing techniques show

TABLE 4-1: POTENTIAL NO NET LOSS INDICATORS for SHORELINE MASTER PROGRAMS

Indicator (all in shoreline jurisdiction)	Functions affected - key categories - water quality, water quantity and habitat	Type of Impairment**	Limitations of indicator	Where	Is data available or reasonable to obtain
	pathogens through adsorption, filtration and retention. Removal of nitrogen through denitrification. Temperature regulation. Water quantity - water storage and flow regulation and reduction in downstream flooding. Habitat - formation of habitat structure from LWM, vegetation communities and sediment type/channel configuration that support habitat life needs. Input of organics.	pollutants from surface & subsurface flow. Alters the delivery and timing of water to aquatic areas, increasing quantity of water and pollutants delivered to aquatic habitats during high and low flows, which affects habitat structure. Increases water temperature Reduces prey base (by associated removal of vegetation) Loss of nesting sites, rearing, refuge & foraging areas.	urban areas would be small and may not be useful indicator. Some land surface cover layers are inaccurate, e.g. showing impervious for clearcut forest.		impervious cover. Local governments require new impervious information in permit applications.
Wetlands <u>acreage</u>: Fill of natural wetlands and constructed or engineered wetlands. This includes nearshore tidal estuaries.	Water Quality - Wetlands filter pollutants and store sediment. Water Quantity - Affect groundwater storage and flow regulation. Habitat - Affects habitat structure, results in loss of wetland vegetation	Changes to natural hydrological, chemical, and physical regimes affect the production and succession of a wetland's ecology, and therefore its functions and values.	Difficult to track. Could be covered in other indicators (impervious surface and water quality), however other indicators don't get at wetland conversion to non-impervious land use such as landscaping or	Rural, urban	Is data available? Local permit tracking? Ecology? Core of Engineers?

TABLE 4-1: POTENTIAL NO NET LOSS INDICATORS for SHORELINE MASTER PROGRAMS

Indicator (all in shoreline jurisdiction)	Functions affected - key categories - water quality, water quantity and habitat	Type of Impairment**	Limitations of indicator	Where	Is data available or reasonable to obtain
	communities that support habitat life needs.		agriculture. May require field work.		
Area of seagrasses, kelp and emergent aquatic vegetation.	Habitat - structure for habitat life needs, including food and shelter for many species.	Decreases in aquatic vegetation such as eelgrass and kelp results in loss of food and shelter for many species.	Multiple factors affect growth and sustainability of aquatic vegetation.	Aquatic	Seagrass, kelp and emergent aquatic vegetation data along shoreline available from DNR Shorezone. (1994- 2000) More recent local data available at those sites that are among the stratified randomly sampled sites.

* LWM - Large Woody Material

** For some indicators, decreasing the length or area of the indicator would result in a benefit to shoreline functions (e.g., shoreline stabilization, piers & docks.) For other indicators, increasing the length or area of the indicator would result in a benefit to functions (e.g. forest cover, riparian vegetation.)

*** Rural includes rural residential, agricultural and forestry areas.

CCAP - Coastal Change Analysis Program

NGO - Non-government organization

PBRS - Public Benefit Rating System

NRCS - National Resource Conservation Service

Inventory provides baseline

A baseline of shoreline ecological conditions is necessary in order to use indicators. You need a starting point. Fortunately, the shoreline inventory and characterization provide the baseline for measuring no net loss. The best time to collect data related to the indicators is during the shoreline inventory.

Some local governments have completed their inventory, and don't plan on collecting new data in the near future. Existing inventory data should provide good information for some of the indicators – impervious surfaces, levees and dikes, shoreline stabilization, floodplains, vegetation, overwater structures – as they are required as part of the inventory, to the extent that such information is available.

If you are working on the inventory now or will be in the future

Look at the indicators list. Consider what you now know about your shorelines. Are you aware of extensive riparian vegetation, a large number of eagle nests, water quality problems or limited shoreline armoring? Would these indicators be able to be counted as part of the inventory and tracked over time? What about other indicators? As you work on the inventory, keep the potential indicators in mind. If you find out there aren't any eagle nests, they would not be a good indicator for your community. If you learn there are many feet of roads in shoreline jurisdiction, and there are also long-term plans to remove some road lengths, road length may be a good indicator. Keep in mind that data about the indicators needs to be available now and in the future.

If your inventory is complete

Look at the indicators list. Consider your shoreline conditions and the inventory information that you have available. Are several of the indicators on the list reflected in your inventory? Does your inventory include the amount of shoreline stabilization or overwater structures such as piers and docks (this information is commonly included in inventories.) If so, you can choose several indicators from the list. If Ecology's potential indicators are not applicable to your shorelines, what inventory information could be useful as one or more indicators?

Selecting other indicators

If Ecology's potential indicators are not appropriate for your shoreline, you may develop your own. Your local government may have data specific to your shorelines that could be useful for indicators. These indicators should be relevant to the regulatory authority that your local government has over factors that affect the indicators. If an upstream city's activities have significant effects on water quality along your shoreline, then water quality is not an appropriate indicator to measure net loss or gain that can be attributed to your local government's actions. When determining what indicators to use, consider the following criteria:

- Data are available, reliable and can be gathered in a consistent manner over time. Note that data may be specific for some areas and not available for other areas

within your jurisdiction. Example, current eelgrass data are available for some nearshore areas and not others.

- The data selected for measurement provide an indication of ecological function within shoreline jurisdiction.
- Indicators are relevant to implementation of local policies and regulations. The number of orcas that pass by offshore is not a reflection of your local SMP's effectiveness, as orcas can range through the waters of many jurisdictions, even going out of state or country.
- Data have the potential to show change over a relatively short time period.
- Indicators are used by other agencies such as the Puget Sound Partnership.

An indicator may be present throughout your shoreline jurisdiction, such as impervious surfaces in urban areas, or limited to one or several shoreline reaches, such as freshwater riparian vegetation. A small percent reduction of impervious surfaces throughout shoreline jurisdiction could have significant positive effects on shoreline functions. On the other hand, the loss of riparian vegetation in one or several reaches could have significant detrimental impacts on shoreline functions. You could choose one or two indicators that occur throughout shoreline jurisdiction and several other indicators that occur in one or several reaches where a gain or loss represents a substantial change to shoreline functions.

Choosing appropriate indicators

Choose indicators that represent habitat, water quantity and water quality in your community. For example, shoreline stabilization affects habitat; forest cover affects habitat, water quantity and water quality; and the 303(d) list reflects water quality. This combination of indicators, if they adequately represent your shorelines, would be good to track.

The indicators you choose should take into account the anticipated future development along your shorelines. Projecting “reasonably foreseeable future development and use of the shoreline” is part of the Cumulative Impacts Analysis. If you expect that urban, suburban or high intensity development will occur along the shoreline, consider indicators related to such development. These may include impervious surface area, shoreline stabilization, overwater structures, riparian vegetation, road lengths or invasive species, among others.



Figure 4-4: Riparian vegetation, overwater structures and impervious surfaces are potential indicators of no net loss.

Keep in mind any restoration that you expect to occur. If your plans call for removing bulkheads and restoring habitat, appropriate indicators might be riparian vegetation, eagle and osprey nests, and the length of shoreline armoring.

Avoid choosing an indicator that does not represent your shoreline, for example, forest cover if forest cover would not occur naturally. Avoid choosing several indicators that may represent the same impacts on ecological function – e.g., riparian vegetation in a relatively undeveloped area, and acres of permanently protected areas in the same location.

Tracking indicators

Develop a process and method to track the indicators. The SMP Guidelines state, “Master programs or other local permit review ordinances addressing shoreline project review shall include a mechanism for documenting all project review actions in shoreline areas. Local governments shall also identify a process for periodically evaluating the cumulative effects of authorized development on shoreline conditions. This process could involve a joint effort by local governments, state resource agencies, affected Indian tribes, and other parties” [WAC 173-26-191(2)(a)(iii)(D)].

Tracking your indicators can help you determine whether you are achieving no net loss. Determine how often you will measure your indicators – annually, when you update your SMP, or something in between? What do the indicators tell you compared with the baseline? How will the information be analyzed? Figure out early what you will be looking for, how it will be measured, and what it might mean.

Some options for tracking indicators:

- Track through the permit process. This may work for some development features, such as impervious surface coverage, length of bulkheads, and vegetation clearing. Developments that are exempt from the requirements for a Shoreline Substantial Development permit usually need local building or other permits. How often will these be checked? Can you keep a running tally, or run a software program annually?
- Track through local data that is updated regularly.
- Track through state or federal or other data sources. Who in your department will follow up, and when should that happen? (Refer to the indicators table for potential data sources.)
- Track changes through aerial photos or shoreline field visits, on land and water. Identify the process you will use.

Reporting use of indicators

The SMP Guidelines require local governments to show how NNL will be achieved, although specific indicators are not required. However, you are required to show in the Cumulative Impacts Analysis and No Net Loss report how the SMP will achieve no net loss when implemented over time. Your choice of indicators, rationale for choosing them, and explanation of how they will be tracked and evaluated should be discussed in these reports. Your SMP also can discuss how you will use indicators to show whether you are achieving no net loss.

Shoreline Master Program Guidelines

SMP Guidelines specifically addressing No Net Loss

WAC 173-26-186

(8) Through numerous references to and emphasis on the maintenance, protection, restoration, and preservation of "fragile" shoreline "natural resources," "public health," "the land and its vegetation and wildlife," "the waters and their aquatic life," "ecology," and "environment," the act makes protection of the shoreline environment an essential statewide policy goal consistent with the other policy goals of the act. It is recognized that shoreline ecological functions may be impaired not only by shoreline development subject to the substantial development permit requirement of the act but also by past actions, unregulated activities, and development that is exempt from the act's permit requirements. The principle regarding protecting shoreline ecological systems is accomplished by these guidelines in several ways, and in the context of related principles. These include:

(a) Local government is guided in its review and amendment of local master programs so that it uses a process that identifies, inventories, and ensures meaningful understanding of current and potential ecological functions provided by affected shorelines.

(b) Local master programs shall include policies and regulations designed to achieve **no net loss** of those ecological functions.

(i) Local master programs shall include regulations and mitigation standards ensuring that each permitted development **will not cause a net loss** of ecological functions of the shoreline; local government shall design and implement such regulations and mitigation standards in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property.

(ii) Local master programs shall include regulations ensuring that exempt development in the aggregate **will not cause a net loss** of ecological functions of the shoreline.

SMP Guidelines generally addressing environmental protection and related to No Net Loss

Scientific and technical information

WAC 173-26-201(2)(a)

(a) **Use of scientific and technical information.** To satisfy the requirements for the use of scientific and technical information in RCW 90.58.100(1), local governments shall incorporate the following two steps into their master program development and amendment process.

First, identify and assemble the most current, accurate, and complete scientific and technical information available that is applicable to the issues of concern. The context, scope, magnitude, significance, and potential limitations of the scientific information should be considered. At a minimum, make use of and, where applicable, incorporate all available scientific information, aerial photography, inventory data, technical assistance materials, manuals and services from reliable sources of science....

Second, base master program provisions on an analysis incorporating the most current, accurate, and complete scientific or technical information available. Local governments should be prepared to identify the following:

- (i) Scientific information and management recommendations on which the master program provisions are based;
- (ii) Assumptions made concerning, and data gaps in, the scientific information; and
- (iii) Risks to ecological functions associated with master program provisions. Address potential risks as described in WAC 173-26-201 (3)(d).

Shoreline ecological functions

WAC 173-26-201(3)(d)(i):

(C) Shoreline ecological functions include, but are not limited to:

In rivers and streams and associated flood plains:

Hydrologic: Transport of water and sediment across the natural range of flow variability; attenuating flow energy; developing pools, riffles, gravel bars, recruitment and transport of large woody debris and other organic material.

Shoreline vegetation: Maintaining temperature; removing excessive nutrients and toxic compound, sediment removal and stabilization; attenuation of flow energy; and provision of large woody debris and other organic matter.

Hyporheic functions: Removing excessive nutrients and toxic compound, water storage, support of vegetation, and sediment storage and maintenance of base flows.

Habitat for native aquatic and shoreline-dependent birds, invertebrates, mammals; amphibians; and anadromous and resident native fish: Habitat functions may include, but are not limited to, space or conditions for reproduction; resting, hiding and migration; and food production and delivery.

In lakes:

Hydrologic: Storing water and sediment, attenuating wave energy, removing excessive nutrients and toxic compounds, recruitment of large woody debris and other organic material.

Shoreline vegetation: Maintaining temperature; removing excessive nutrients and toxic compound, attenuating wave energy, sediment removal and stabilization; and providing woody debris and other organic matter.

Hyporheic functions: Removing excessive nutrients and toxic compound, water storage, support of vegetation, and sediment storage and maintenance of base flows.

Habitat for aquatic and shoreline-dependent birds, invertebrates, mammals; amphibians; and anadromous and resident native fish: Habitat functions may include, but are not limited to, space or conditions for reproduction, resting, hiding and migration; and food production and delivery.

In marine waters:

Hydrologic: Transporting and stabilizing sediment, attenuating wave and tidal energy, removing excessive nutrients and toxic compounds; recruitment, redistribution and reduction of woody debris and other organic material.

Vegetation: Maintaining temperature; removing excessive nutrients and toxic compound, attenuating wave energy, sediment removal and stabilization; and providing woody debris and other organic matter.

Habitat for aquatic and shoreline-dependent birds, invertebrates, mammals; amphibians; and anadromous and resident native fish: Habitat functions may include, but are not limited to, space or conditions for reproduction, resting, hiding and migration; and food production and delivery.

Wetlands:

Hydrological: Storing water and sediment, attenuating wave energy, removing excessive nutrients and toxic compounds, recruiting woody debris and other organic material.

Vegetation: Maintaining temperature; removing excessive nutrients and toxic compound, attenuating wave energy, removing and stabilizing sediment; and providing woody debris and other organic matter.

Hyporheic functions: Removing excessive nutrients and toxic compound, storing water and maintaining base flows, storing sediment and support of vegetation.

Habitat for aquatic and shoreline-dependent birds, invertebrates, mammals; amphibians; and anadromous and resident native fish: Habitat functions may include, but are not limited to, space or conditions for reproduction, resting, hiding and migration; and food production and delivery.

(D) The overall condition of habitat and shoreline resources are determined by the following ecosystem-wide processes and ecological functions:

The distribution, diversity, and complexity of the watersheds, marine environments, and landscape-scale features that form the aquatic systems to which species, populations, and communities are uniquely adapted.

The spatial and temporal connectivity within and between watersheds and along marine shorelines. Drainage network connections include flood plains, wetlands, upslope areas, headwater tributaries, and naturally functioning routes to areas critical for fulfilling life history requirements of aquatic and riverine-dependent species.

The shorelines, beaches, banks, marine near-shore habitats, and bottom configurations that provide the physical framework of the aquatic system.

The timing, volume, and distribution of woody debris recruitment in rivers, streams and marine habitat areas.

The water quality necessary to maintain the biological, physical, and chemical integrity of the system and support survival, growth, reproduction, and migration of individuals composing aquatic and riverine communities.

The sediment regime under which aquatic ecosystems evolved. Elements of the sediment regime include the timing, volume, rate, and character of sediment input, storage, and transport.

The range of flow variability sufficient to create and sustain fluvial, aquatic, and wetland habitats, the patterns of sediment, nutrient, and wood routing. The timing, magnitude, duration, and spatial distribution of peak, high, and low flows, and duration of flood plain inundation and water table elevation in meadows and wetlands.

The species composition and structural diversity of plant communities in river and stream areas and wetlands that provides summer and winter thermal regulation, nutrient filtering, appropriate rates of surface erosion, bank erosion, and channel migration and to supply amounts and distributions of woody debris sufficient to sustain physical complexity and stability.

(E) Local governments should use the characterization and analysis called for in this section to prepare master program policies and regulations designed to achieve **no net loss** of ecological functions necessary to support shoreline resources and to plan for the restoration of the ecosystem-wide processes and individual ecological functions on a comprehensive basis over time.

Precautionary principle

WAC 173-26-201(3)(g)

The level of detail of inventory information and planning analysis will be a consideration in setting shoreline regulations. As a general rule, the less known about existing resources, the more protective shoreline master program provisions should be to avoid unanticipated impacts to shoreline resources. If there is a question about the extent or condition of an existing ecological

resource, then the master program provisions shall be sufficient to reasonably assure that the resource is protected in a manner consistent with the policies of these guidelines.

Mitigation sequencing

WAC 173-26-201(2)

(e) Environmental impact mitigation.

(i) To assure **no net loss** of shoreline ecological functions, master programs shall include provisions that require proposed individual uses and developments to analyze environmental impacts of the proposal and include measures to mitigate environmental impacts not otherwise avoided or mitigated by compliance with the master program and other applicable regulations. To the extent Washington's State Environmental Policy Act of 1971 (SEPA), chapter 43.21C RCW, is applicable, the analysis of such environmental impacts shall be conducted consistent with the rules implementing SEPA, which also address environmental impact mitigation in WAC 197-11-660 and define mitigation in WAC 197-11-768. Master programs shall indicate that, where required, mitigation measures shall be applied in the following sequence of steps listed in order of priority, with (e)(i)(A) of this subsection being top priority.

(A) Avoiding the impact altogether by not taking a certain action or parts of an action;

(B) Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;

(C) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

(D) Reducing or eliminating the impact over time by preservation and maintenance operations;

(E) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and

(F) Monitoring the impact and the compensation projects and taking appropriate corrective measures.

(ii) In determining appropriate mitigation measures applicable to shoreline development, lower priority measures shall be applied only where higher priority measures are determined to be infeasible or inapplicable.

Consistent with WAC 173-26-186 (5) and (8), master programs shall also provide direction with regard to mitigation for the impact of the development so that:

(A) Application of the mitigation sequence achieves **no net loss** of ecological functions for each new development and does not result in required mitigation in excess of that necessary to assure that development will result in **no net loss** of shoreline ecological functions and not have a significant adverse impact on other shoreline functions fostered by the policy of the act.

(B) When compensatory measures are appropriate pursuant to the mitigation priority sequence above, preferential consideration shall be given to measures that replace the impacted functions directly and in the immediate vicinity of the impact. However, alternative compensatory mitigation within the watershed that addresses limiting factors or identified critical needs for shoreline resource conservation based on watershed or comprehensive resource management plans applicable to the area of impact may be authorized. Authorization of compensatory mitigation measures may require appropriate safeguards, terms or conditions as necessary to ensure **no net loss** of ecological functions.

Shoreline inventory and characterization

WAC 173-26-201(3)(c)

Local government shall, at a minimum, and to the extent such information is relevant and reasonably available, collect the following information:

(i) Shoreline and adjacent land use patterns and transportation and utility facilities, including the extent of existing structures, impervious surfaces, vegetation and shoreline modifications in shoreline jurisdiction. Special attention should be paid to identification of water-oriented uses and related navigation, transportation and utility facilities.

(ii) Critical areas, including wetlands, aquifer recharge areas, fish and wildlife conservation areas, geologically hazardous areas, and frequently flooded areas. See also WAC 173-26-221.

(iii) Degraded areas and sites with potential for ecological restoration.

(iv) Areas of special interest, such as priority habitats, developing or redeveloping harbors and waterfronts, previously identified toxic or hazardous material clean-up sites, dredged material disposal sites, or eroding shorelines, to be addressed through new master program provisions.

(v) Conditions and regulations in shoreland and adjacent areas that affect shorelines, such as surface water management and land use regulations. This information may be useful in achieving mutual consistency between the master program and other development regulations.

(vi) Existing and potential shoreline public access sites, including public rights of way and utility corridors.

(vii) General location of channel migration zones, and flood plains.

(viii) Gaps in existing information. During the initial inventory, local governments should identify what additional information may be necessary for more effective shoreline management.

(ix) If the shoreline is rapidly developing or subject to substantial human changes such as clearing and grading, past and current records or historical aerial photographs may be necessary to identify cumulative impacts, such as bulkhead construction, intrusive development on priority

habitats, and conversion of harbor areas to nonwater-oriented uses.

(x) If archaeological or historic resources have been identified in shoreline jurisdiction, consult with the state historic preservation office and local affected Indian tribes regarding existing archaeological and historical information.

WAC 173-26-201(3)(d)

Analyze shoreline issues of concern. Before establishing specific master program provisions, local governments shall analyze the information gathered in (c) of this subsection and as necessary to ensure effective shoreline management provisions, address the topics below, where applicable.

(i) Characterization of functions and ecosystem-wide processes.

(A) Prepare a characterization of shoreline ecosystems and their associated ecological functions. The characterization consists of three steps:

(I) Identify the ecosystem-wide processes and ecological functions based on the list in (d)(i)(C) of this subsection that apply to the shoreline(s) of the jurisdiction.

(II) Assess the ecosystem-wide processes to determine their relationship to ecological functions present within the jurisdiction and identify which ecological functions are healthy, which have been significantly altered and/or adversely impacted and which functions may have previously existed and are missing based on the values identified in (d)(i)(D) of this subsection; and

(III) Identify specific measures necessary to protect and/or restore the ecological functions and ecosystem-wide processes.

Use analysis

WAC 173-26-201(3)(d)

(ii) **Shoreline use analysis and priorities.** Conduct an analysis to estimate the future demand for shoreline space and potential use conflicts. Characterize current shoreline use patterns and projected trends to ensure appropriate uses consistent with chapter 90.58 RCW and WAC 173-26-201 (2)(d) and 173-26-211(5).

If the jurisdiction includes a designated harbor area or urban waterfront with intensive uses or significant development or redevelopment issues, work with the Washington state department of natural resources and port authorities to ensure consistency with harbor area statutes and regulations, and to address port plans. Identify measures and strategies to encourage appropriate use of these shoreline areas in accordance with the use priorities of chapter 90.58 RCW and WAC 173-26-201 (2)(d) while pursuing opportunities for ecological restoration.

Cumulative Impacts

WAC 173-26-186

(d) Local master programs shall evaluate and consider cumulative impacts of reasonably foreseeable future development on shoreline ecological functions and other shoreline functions fostered by the policy goals of the act. To ensure **no net loss** of ecological functions and protection of other shoreline functions and/or uses, master programs shall contain policies, programs, and regulations that address adverse cumulative impacts and fairly allocate the burden of addressing cumulative impacts among development opportunities. Evaluation of such cumulative impacts should consider:

- (i) Current circumstances affecting the shorelines and relevant natural processes;
- (ii) Reasonably foreseeable future development and use of the shoreline; and
- (iii) Beneficial effects of any established regulatory programs under other local, state, and federal laws.

It is recognized that methods of determining reasonably foreseeable future development may vary according to local circumstances, including demographic and economic characteristics and the nature and extent of local shorelines.

(e) The guidelines are not intended to limit the use of regulatory incentives, voluntary modification of development proposals, and voluntary mitigation measures that are designed to restore as well as protect shoreline ecological functions.

Restoration Planning

WAC 173-26-186(8)

(c) For counties and cities containing any shorelines with impaired ecological functions, master programs shall include goals and policies that provide for restoration of such impaired ecological functions. These master program provisions shall identify existing policies and programs that contribute to planned restoration goals and identify any additional policies and programs that local government will implement to achieve its goals. These master program elements regarding restoration should make real and meaningful use of established or funded nonregulatory policies and programs that contribute to restoration of ecological functions, and should appropriately consider the direct or indirect effects of other regulatory or nonregulatory programs under other local, state, and federal laws, as well as any restoration effects that may flow indirectly from shoreline development regulations and mitigation standards.

WAC 173-26-201(2)(f)

Shoreline restoration planning. Consistent with principle WAC 173-26-186 (8)(c), master programs shall include goals, policies and actions for restoration of impaired shoreline ecological functions. These master program provisions should be designed to achieve overall improvements in shoreline ecological functions over time, when compared to the status upon adoption of the master program. The approach to restoration planning may vary significantly among local jurisdictions, depending on:

- The size of the jurisdiction;

- The extent and condition of shorelines in the jurisdiction;
- The availability of grants, volunteer programs or other tools for restoration; and
- The nature of the ecological functions to be addressed by restoration planning.

Master program restoration plans shall consider and address the following subjects:

- (i) Identify degraded areas, impaired ecological functions, and sites with potential for ecological restoration;
- (ii) Establish overall goals and priorities for restoration of degraded areas and impaired ecological functions;
- (iii) Identify existing and ongoing projects and programs that are currently being implemented, or are reasonably assured of being implemented (based on an evaluation of funding likely in the foreseeable future), which are designed to contribute to local restoration goals;
- (iv) Identify additional projects and programs needed to achieve local restoration goals, and implementation strategies including identifying prospective funding sources for those projects and programs;
- (v) Identify timelines and benchmarks for implementing restoration projects and programs and achieving local restoration goals;
- (vi) Provide for mechanisms or strategies to ensure that restoration projects and programs will be implemented according to plans and to appropriately review the effectiveness of the projects and programs in meeting the overall restoration goals.

Specific Shoreline Activity and Use Standards

Numerous additional specific references exist in the SMP Guidelines, requiring SMP regulations resulting in **no net loss** of shoreline ecological functions. Specific shoreline activity standards referencing NNL are located at:

WAC 173-26-221(2)(c)(ii)(C) and (D): Geologically hazardous areas.
WAC 173-26-221(2)(c)(iii)(C): Critical saltwater habitats
WAC 173-26-221(2)(c)(iv)(C): Critical freshwater habitats
WAC 173-26-221(3): Flood hazard reduction
WAC 173-26-221(4)(d): Public access
WAC 173-26-221(5): Shoreline vegetation conservation
WAC 173-26-221(6): Water quality, storm water and nonpoint pollution

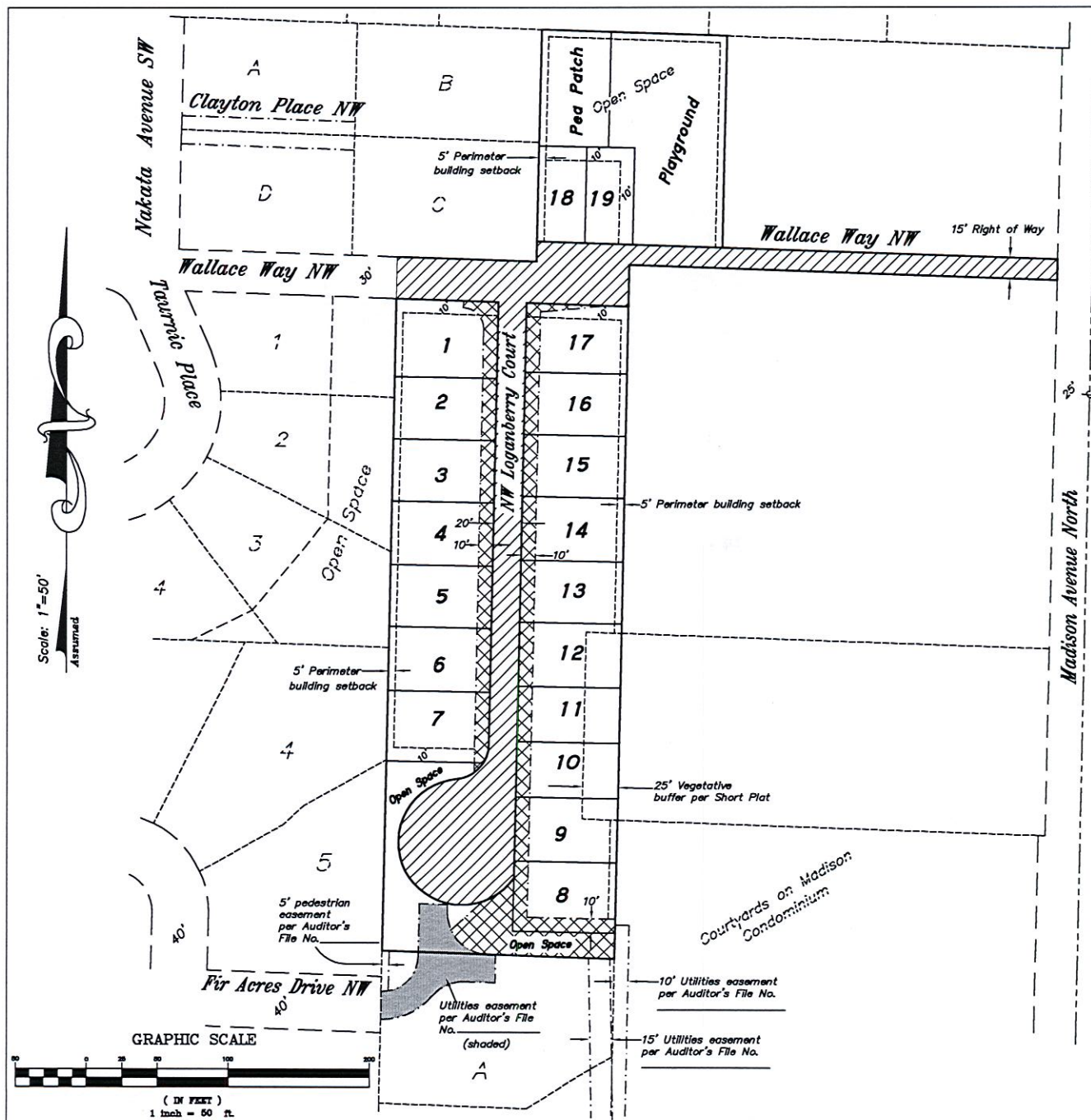
WAC 173-26-231: Shoreline modifications, including shoreline stabilization, piers and docks, fill, breakwaters, jetties, groins and weirs, beach and dunes management, dredging and dredge material disposal, shoreline habitat and natural systems-enhancement projects.

Specific shoreline use standards referencing NNL are located at:

WAC 173-26-241(2)(a)(iv), addressing the following uses:

- Agriculture
- Aquaculture
- Boating facilities
- Commercial development
- Forest practices
- Industry
- In-stream structural uses
- Mining
- Recreational development
- Residential development
- Transportation and parking
- Utilities

Stephen Crampton
2-8-18



Preliminary
Plat of Wallace Way Cottages
Housing Design Demonstration Project
SE 1/4, NE 1/4,
Sec.27, T.25N., R.2E., W.M.
City of Bainbridge Island, Kitsap County, Washington
Lot Layout & Easement Details

Areas		
Lots 1-19	56,377 sq. ft.	1.29 acres
Open Space	22,452 sq. ft. (21%)	
Right of Way	23,789 sq. ft.	0.55 acres
Total Area	107,263 sq. ft.	2.46 acres

Lot Coverage	
Total Area (less flag portion)	= 103,685 sf
Maximum lot coverage of 35%	= 36,290 sf
Lots 1-19 maximum lot coverage of 1,910 sf per lot	= 36,290 sf

Legend

- = Dedicated Right of Way
- = Pedestrian & Utilities Easement



1/17/18

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