



PLANNING COMMISSION
SPECIAL MEETING AND PUBLIC HEARING
THURSDAY, MARCH 29, 2018
6:30 – 9:00 PM
COUNCIL CHAMBER
280 MADISON AVE N
BAINBRIDGE ISLAND, WA 98110

AGENDA

- 6:30 PM CALL TO ORDER
 Call to Order, Agenda Review, Conflict Disclosure
- 6:35 PM PUBLIC COMMENT
 Accept public comment on off agenda items.
- 6:45 PM Wyatt Apartments, [PLN50165B SPR](#)
 Public Meeting and Recommendation
 Kelly Tayara, Associate Planner
- 7:45 PM SMP Amendment – Non-Conforming/Existing Structures
 Study Session
 Christy Carr, AICP, Senior City Planner
- 8:30 PM Ordinance 2018-11
 Public Hearing
 Jennifer Sutton, AICP, Senior City Planner
- 8:55 PM NEW/OLD BUSINESS
- 9:00 PM ADJOURN

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

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

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



Department of Planning and Community Development

Staff Report

Date: March 12, 2018
To: Planning Commission
From: Kelly Tayara, Associate Planner
Project: Wyatt Apartments
File No: PLN 50165B SPR

Request: The Department of Planning and Community Development requests Planning Commission recommendation on application for Site Plan and Design Review permit for Wyatt Apartments, a 42-unit multi-family development comprised of a 36-unit apartment building and six townhomes.

As provided in BIMC 2.16.040, in the case of a major Site Plan and Design Review (SPR) application, the Planning Commission ("Commission") shall review the application prior to the final decision by the Department of Planning and Community Development Director ("Director"). The Director shall determine the major issues and specific aspects of the project that the Commission should review, and shall forward this review directive to the Commission. The Commission shall review the application based on the Director's review directive, the Design Review Board (DRB) recommendation, and the decision criteria, consider the application at a public meeting where public comments will be taken, and forward its recommendation to the Director in accordance with BIMC 2.16.030.C through E. The director will make the final decision based on the decision criteria in BIMC 2.16.040.E, the recommendation of the Planning Commission, the DRB recommendation, and consideration of any public comments received.

Applicant: Madison Avenue Development Inc.
2930 Westlake Ave N
Seattle, WA 98109

Location: 138 Wyatt Way NE

2. Zoning Designation:

The subject property is within the Mixed Use Town Center – Madison Avenue Overlay District (MUTC-MAD). Except for properties to the south which are within the Mixed Use Town Center - Core Overlay District (MUTC-CORE), the surrounding properties are also designated MUTC-MAD.

3. Comprehensive Plan Designation:

The Comprehensive Plan designation for the subject property is MUTC-MAD district and except for properties to the south which are designated MUTC-CORE, the surrounding properties are also designated MUTC-MAD.

4. Existing Development:

The subject property is undeveloped. One property to the north is a park (Madison Avenue Tot Lot) and one contains a multi-family building. The property to the east contains multi-family buildings. Of the properties to the south, across Wyatt Way, one contains a mixed-use commercial and multi-family development, one houses a yoga studio, and one is developed with a funeral home. To the west, across Madison Avenue, one property contains a retirement center and one is developed with an automobile repair shop and carwash facility.

In 2016 the property received Site Plan and Design Review approval for Wyatt Cottages, a 28-unit development, but that project was not pursued (City File No. PLN50165 SPR).

5. Access:

Vehicular access is proposed from Wyatt Way with additional emergency service access via access easement from Madison Avenue.

6. Soils and Terrain:

Site soils are composed of Ragnar Fine Sandy Loam. The site gently slopes down from south to north at approximately six percent.

7. Public Services and Utilities:

- a. Police: City of Bainbridge Island Police Department
- b. Fire: Bainbridge Island Fire District
- c. Water: City of Bainbridge Island
- d. Sewer / Septic: City of Bainbridge Island
- e. Storm drainage: Storm drainage connects to existing systems in Wyatt Way and Madison Avenue. Pervious pavement with under-drain collection system is used for the parking facility.

Part II: Comprehensive Plan Guiding Principles, Goals and Policies

The Comprehensive Plan designation for the site is Mixed Use Town Center-Madison Overlay District (MUTC-MAD). The Winslow Master Plan builds on the guiding principles, goals and policies in the Comprehensive Plan. These guiding principles, goals and policies, along with implementing regulations in the Municipal Code, are used to evaluate the proposal and weigh the project benefits and impacts. The following land use Comprehensive Plan guiding principles, goals and policies apply to the development proposal:

1. Comprehensive Plan Land Use Element

- a. Winslow Town Center Goal LU-7 and Policy LU 7.5: The Winslow mixed use and commercial districts are designed to strengthen the vitality of downtown Winslow as a place for people to live, shop and work. The Mixed Use Town Center (MUTC) is intended to have a strong residential component to encourage a lively community during the day and at night. The purpose of the Madison Avenue Overlay District is to provide for a mix of residential and small-scale non-residential development.

2. Winslow Master Plan

- a. Overall Land Use Goal WMP 2-1: Strengthen Winslow - the Island's commercial, cultural and commuter hub - as a sustainable, affordable, diverse, livable and economically vital community, by: Encouraging downtown living; Providing an enhanced pedestrian experience, with linked access to retail shopping, the ferry, major public facilities, open space and residential areas; Promoting the efficient use of land; Promoting development that is sustainable and supports community values.
- b. Overall Land Use Goal WMP 2-2: Ensure the Compatibility of New Development in the Mixed-Use Town Center
 - 1) Policy WMP 2-2.1: To promote compatibility between and within districts of the Mixed-Use Town Center, variations in development standards and design guidelines may be provided within districts.
 - 2) Policy WMP 2-2.3: Minimize driveways and encourage use of joint driveways.
- c. Overall Land Use Goal WMP 2-3: Maintain and Enhance Community Character in the Mixed-Use Town Center
 - 1) Policy WMP 2-3.1: Promote architecture that encourages green building, natural light, ventilation and rooftop gardens.
 - 2) Policy WMP 2-3.2: Through the use of design guidelines, development standards and incentives, promote the development of courtyards that create a pattern of linked public and private gardens and gathering places, providing opportunities for pedestrian movement.
 - 3) Policy WMP 2-3.3: Through the use of design guidelines, development standards and incentives encourage stepped-back buildings that result in a softer street edge, the retention and enhancement of visual connections to Eagle Harbor and the creation and preservation of sun-filled public gathering spaces.
 - 4) Policy WMP 2-3.5: Retain and expand the historic pattern of narrow pedestrian passages.
 - 5) Policy WMP 2-3.6: Enhance the livability of the downtown with trees and small gardens on the streets, along paths and in courtyards.

Part III: Public Notice and Agency Review:

1. Environmental Review / Public Notice

A pre-application conference was held on April 17, 2017. A public participation meeting was held on May 22. Application for Site Plan and Design Review was received on June 28; the application was deemed incomplete on July 25 and, after receipt of additional information, deemed complete on August 21. A public meeting was held with the Design Review Board on September 18 and the applicant presented the project to the Planning Commission during a public meeting on March 8, 2018.

The project is subject to State Environmental Policy Act (SEPA) review (WAC 197-11-800). Utilizing the optional DNS process (WAC 197-11-355), the City issued a combined Notice of Application/SEPA comment period on September 1, 2017. The 14-day comment period ended on September 15, 2017. The City, acting as lead agency, will issue a SEPA threshold determination with decision.

2. Public Comment Summary

Four public comments were received, as summarized below:

- A roundabout should replace the four-way stop sign at the intersection of Madison Avenue and Wyatt Way as a mitigation measure for increased traffic congestion.
- The Fire District should review the site and ensure adequate turn radius for fire trucks, and the development should provide a fire prevention system with alarm and monitoring capabilities.
- The applicant should provide a public trail along the east side of the development to connect to the existing trail which emanates on the northeast side of City Hall and terminates at Wyatt Way.
- The proposal is different than the project approved in 2016.
- There are insufficient water aquifer resources available on the Island to support further development.

Staff response: The City is constructing a roundabout, and construction is likely to occur after the project utility work. The Island Wide Transportation Plan identifies a trail on the adjacent property for the length of the east property line. The City has not determined that Island aquifer resources are insufficient to support future development.

3. Agency Comment

Kitsap Transit requested that the development provide an improved bus stop along Madison Avenue to improve the transit access: The existing bus stop is served by Route 90, linking the project site to Poulsbo, and an additional bus stop across Madison Avenue allows passengers access to the Ferry terminal. The agency provided specifications and commented that they are open to any applicant design that accommodates Americans with Disability Act (ADA) requirements.

The Kitsap Public Health District approved the application, and subsequent building permits are subject to Health District approval.

The Bainbridge Island Fire District commented as follows: The project must comply with the Fire Code; residential fire sprinklers and fire hydrants are required; Madison Avenue access must meet District standards; Class I standpipes are required where the floor level of the highest story is located more than 30 feet above the lowest level of District vehicle access; aerial fire apparatus is required along Wyatt Way; overhead utility and power lines shall not be located over the access road or between the aerial fire apparatus road and the building; tree retention on Wyatt Way shall not impede aerial access to the building; landscaping shall provide for clear access and a minimum of 36-inch clearance around all fire appliances including hydrants, connections, post indicator valves and all other fire/life safety equipment.

Part IV: Land Use Code Analysis

*The Municipal Code is presented in normal font, and **staff discussion in bold font**.*

1. BIMC Title 18 Zoning

a. BIMC 18.09.020 Use Table

Multi-family use is permitted in the Mixed Use Town Center.

b. BIMC 18.12.020-3 Dimensional Standards Table

Dimensional Standard	Requirement	Proposed / Compliance Evaluation
Floor Area Ratio (FAR)	.4 maximum	Floor area is a calculation based on the area of all floors within the exterior vertical walls of a building. FAR is determined by dividing the floor area by the lot area (prior to dedication of any right-of-way). Base FAR is 22,498 square feet (56,245 x .4).
FAR Bonus Density	.6 maximum	Projects may achieve a maximum level of development above base FAR by using bonus provisions identified in BIMC 18.12.030.E. The proposed development seeks full bonus FAR to 33,552 square feet (56,245 x .6).
Lot Dimensions	N/A	There are no standards for the district.
Lot Coverage	35% maximum	Proposed lot coverage is 25.1% (approximately 14,270 sf) and complies with this requirement.
Front Setback	10 feet minimum 20 feet maximum	The property fronts both Madison Avenue and Wyatt Way. The proposed setback is ten feet and meets this requirement.
Side Setback	0 feet	For properties with more than one front lot line, the remaining lot lines are sides (BIMC 18.12.050). The proposal meets this requirement.
Building Height	25 feet maximum	Height is measured as the vertical distance above "grade" to the midpoint of the roof. Grade is the average elevation of the original ground surface. Grade at elevation 141 for the multi-family building is depicted on Sheet D 3. Based on the information on Sheet D 1, grade for the townhomes is approximately elevation 151. While building height is not depicted in compliance with the Rules of Measurement (BIMC 18.12.050), information submitted on Sheets D 1, D 3 and D 5 is sufficient to determine that the multi-family building height is 24.5 feet and the townhomes are approximately 20 feet in height. Compliance with height requirements is verified during building permit review.

c. BIMC 18.15.010 Landscaping, Screening, and Tree Retention, Protection, Replacement

In the Mixed Use Town Center Madison Overlay districts, the intent is to retain the character of landscape front yards and to provide landscape development to screen uses from single-family residential properties and to soften the appearance of surface parking areas.

Development within this district is subject to landscaping, screening and tree retention requirements identified in BIMC Table 18.15.010-1.

1) Tree Retention, Protection and Replacement

Trees and tree stands located in the perimeter areas required to be landscaped pursuant to BIMC 18.15.010.D, Perimeter Buffering and Screening, and BIMC 18.15.010.E, Street Frontage Landscaping, shall be retained and protected as described in BIMC 18.15.010.C.4.

Because the property is not adjacent to a single-family residential district, perimeter buffers are not required (BIMC Table 18.15.010-3). Unless a property abuts State Route 305, roadside buffers are not required (BIMC Table 18.15.010-4) in the Mixed Use Town Center.

2) Total Site Tree Unit Requirements

The development parcel shall have at least 40 tree units per acre following the proposed development or redevelopment (BIMC 18.15.040.G.4). The applicant may choose to retain trees or to plant new trees to meet this requirement.

Sheet L 4 contains the tree unit calculation. The project requires 56 tree units to meet total tree unit requirements (1.38 x 40). The parking lot tree requirements (paragraph below) are added to this total, so altogether 62 tree units are required. The project retains 5.8 tree units, comprised of a big-leaf maple and several cedar trees. A total of 73 new trees are proposed, which exceeds total site tree unit requirements. For trees to be retained, the applicant is required to provide International Society of Arboriculture valuation of the trees.

3) Parking Lot Landscaping

Requirements for parking lots located behind buildings and not adjacent to rights-of-way:

- One tree for every eight parking stalls
- One hundred percent of the trees may be deciduous
- Deciduous trees minimum two-inch caliper, evergreen trees minimum four feet height at the time of planting
- Evergreen ground cover and/or shrubs planted and spaced to achieve total coverage within two years
- A landscaped area at the end of aisles
- Standards:
 - Maintain shrubs at a maximum three feet height within parking lots so views between vehicles and pedestrians will not be blocked.
 - Landscape in planting islands or strips shall have an area of at least 100 square feet and with a narrow dimension of not less than five feet if wheel stops are provided to prevent vehicle overhang. A narrow dimension of not less than eight feet may be provided if the vehicle overhang area is included in the planting area.

- Provide permanent curbs or wheel stops to protect the plantings from vehicle overhang.
- Significant trees and tree stands may be used in lieu of new landscape requirements if they are in addition to the significant tree and tree stand retention requirements.
- Clustering of new plant material within parking lots may be approved or required by the director if the intent of this section is met.
- Refer to the suggested landscape materials matrix in the administrative manual for tree species appropriate for parking lots.

The landscape plans are contained on Sheets L 1 – L 4. For 42 parking spaces, at least six trees are required. The proposed trees are six-to-eight feet in height at time of planting, and the landscape plan contains evergreen shrubbery designed to adequately vegetate landscaping areas.

4) Protection During Construction and Development.

In order to preserve future ecological function, the applicant shall identify areas of prohibited disturbance, generally corresponding to the dripline or critical root zone (as identified by a consulting arborist) of the existing vegetation, trees and /or tree canopy of tree stands to be retained, buffers, areas of existing vegetation to be maintained, future rain gardens, and future planting areas larger than 400 square feet (i.e. landscape islands in parking lots).

A temporary five-foot high chain link fence with tubular steel poles or “T” posts shall delineate the area of prohibited disturbance, identified in the above paragraph, unless the Director approves use of a four-foot high plastic net fence as an alternative. The fencing must be posted with signage denoting the vegetation protection area.

No impervious surfaces, fill, excavation, vehicle operations, compaction, removal of native soil or storage of construction materials shall be permitted within the area defined by the required construction fencing. If construction and compaction in future planting areas is unavoidable, the landscape plan for the project shall include methods for aerating and/or augmenting compacted soil to prepare for new planting.

The application materials include two arborist’s evaluations. Civil plans provided for construction should provide a level of detail sufficient to allow review of compliance with these requirements. The civil plans should identify areas of prohibited disturbance, fencing locations and any additional provisions necessary to adequately protect those areas of prohibited disturbance which are in proximity to construction activities.

d. BIMC 18.15.020 Parking Spaces Required

The number of parking spaces required is identified in BIMC Table 18.15.020-2. A minimum of one space per primary dwelling unit that is a studio or one-bedroom unit and two spaces for all other primary dwelling units is required. The Director of Planning and Community Development may require guest parking in excess of the required parking spaces up to a maximum additional 0.5 stall per dwelling unit, if there is inadequate guest parking on the subject property.

Residential parking requirements may be reduced by 50 percent for dwelling units located within a one-half-mile radius and 25 percent for dwelling units located between one-half mile and a one-mile radius of the ferry terminal providing scheduled service to Seattle. This provision may not be used in conjunction with senior housing or other parking reduction arrangements, and the required number of parking spaces shall not be reduced below one space per parking unit. This provision does not preclude the authority of the Director to require guest parking as described in the table.

Small car spaces may total no more than 30 percent of the required number of parking spaces.

The project provides three two-bedroom, 29 one-bedroom and four studio units within the apartment building and six two-bedroom townhome units. The required parking is 52 units $[(32 \times 1) + (10 \times 2) = 52]$. The property is located less than one-half mile from the ferry terminal, and therefore parking requirements may be reduced by 25 percent, to not less than 39 spaces $(52 \times .75 = 39)$. The proposal provides 42 on-site spaces and four off-site street parking spaces on Madison Avenue. Based on the number of required parking spaces, a maximum of 15 compact car spaces are allowed $(52 \times .3)$, and 14 are proposed, as depicted on Sheet D 2.

e. BIMC 18.15.030 Mobility and Access

1) Circulation and Walkways for Non-residential Development

Parking lots and driveways shall provide well-defined, safe and efficient circulation for motor vehicles, bicycles and pedestrians. Entrances from the right-of-way, ends of parking aisles and the circulation pattern shall be defined by landscaped areas with raised curbs. Pedestrian walkways should be provided around buildings to assure safe access. Internal walkways shall be surfaced with nonskid hard surfaces, meet accessibility requirements and provide at least five feet of unobstructed width. Walkways that cross driving lanes shall be constructed of contrasting materials or maintained painted markings. Walkways must be curbed and raised six inches above adjacent vehicular surface grade, except where the walkway crosses vehicular driving lanes or to meet accessibility standards.

The City Development Engineer finds that the site plan conforms to the City of Bainbridge Island Design and Construction Standards and Specifications. Civil plans provided for construction should provide a level of detail sufficient to allow review of compliance with these requirements. The civil plans should identify raised curbs and walkways should be constructed and maintained to meet Municipal Code and ADA requirements.

2) Bicycle facilities

The development must provide one bicycle space for every five vehicle parking spaces, with a minimum of four spaces provided for each parking lot.

Based on the 42 on-site vehicle parking spaces proposed, nine bicycle spaces are required; a proposed 14-bicycle rack is depicted on Sheet D 2.

f. BIMC 18.15.040 Outdoor Lighting

All outdoor lighting must result in no light trespass. Outdoor lighting must be shielded and aimed downward, with no escaping direct light permitted to contribute to light pollution by

shining upward into the sky or onto adjacent properties. Spotlighting on landscaping and foliage is limited to 150 watts incandescent (2,220 lumens output).

The applicant proposes tree and entry downlighting as depicted in lighting plan Sheet D 10.

g. BIMC Chapter 18.18 Design Guidelines

The project is subject to the 'Design Guidelines for Mixed Use Town Center and High School Road Districts' which include 'Guidelines Applicable to All Overlay Districts' (also referred to as 'General Guidelines' and 'Guidelines Applicable to the Madison Avenue Overlay District'.

- i. Site Design. Development should provide facilities near or visible from the sidewalk for outdoor public use (such as seating areas, courtyards, small plazas). Development should include pedestrian walkways, raised and separated from traffic lanes, that offer access from the public sidewalk to the main entrance to the building. Pedestrian walkways should offer connections to adjoining properties. Parking lots should be located behind or to the side of buildings. Within parking lots, pedestrian walkways should allow people to traverse the lot without being forced to use vehicular aisles. Most common open space serving residents should be designed to allow walking throughout the development, to any adjacent commercial or recreational areas, and to surrounding streets. Some place for children to play should be provided. Exterior lighting should not exceed 14 feet in height and should incorporate shields. Trash containers should be shielded from view. Landscaped front setbacks are encouraged along Madison Avenue.
- ii. Building Design. Buildings should utilize elements such as massing, materials, windows, canopies, and pitched or terraced roof forms to create a visually distinct base and cap. Building materials and patterns should be varied to produce variations in texture. Building elevations shall be vertically and horizontally modulated to avoid massive scale. Facades facing public ways shall incorporate setbacks or articulation and shall include features such as columns or recessed entries. Blank walls shall not be visible to public spaces. Building designs should respond to nearby buildings by using shared elements, materials or massing. Principal entrances should be visually prominent and incorporate elements such as setbacks, recesses, and porches. Rooftop mechanical equipment should be concealed by and integrated within the roof form. Visually prominent buildings should be encouraged at Madison Avenue intersections. Buildings should have pitched roof forms, with the pitch being at least 4:12 and no more than 12:12.

The Design Review Board (DRB) met on September 18, 2017 to review the proposal and provided the following recommendations: The project should advance as submitted with recommendations of widening the driveway, including canopies on both south and north elevations, considering contrasting pavement in the entry drive, considering moving the handicapped accessible parking space to the west, planting larger caliper trees and retention of existing willow trees.

In response to the DRB comments, on December 14, the applicant submitted two new plan sheets (D 2 and D 4) which contain a potential reconfiguration of the northerly townhomes with the intent of breaking up the scale of the buildings along with entry cover over common entries along Wyatt Way, modification to the rain screen siding and modified fencing design.

2. BIMC 2.16.040.E Site Plan and Design Review - Decision Criteria

The Commission shall review the application based on the Director's review directive, the Design Review Board (DRB) recommendation, and the decision criteria below:

- a. The site plan and design is in conformance with applicable code provisions and development standards of the applicable zoning district.

Consistency with zoning standards, including dimensional standards, design guidelines, landscaping and parking requirements, is discussed above in Part IV 1. Continued compliance with standards and any project conditions is ensured at time of building permit review.

- b. The locations of the buildings and structures, open spaces, landscaping, pedestrian, bicycle and vehicular circulation systems are adequate, safe, efficient and in conformance with the Island-Wide Transportation Plan.

The City Development Engineer finds that the site plan conforms to the City of Bainbridge Island Design and Construction Standards and Specifications. The Island Wide Transportation Plan identifies a "Trails School/Pvt Maintained" along the length of the east property line.

- c. The Kitsap County Health District has determined that the site plan and design meets the following decision criteria: The proposal conforms to current standards regarding domestic water supply and sewage disposal.

The Kitsap Public Health District recommends approval of the proposal.

- d. The City Engineer has determined that the site plan and design meets the following decision criteria: The site plan and design conforms to regulations concerning drainage in BIMC 15.20 and 15.21; The site plan and design will not cause an undue burden on the drainage basin or water quality and will not unreasonably interfere with the use and enjoyment of properties downstream; The streets and pedestrian ways as proposed align with and are otherwise coordinated with streets serving adjacent properties; The streets and pedestrian ways as proposed are adequate to accommodate anticipated traffic; The site plan and design conforms to the "City of Bainbridge Island Engineering Design and Development Standards Manual" unless the City Engineer has approved a variation to the road standards in that document based on his or her determination that the variation meets the purposes of BIMC Title 18.

The City Development Engineer completed review of the project materials received on June 28th, 2017 with revisions received on December 14th, 2017. The Development Engineer recommends conditioned approval based on the following findings:

- **The site plan conforms to regulations concerning drainage in BIMC 15.20 and 15.21;**
- **The site plan will not cause an undue burden on the drainage basin or water quality and will not unreasonably interfere with the use and enjoyment of properties downstream;**
- **The streets and pedestrian ways as proposed are adequate to accommodate anticipated traffic;**
- **The site will rely on public water and sewer services. There is adequate capacity in the water and sewer system and those services can be made available at the site;**
- **The site plan conforms to the City of Bainbridge Island Design and Construction Standards and Specifications, "the Standards", except as noted;**

- The site plan and design is in conformance with the applicable portions of the comprehensive plan pertaining to streets, roads, and utilities.

In 2016 the property received Site Plan and Design Review approval for Wyatt Cottages, a 28-unit development, but that project was not pursued (City File No. PLN50165 SPR). During the review process for that permit, a willow tree located along Wyatt Way was the subject of considerable discussion: City staff recommended that the tree be removed, and the Planning Commission recommended that it be retained. The Development Engineer provides the following discussion regarding the willow tree:

The Development Engineer does not recommend retention of the willow tree on the southeast corner of the lot. Replacement with a more appropriate street tree is recommended to minimize pedestrian and traffic hazards and limit potential damage to the proposed street improvements caused by its toppling or future removal. An arborist was commissioned by the City in 2014 to assess the willow. The assessment was triggered by citizen concerns about safety. The arborist recommended that the tree be removed. The arborist assessed a risk rating of 10 (on a scale of 3 to 12), meaning, *"The assessed issues have now become very clear. The probability of failure is now getting serious, or the target rating and/or site context have changed such that mitigation measures should now be on a schedule with a clearly defined timeline for action."*

The applicant provided two additional reports with this application, one prepared in 2015 and another in 2016 by the same author of the 2014 study referenced above. The 2015 report found no signs of insects, decay, fungi or sap flow in the trunk and included recommendations to prune out dead branches, cable the tree to address safety concerns, and boost vigor prior to development. The 2016 report found for a second time the willow to be in poor condition with multiple areas of rot with extensive dieback and poor structure, noted it is a poor candidate for retention, and recommended removal prior to construction activities.

In addition to the arborist reports, the City Public Works Department has reported drainage issues with a culvert adjacent to the tree being clogged by roots and causing flooding issues. No information has been provided by the applicant on the effect of installing new storm drain pipes, an 8-inch water line proposed as part of the development, and curb and road construction on the tree's further health or viability. Tree failure is expected in the near-term and would result in possible damage to City facilities and put financial liability on the citizens to repair what appears to be avoidable damage.

- e. The site plan and design is consistent with applicable design guidelines.

The Design Review Board recommended approval of the project and recommended that the driveway be widened, canopies be included on both the south and north elevations, contrasting pavement be considered in the entry drive, moving the handicapped accessible parking space to the west be considered, planting larger caliper trees and retaining existing willow trees.

- f. No harmful or unhealthful conditions are likely to result from the proposed plan.

This staff report identifies the regulations and provides reviewer comments regarding public health, safety and welfare, and public use and interest. Specifically, the report addresses

transportation, access, including pedestrian and emergency services access, water, sewer, and stormwater facilities.

- g. The site plan and design is in conformance with the Comprehensive Plan and other applicable adopted community plans.

The project provides for residential development within the Mixed Use Town Center which meets the intent of the district.

- h. Any property subject to site plan and design review that contains a critical area or buffer conforms to all requirements of that chapter.

The site is unencumbered by critical areas or their buffers.

- i. Any property subject to site plan and design review that is within shoreline jurisdiction conforms to all requirements of that chapter.

The property is not within shoreline jurisdiction.

- j. The site plan and design has been prepared consistent with the purpose of the site design review process and open space goals.

The purpose of Site Plan and Design Review to establish a comprehensive site plan and design review process that ensures compliance with the adopted plans, policies, and ordinances of the City. This application for Site Plan and Design Review permit is reviewed consistent with the adopted review process to ensure compliance with current plans, policies and regulations.

Part V. Conclusions

This report includes the standards of review, relevant Municipal Code and Comprehensive Plan provisions and provisions of other permitting agencies. The staff report includes findings based on evidence in the record. The project file contains the official record and basis for findings, including technical information and documentation.

Appropriate notice of application was provided, and comments considered. The application is properly before the Planning Commission for recommendation. Should the Commission recommend approval, staff suggests that the following conditions be considered:

SEPA CONDITION

1. To mitigate transportation and public service impacts, the project shall provide a bus shelter on Madison Avenue. The bus shelter shall meet Americans with Disabilities Act (ADA) requirements, and the shelter design and installation shall be coordinated with Kitsap Transit and City Public Works Department. The shelter shall be installed and achieve final inspection prior to occupancy of any buildings.

PROJECT CONDITIONS

2. The authorization for construction activities automatically expires and is void if the applicant fails to file for a building permit or other necessary development permit within three years of the effective date of the Site Plan and Design Review permit.
3. Construction plans shall substantially conform to plans submitted with application as revised by sheets submitted on August 9, 2017 (Sheets D1, D1.1, D1.2, D1.3, D2, D3, D4, D8, D11) as further revised by sheets submitted on December 14, 2014 (Sheets D2, D4).
4. Prior to any construction activities, the applicant shall obtain the appropriate permits from the City of Bainbridge Island, including but not limited to clearing, grading, and/or building permits.
5. The project shall comply with the following conditions of the City Survey Program Manager:
 - a. Right-of-Way Dedication
 - 1) Madison – 5.00' dedication for a total of 30.00' from section line between Sections 26 & 27
 - 2) Wyatt – 30.00' dedication north of the East-West centerline of Section 26 (this will include any right-of-way previously dedicated or granted)
 - 3) Additional right-of-way or easements may be required accommodate the Wyatt Way Reconstruction Project
6. The project shall comply with the following conditions of the City Engineer:
 - a. General
 - 1) Civil improvement plans, reports, and computations, prepared by a civil engineer registered in the State of Washington shall be submitted with the application(s) for a construction permit (building, grading, ROW, etc.) to COBI for review and approval to construct all necessary infrastructure and utilities serving the site. Certificate of occupancy will not be issued for any building until all civil improvements are completed and finalized.
 - 2) As-built civil construction plans stamped by a civil engineer shall be provided by the applicant prior to final.
 - b. Facilities Extension
 - 1) A Developer Extension Agreement (DEA) shall be executed at the site utilities construction permitting application phase for the construction of utilities to be inspected and accepted by the City.
 - 2) A right-of-way (ROW) construction permit will be required prior to any construction activities within the right-of-way in addition to completing the DEA and obtaining other

necessary construction permits. The ROW permit will be subject to separate conditions and bonding requirements.

- 3) Coordination of construction phasing with the adjacent Wyatt Way Improvement Project, including the planned construction of a roundabout at the intersection of Wyatt Way NE and Madison Avenue North, shall be undertaken prior to or at the time of executing the DEA. A moratorium on pavement cuts within the newly constructed roundabout improvements will require coordination of all utility extensions, frontage improvements, and bus shelter construction.
- 4) ROW dedication shall be required consistent with the City's survey program manager's requirements. The public sidewalk along Wyatt Way NE must be located within a City ROW or an easement granted to the City for public pedestrian access. Coordination for ROW dedication shall occur with the Wyatt Way Improvement project.
- 5) ROW improvements along Wyatt Way NE shall conform to the Standards for an urban collector roadway that requires a 10-foot travel lane, and a 3-foot paved shoulder clear of the parallel parking stalls. Parallel parking stall width shall comply with the minimums stated in BIMC 18.15.

c. Access

- 1) Access to the site shall be provided as modeled in the traffic impact analysis with primary ingress and egress from Wyatt Way NE. The emergency fire access at the northwestern corner of the project shall be marked with signage or bollards precluding non-emergency access from the adjacent parcel via Madison Avenue North.

d. Utilities

- 1) Trenching and excavation work performed within the drip line or critical root zone of significant trees to be retained shall be monitored by a certified arborist.
- 2) Abandonment and/or removal of the existing 4-inch asbestos concrete (AC) water main in Wyatt Way NE shall be performed by a contractor certified in asbestos abatement and removal.
- 3) On-site water main extensions shall include a utility easement granted to the City to the meters and/or backflow prevention devices.
- 4) Retention of the willow tree on the southeast corner of the lot is not recommended per the project arborist's report. Replacement with a more appropriate street tree is recommended to minimize pedestrian and traffic hazards and limit potential damage to the proposed street improvements caused by its toppling or future removal.

e. Stormwater

- 1) A Stormwater Pollution Prevention Plan (SWPPP) prepared by a civil engineer licensed in the State of Washington is required prior to construction activities including clearing or grading or civil improvements for all phases of the project that complies with BIMC 15.20.
- 2) A final stormwater report shall be submitted with the building permit detailing compliance with all applicable minimum requirements as required by BIMC 15.20, prepared by a civil

engineer licensed in the State of Washington.

- 3) Prior to building permit final, the applicant shall submit an operation and maintenance plan for the on-going maintenance of the storm drainage system.
- 4) New and replaced hard surfaces associated with frontage improvements, including on-street parallel parking stall construction shall be subject to on-site and water quality stormwater requirements per BIMC 15.20. Treatment shall be provided for these surfaces.
- 5) All on-site stormwater facilities shall remain privately owned and maintained. The owner(s) shall be responsible for maintenance of the storm drainage facilities for this development following construction. Annual inspection and maintenance reports shall be provided to the City. A Declaration of Covenant for stormwater system operation and maintenance will be required to be recorded before final plat submittal. The approved language for the Declaration of Covenant is found in BIMC Chapter 15.21, Exhibit A.

f. Permitting

- 1) Application for a building permit shall require binding water and sewer availability letters from the City.
- 2) The proposed action(s), phased or concurrent, in their totality would result in more than one (1) acre of earth disturbance on the site and drain to waters of the State. A Construction Stormwater General Permit shall be obtained from the Washington State Department of Ecology and the site shall be monitored for discharge of pollutants and sediment to the wetlands and stream for the duration of the project. No land clearing or construction permits shall be issued prior to obtaining the State permit.

7. The project shall comply with the following conditions of the Fire Marshal:

- a. The project must comply with the Fire Code
- b. Residential fire sprinklers are required in all buildings
- c. Fire hydrants are required
- d. Access from Madison Avenue must meet Fire District standards
- e. Class I standpipes are required where the floor level of the highest story is located more than 30 feet above the lowest level of Fire District vehicle access
- f. Aerial fire apparatus access is required along Wyatt Way
- g. Overhead utility and power lines shall not be located over the access road or between the aerial fire apparatus road and the building
- h. Tree retention on Wyatt Way, at the east end of the project, shall not impede aerial access to the building, as required
- i. Landscaping plans shall provide for a minimum of 36" clearance around all fire department appliances including fire hydrants, fire department connections, post indicator valves and other fire and life safety equipment. Clear access shall also be provided to such appliances and equipment.

8. The project may achieve a maximum level of development above the base Floor Area Ratio (FAR) in BIMC Table 18.12.020-3 by using one, or a combination of, the FAR bonus provisions identified in BIMC 18.12.030.E. FAR bonus provisions may be combined to achieve the maximum level of development established for each district. In no case shall the total residential FAR exceed the maximum FAR as provided for in BIMC Table 18.12.020-3.
9. Bicycle facilities shall allow secure locking of both the frame and wheels of a bicycle.
10. All trees that are required to be retained through this approval shall be depicted on the site plan, civil plan and landscape plan submitted for building permit.
11. Building permit application shall include the International Society of Arboriculture valuation for trees which are required to be retained through this approval.
12. The project is subject to tree retention replacement, enforcement and penalty regulations in BIMC 18.15.010.C.
13. The civil plan submitted with building permit shall identify the dripline or critical root zone (as identified by a consulting arborist) of trees and /or tree canopy of tree stands required to be retained, future rain gardens, and future planting areas larger than 400 square feet (i.e. landscape islands in parking lots).
 - a. These areas shall be identified as no-disturbance or for soil amendment, as applicable.
 - b. Temporary chain link fencing a minimum five feet in height with tubular steel poles or "T" posts shall delineate the area of prohibited disturbance.
 - c. Prior to permit issuance for any construction activity, fencing shall be erected and posted with signs to protect no-disturbance areas. Protective fencing and signage shall remain until construction is complete, and removal of any portion of the fencing is subject to approval of the Department of Planning and Community Development.
 - d. Fencing materials and signage shall be approved by the Planning Division prior to installation.
14. All plantings shall be installed or installation financially assured in accordance with BIMC 18.15.010.H. prior to occupancy of any of the new buildings. After installation approval by the Department, maintenance assurity shall be required in accordance with BIMC 18.15.010.H.
15. Internal walkways shall be surfaced with nonskid hard surfaces, meet handicapped-accessibility requirements and be designed to provide a minimum of five feet of unobstructed width.
16. Where walkways cross vehicular driving lanes, the walkways shall be constructed of contrasting materials or with maintained painted markings. The walkway adjacent to the pick-up / drop-off lane shall be curbed and raised six inches above adjacent vehicular surface grade, except where required to meet accessibility standards.
17. Raised curbs shall be used to define driveways from the public right-of-way, landscape areas within the parking lot, the ends of parking aisles, and the vehicular circulation pattern.
18. Outdoor trash / recycle receptacles shall be enclosed with a solid structure / gated and screened from view with evergreen vegetation.

4.2 General Use

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

4.2.1.1 Applicability

This section applies to shoreline uses, lots, and ~~or~~ structures that were lawfully established or constructed prior to the effective date of the initial adoption of the ~~Master~~ this Program (November 26, 1996) or ~~its~~ amendments thereto, ~~but~~ and which do not conform to ~~present~~ current regulations or standards of the ~~Master~~ this Program. Nonconforming uses, lots and structures. ~~Existing structures and uses that do not conform to this Program are not required to meet this Program's requirements, unless changes to a use, lot or structure or use that would require review under this Program are proposed.~~

4.2.1.2 Definitions

A. Nonconforming Use. A nonconforming use means an existing shoreline use that was lawfully established prior to the effective date of this Program (November 26, 1996) but which does not conform to present use regulations due to subsequent changes to the Program.

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B. Nonconforming Lot. A nonconforming lot means a lot that met dimensional requirements of the applicable SMP at the time of its establishment (November 26, 1996) but now contains less than the required width, depth or area due to subsequent changes in the Program.

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

4.2.1.2 Goal

It is the purpose of this ~~program~~ section to recognize legally established uses, lots, and structures ~~primary residential structures~~, and to allow them to be maintained, repaired, remodeled, replaced, and in some cases expanded, in conformance with ~~these rules~~ current regulations and standards of this Program with due regard to unique site conditions and property rights. ~~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~~ A further goal is to ultimately, over time, have uses and commercial structures conform to the provisions current regulations and standards of this pProgram. Over time, uses and commercial structures that do not conform to the current regulations and standards of this pProgram should be phased out as uses cease or redevelopment of structures occurs.

Commented [KM1]: I'm not sure of the value of this – what are we trying to say here?

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

4.2.1.3 Policies

1. ~~Lawfully constructed commercial and industrial structures shall be allowed to be repaired, maintained, and remodeled provided that the alteration does not increase the nonconformity.~~
2. ~~Lawfully constructed structures, established uses, public facilities, transportation structures, and/or lots of record located within the shoreline jurisdiction prior to the effective date of the Master Program but which do not conform to the present policies, regulations or standards, shall be allowed to continue and be repaired and maintained.~~
3. ~~Nonconforming Lawfully constructed residential structures may be replaced, repaired, maintained, and remodeled, and in some cases expanded, provided the alteration meets the goals and provisions of this program~~ current regulations and standards of this Program.
4. ~~Lawfully constructed residential structures may be expanded in some circumstances, provided the expansion will not result in adverse impacts to shoreline ecological functions and processes, and mitigation is provided.~~
5. ~~Once discontinued, reestablishment of nonconforming uses and nonconforming commercial structures located in the shoreline jurisdiction shall~~ should be restricted or phased out over time.
6. ~~Lawfully constructed commercial structures that do not conform to the standards and regulations of this Program are located in the shoreline jurisdiction are to be phased out over time. Depending on the extent and intensity of the nonconformity, a primary residential structure and primary appurtenance, may be allowed certain alteration or expansion, provided that adverse impacts to shoreline ecological functions and shoreline processes are mitigated or restored.~~
7. ~~Nonconforming Lawfully constructed structures that are demolished or destroyed by fire, explosion, flood, or other casualty may be restored or replaced without increasing or expanding the nonconformity, and are encouraged to decrease nonconformity reconstructed to configurations existing immediately prior to the time the structure was damaged or destroyed. Decreases in nonconformity should be encouraged. Legally established overwater structures that are destroyed may be reconstructed to the same size, but the configuration may be altered to reduce the impact to the shoreline environment provided the size of the nonconformity is not increased. Such redevelopments may be permitted provided that impacts to shoreline functions and processes are mitigated or restored, and the reconstruction application is submitted within two years of the date of destruction.~~
8. ~~Legally established Nonconforming Lawfully constructed and located overwater structures that are destroyed may be reconstructed to the same size, but the configuration may be and modified, reoriented or altered within the same general location to be more consistent with the provisions of this Program. altered to reduce the~~

impact to the shoreline environment provided the size of the nonconformity is not increased.

- ~~8. Provisions for reconstruction of a lawfully constructed residential house shall allow certain expansions of the existing structure when it can be demonstrated that the expansion will not result in adverse impacts to shoreline ecological functions and shoreline processes are mitigated or restored.~~
9. ~~Legally created n~~Nonconforming lots of record may be developed consistent with the standards and regulations of this Program, provided that adverse impacts to shoreline ecological functions and shoreline processes are mitigated or restored.
10. Redevelopment of nonconforming public rights-of-way and associated existing transportation structures may be permitted for purposes of facilitating essential public access, development of public trails and/or public shoreline access.

4.2.1.4 Regulations – General

1. Nonconforming uses, lots and ~~developments and/or existing buildings and structures that were lawfully constructed or existed established prior to the effective date of initial adoption of this Program (November 26, 1996), or its amendments thereto, but and which do not meet the specific current regulations and standards of this Program,~~ may be continued subject to the provisions of this section
- ~~2. Nonconforming uses and structures shall not be reconstructed, altered or expanded in any way that increases the nonconformity, except as allowed under specific provisions of this Program. The reconstruction shall not cause adverse impacts to shoreline ecological functions and processes.~~
2. A complete application for any reconstruction under this section must be submitted within two (2) years of the date of damage or removal, and upon approval of the application, redevelopment must be completed within one (1) year of the commencement of reconstruction. A one (1) year extension may be granted, provided that a written request is submitted no later than twenty-one (21) days prior to either deadline and provided that the owner is not responsible for the delay.
3. ~~An existing use designated by the adoption of an applicable amendment hereto as a conditional use that lawfully existed prior to the adoption of the Program or the adoption of an applicable amendment hereto and which has not obtained a conditional use permit, shall be considered a legal nonconforming use and may be continued subject to the provisions of this section without obtaining a conditional use permit.~~
4. A structure for which a variance has been issued but which does not comply with applicable requirements of this Program ~~as amended or amendments hereto~~ shall be considered a legal existing structure and the requirements of this section shall apply.
5. ~~Any permitted remodel or expansion shall not cause adverse impacts to shoreline ecological functions and/or processes. Any alterations to nonconforming-existing uses or structures shall meet the no net loss standard pursuant to Section 4.1.2.4. The current condition of the shoreline, including nonconforming existing uses and structures, shall~~

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Commented [KM2]: What does this mean? What type of variance and when would one be needed?

be the starting point or baseline for determining compliance with the no net loss standard.

4.2.1.5 Regulations - Nonconforming Uses

1. ~~Nonconforming uses shall not be altered or expanded in any way that increases the nonconformity.~~
2. If a nonconforming use is discontinued for twelve (12) consecutive months, any subsequent use shall be conforming; except that if a nonconforming use is operated within a nonconforming structure that is accidentally damaged or destroyed and reconstruction is proposed under Section 4.2.1.6.1(3), then the use may be re-established within the same time period as the reconstruction for the nonconforming structure pursuant to Section 4.2.1.4(2)
3. A nonconforming use cannot be changed to another nonconforming use.
4. Change of ownership, tenancy, or management of a nonconforming use shall not affect its nonconforming status, provided that all provisions are met.
5. ~~An existing use designated by the adoption of an applicable amendment hereto as a conditional use that lawfully existed prior to the adoption of the Program or the adoption of an applicable amendment hereto and which has not obtained a conditional use permit. A use listed in Table 4-1 as a conditional use that lawfully existed prior to the adoption of this Program or amendments hereto shall be considered a legal nonconforming use and may be continued subject to the provisions of this section without obtaining a conditional use permit.~~

Commented [KM3]: Duplicative.

END OF REVISIONS FOR MARCH 8, 2018 MEETING

4.2.1.6 Regulations – ~~Nonconforming Structures~~Existing Development

4.2.1.6.1 General Provisions – Nonconforming Structures

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

ii. ~~Adding to the footprint of an existing structure is permitted as long as the addition meets the requirements of this program.~~

b. ~~There is a~~No further encroachment into the buffers ~~is unless~~ allowed ~~unless permitted~~ by this ~~P~~program or through an approved variance;

e. ~~Renovations or remodels are entirely contained within the building;~~

d. ~~Any relocation of the structure must If moved, the structure shall be made to conform to regulations of this P~~program.

2. If a ~~nonconforming a-existing~~ primary structure is damaged or destroyed by fire, explosion, earthquake, flooding or other casualty, ~~or destroyed in any other manner~~, it may be reconstructed to the bulk dimension existing immediately prior to the ~~demolition or~~ 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 must meet~~ geologically hazardous provision for existing development in Section 4.1.5, Regulations – **Nonconforming Uses**, and Appendix B.

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

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

4.2.1.6.3 ~~Nonconforming Existing~~ Structures – Residential Single-Family: Primary Structures

1. If a ~~nonconforming a-existing~~ primary residential structure is damaged or destroyed as described in Section 4.2.1.6.1(2), the ~~nonconforming existing~~ primary residential structure configuration may be altered or expanded pursuant to subsections 4.2.1.6.3(2-4).
2. A ~~nonconforming a-existing~~ primary residential structure may be altered or expanded to the extent allowed by this Program, provided:

Commented [KM4]: Under what circumstances would this occur?

Commented [KM5]: I suggest we remove the specific items because leaving them in suggests this is a comprehensive list of all requirements that need to be met.

Commented [KM6]: Do we need to add the same requirement for the CAO? Is there a reason we specifically call out geologically hazardous here?

Commented [KM7]: Under what circumstances would this apply? Why would we allow an increase in nonconformity for commercial and industrial primary structures but not for residential structures, which are a preferred structure in the shoreline?

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

Commented [KM8]: Is there a section of the SMP that we can add a reference to here, that addresses view regulations?

Commented [KM9]: This seems inconsistent with the requirement that any rebuilding of a nonconforming structure may not increase the nonconformity. Also how can you treat it as a separate structure if you are just increasing the size of the structure being rebuilt? Can we discuss?

4.2.1.6.4 ~~Nonconforming~~**Existing Structures – Multifamily Residential: Primary Structures**

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

- d. The replacement structure meets geologically hazard provision for existing development in Section 4.1.5, Critical Areas, and Appendix B.
- 2. A ~~nonconforming n-existing~~ primary multifamily residential structure or portion thereof may be reconstructed, altered, or expanded, including the footprint and/or the height increased, to the extent allowed by this Program, if the following are met:
 - a. Public access is provided pursuant to Section 4.2.4.6, Regulations – Public Access Design and Location Standards; and
 - b. Mitigation of the shoreline buffer is provided to meet no net loss, as detailed in Section 4.1.2, Environmental Impacts, including revegetation standards in Section 4.1.2.5(3).

Commented [KM10]: Applicable only to nonconforming primary multifamily residential structures?

Commented [KM11]: Isn't this true of all activities associated with nonconforming lots, uses and structures? Move this to general regulations applicable to all nonconforming uses, lots, structures?

4.2.1.6.5 ~~Nonconforming Existing~~ Structures – Residential: Accessory Structures

- 1. If a ~~nonconforming n-existing~~ residential accessory structure is damaged, destroyed or intentionally demolished, the reconstruction shall be in conformance with all standards of the Program, except:
 - a. A ~~nonconforming n-existing~~ essential single family residential accessory structure may be reconstructed as follows:
 - b. Replacement structure is the same bulk dimension as the existing structure.
 - c. Replacement structure may be located within Zone 2 provided mitigation occurs in accordance with 4.1.2.5, Regulations – Revegetation Standards.
 - d. Attached decks essential to a single family residence may be replaced in the same location.
 - e.. All other applicable standards and provisions are met, including regulations of this Program, the Bainbridge Island Municipal Code, the septic system requirements of the Kitsap Health District, and any state and federal laws.

Commented [KM12]: Need to define this. Or discuss removing the “essential” distinction. Why is it here?

Note to author: add, provided that shoreline modifications shall conform to Section 6.1, General Shoreline Modification Provisions, and Section 6.2, Shoreline Stabilization. And overwater residences

4.2.1.7 Regulations – ~~Encumbered and~~ Nonconforming Lots

- 1. Single-family development and redevelopment, except in the Point Monroe District, that is proposed on a ~~legal~~-nonconforming lot located in the shoreline jurisdiction or proposed for a shoreline property that is significantly encumbered by shoreline or critical area buffers, may be allowed without a shoreline variance when the following criteria are met:
 - a. A lot contains a building area of 2,500 square feet or more available for a single-family residence and normal appurtenances and unrestricted by buffers from shorelines or critical areas shall comply with the provisions of this Program. The building area means the entire area that will be disturbed to construct the home, normal appurtenances (except drainfields), and landscaping; or

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

4.2.1.8 Regulations – Nonconforming Public Facilities & Transportation

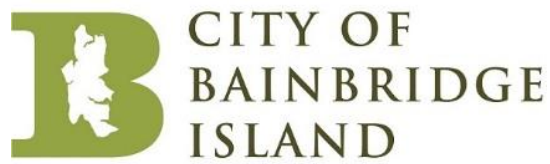
1. Nonconforming public facilities shall be allowed to continue and to be repaired, maintained, or remodeled.
2. Redevelopment of nonconforming public rights-of-way and associated transportation structures are allowed for purposes of facilitating essential public access, development of public trails,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

4.2.1.8 Regulations – ~~Nonconforming Existing~~ Residential and Commercial Structures: Aquatic Structures and Accessory Aquatic Structures

1. Existing docks floats, and buoys may be repaired and replaced in the same foot print and shall comply with this Program's requirements for materials and standards, to the extent practicable.
 - a. Except that as a conditional use, an existing dock may be modified, reoriented or altered within the same general location to be more consistent with the provisions of this Program.
2. Except for docks and floats, repair and replacement up to 50% of the footprint of any existing aquatic structures, including shoreline modifications, or buildings or portions

thereof within the Aquatic or Priority Aquatic designations, shall only be done once within any five year period. Such replacements shall comply with this Program's requirements for materials and standards to the extent practicable. If the structure is composed of several components, then the 50% shall be calculated independently for each component.

3. The replacement shall meet Section 4.1.2, Environmental Impacts, including the mitigation sequencing standards of Section 4.1.2.6, Regulations-Mitigation, to meet the standard of no net loss of shoreline ecological functions and/or processes. Shoreline stabilization shall also meet the alternative analysis provision of Section 6.2.8(1).



DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

MEMORANDUM

Date: March 23, 2018
To: Planning Commission
From: Jennifer Sutton, AICP
Senior City Planner
Subject: Public Hearing on Ordinance 2018-11
Repealing BIMC Chapter 16.22 *Vegetation Management*

BACKGROUND

On February 27, 2018, the City Council approved [Ordinance 2018-01](#); the update to the City's Critical Areas Ordinance. The regulations to conserve and protect one type of critical area, aquifer recharge areas, were enhanced through the Critical Areas Ordinance update through the addition of Aquifer Recharge Protection Areas (ARPA); see new BIMC Section 16.20.100 in the newly adopted [Critical Areas Ordinance](#). The ARPA is a tree and vegetation protection measure that applies in the R-0.4, R-1 and R-2 zones, areas that total almost 91% of the land area on Bainbridge Island. A summary sheet that describes the new ARPA regulations (originally called Native Vegetation Protection Areas) can be viewed on the City's website: <https://wa-bainbridgeisland.civicplus.com/DocumentCenter/View/9398>

BIMC Chapter 16.22 *Vegetation Management* was added to the Bainbridge Island Municipal Code in 1997 and has not been amended since. This Chapter is a fusion of the provisions for different classes of forest practices defined by Chapter 76.09 RCW Forest Practices and the City's prior open space requirements, which were revised in in 2004. BIMC Chapter 16.22 *Vegetation Management* applies primarily in the R-0.4, R-1 and R-2 zones because those are the areas of the Island with substantial amounts of forested area to trigger a *Vegetation Management* permit.

The new ARPA regulations approved with the updated Critical Areas Ordinance overlaps and conflicts with the vegetation preservation requirements in BIMC Chapter 16.22 *Vegetation Management*. Therefore, repealing BIMC Chapter 16.22 *Vegetation Management* provides greater clarity for property owners and City staff in understanding vegetation preservation requirements. Repealing BIMC Chapter 16.22 *Vegetation Management* does not absolve a property owner from obtaining a Forest Practice permit from the State Department of Natural Resources, when applicable. The Planning Commission will hold a public hearing on Ordinance 2018-11 on March 29, and forward on a recommendation to the City Council.

Chapter 16.22 VEGETATION MANAGEMENT

Sections:

16.22.010	Findings and declaration of purpose.
16.22.020	Definitions.
16.22.030	Applicability.
16.22.040	Exemptions.
16.22.050	Vegetation management permit.
16.22.060	Vegetation management standards.
16.22.070	Submittal requirements.
16.22.075	Moratorium relief.
16.22.080	Release of moratorium.
16.22.090	Decision criteria for release of moratorium.
16.22.095	Rescission of moratorium.
16.22.097	Permit revocation and penalties.
16.22.100	Flowchart for timber harvests.
16.22.115	Appeals.

16.22.010 Findings and declaration of purpose.



- A. Forest areas are an integral part of the Island character and enhance the city's appearance and livability, as well as providing significant environmental benefits and natural resource values as identified in the comprehensive plan.
- B. Under the authority of planning and zoning granted to the city under RCW [76.09.240](#), the city of Bainbridge Island considers all forested areas within its jurisdiction as "lands with a likelihood of future conversion" from forest use as defined under WAC [222-16-060](#).
- C. Indiscriminate removal of vegetation may cause loss of wildlife and fish habitat, increased soil erosion, water and air quality degradation as well loss of aesthetic value.
- D. Vegetation management is necessary in order to implement the comprehensive plan, the landscape ordinance, the flexible lot design ordinance and to protect the health and safety of citizens.
- E. Vegetative management planning is necessary prior to removal of vegetation in order to reduce harmful effects and promote incorporation of existing vegetation into future land development plans. (Ord. 97-07 § 2, 1997)

16.22.020 Definitions.

- A. "Agricultural land" means farms and farmland as defined in BIMC [16.20.020](#).
- B. "Basal area of timber" means the cross-sectional area of a tree outside bark, measured at four and one-half feet above the average grade.

C. "Codominant trees" means trees whose crowns form the general level of the crown cover and receive full light from above, but comparatively little light from the sides.

D. "Contiguous" means land adjoining and touching other property held by the same ownership. Land in common ownership which is divided by a public road, but otherwise an integral part of a farming or timber management operation shall be considered contiguous.

E. "Conversion option harvest plan" means a voluntary plan developed by the landowner and approved by the local government entity indicating the limits of harvest areas, road locations, and open space and filed with the Department of Natural Resources (DNR), WAC [222-20-050](#).

F. "DBH" means the average diameter of a tree, outside the bark, at a point four and one-half feet above average grade.

G. "Department" means the department of planning and community development.

H. "DNR" means the Washington State Department of Natural Resources.

I. "Dominant trees" means trees whose crowns are higher than the general level of the canopy and which receive light from the sides as well as from above.

J. "Harvest area" means that area on which timber harvesting is conducted including that area where soil and/or vegetation has been disturbed or damaged during harvesting, including road construction.

K. "Harvesting" means the cutting and/or removal of trees together with all the work incidental thereto such as road building, firebreak construction, and fire hazard abatement, but excluding preparatory work such as tree marking and road flagging.

L. "Haul route" means any public road within Bainbridge Island which is to be used to deliver forest products to a point of processing, disposal, or utilization.

M. "Landing" means that area where forest products are placed on trucks.

N. "Leave trees" means those trees remaining after thinning a stand of trees.

O. "Limbing" means removal of branches and leaving at least two-thirds of the existing tree branch structure. Limbing does not include topping of trees.

P. "Merchantable volume of timber" means the gross volume of trees either in board feet (using the log length and log rule in common usage for western Washington) or cubic volume depending on the measure commonly used in commerce.

Q. Open Space Management Plan. See Open space, BIMC 17.28.020.36 and Open Space Management Plan Required, BIMC 17.12.030.A.8.b.

R. "Owner" means the party or parties having the fee interest in land.

S. "Pasture" means land used for grazing by domestic animals.

T. "Removal" means the act of removing vegetation by digging up, cutting down or any act which is likely to cause vegetation to die within a period of five years including, but not limited to, damage inflicted to the root system by machinery, storage of materials, or soil compaction; changing the ground level in the area of the root system; damage

inflicted on vegetation permitting infection or infestation; excessive pruning or any other action which is deemed harmful to vegetation.

U. "Residual forest land" means any property or portion of any property which is not harvested as part of an approved conversion harvest plan or selective harvest plan.

V. "Routine landscape maintenance" means lawn mowing, composting, gardening, tree limbing and ground cover management which does not include tree removal and is undertaken by person in connection with the normal maintenance and repair of property.

W. "Scenic corridor" means a band of land on either side of a scenic road or trail and wildlife/view corridors designated by the comprehensive plan of Bainbridge Island or Bainbridge Island Municipal Code.

X. "Silvicultural prescription" means a written plan that describes which trees will be removed and what methods will be used to determine the appropriate trees to be removed.

Y. "Slash" means nonmerchantable logs, branches, limbs or stems of any species left in the harvest area as a result of current timber harvesting.

Z. "Thinning" means the removal of trees less than 18 inches DBH where removal will improve the growth of remaining trees or utilize diseased trees that might otherwise die.

Timber removed from a harvest area meeting all of the following conditions:

1. The total volume removed is less than 50 percent of the total merchantable volume of the harvest area prior to harvest;
2. Not more than 40 percent of the total volume removed is from the dominant and codominant trees;
3. The trees removed shall be distributed over the entire harvest area.

AA. "Timber" means trees of any species which are of sufficient size and quality to be capable of furnishing raw material used in the manufacture of forest products.

BB. "Timber cruise report" means a report of the timber volume that includes the method used to obtain the volumes and statistical analysis of the accuracy of the estimation.

CC. "Topping" means cutting the top main trunk of a tree.

DD. "Tree" means any woody plant characterized by one main stem or trunk.

EE. "Undeveloped property" means property which is not improved with a substantial building or substantial structure used for a principally permitted use or an approved conditional use.

FF. "Vegetation" means plant matter, including trees, shrubs and ground cover. (Ord. 97-07 § 2, 1997)

16.22.030 Applicability.

A. Permit Required. Unless exempted in BIMC [16.22.040](#), a vegetation management permit is required for harvesting of trees and/or removal of vegetation in the following areas:

1. Undeveloped properties or developed properties which can be further subdivided, including those properties under two acres in size which are exempt under a Class I forest practice permit;
2. Critical areas and required buffers as defined in Chapter [16.20](#) BIMC;
3. Designated open space areas;
4. Designated scenic or wildlife corridor areas; or
5. As part of a Class IV general forest practice permit, as regulated under RCW [76.09.050](#).

B. Optional Permit. A property owner intending to harvest under a Class I (not exempt in BIMC 16.22.040.E), II or III DNR forest practice permit may avoid the six-year development moratorium if the property owner submits to the city and DNR a conversion option harvest plan which meets the standards of BIMC [16.22.060](#) and is approved by the city prior to the application for a DNR forest practice permit.

C. Development Moratorium. A six-year development moratorium shall be placed on all properties harvested under Class I (not exempt in BIMC 16.22.040.E), II and III DNR forest practices permits in accordance with BIMC 16.20.190.D.2. To avoid the moratorium, a property owner can:

1. Apply for a Class IV general forest practices permit and meet the standard of BIMC [16.22.060](#); or
2. Obtain an approved DNR conversion option harvest plan. (Ord. 2001-41 § 8, 2001; Ord. 97-07 § 2, 1997)

16.22.040 Exemptions.

A vegetation management permit is not required for the following:

A. Class II and III forest practices regulated by the Department of Natural Resources under RCW [76.09.050](#); provided, that the city of Bainbridge Island shall not accept and/or issue any land use or building permit for six years from the date of application approval of a Class II or Class III forest practice permit;

B. Class I forest practices as defined under WAC [222-16-050](#)(3), except that WAC [222-16-050](#)(3)(r)(iii), "Any forest practices involving a single landowner where contiguous ownership is less than two acres in size" is not exempt;

C. Culture and harvest of Christmas trees and seedlings;

D. Construction of less than 600 feet of road on a sideslope of 40 percent or less if the limits of construction are not within the shoreline area or designated critical area;

- E. Cutting and/or removal of less than 5,000 board feet of timber (including live, dead and down material) for personal use (i.e., firewood, fence post, etc.) in any 12-month period;
- F. Removal of trees and vegetation for public safety, maintenance of public right-of-way and maintenance of recorded utility corridors or easements if approved by the public works director and not regulated by other city regulations;
- G. Removal of trees and vegetation obstructing private access routes or easements as a result of storms or other major natural events;
- H. Removal of dead trees and vegetation in the residual forest area for safety purposes if a report by a qualified arborist or consulting forester (approved by the city) indicates that such an action is necessary and no feasible alternative to removal exists. Whenever possible felled trees shall remain in order to provide downed material for plants and wildlife;
- I. Routine landscape maintenance which does not include tree removal; or
- J. Harvest trees, such as hybrid poplars, cultivated by agricultural methods in growing cycles of less than 10 years. (Ord. 98-20 § 13, 1998; Ord. 97-07 § 2, 1997)

16.22.050 Vegetation management permit.

A. Application Required. The owner of any property specified in BIMC [16.22.030](#) that is being converted to a nonforest use or property for which the owner intends to avoid a six-year development moratorium, shall submit a vegetation management permit application for review and approval by the department of planning and community development prior to removal of any vegetation. The application shall be prepared by a consulting forester approved by the city and may be filed jointly with the Washington State Department of Natural Resources (if required by state law) and the city.

B. Application Procedure. The city shall process vegetation management permit applications in accordance with Chapter [2.16](#) BIMC and the following procedures:

1. A preapplication conference is not required; however, the applicant may submit for a preapplication conference in accordance with the procedures set forth in BIMC 2.16.020.G.
2. The applicant shall submit a complete application as specified in BIMC [16.22.070](#), Submittal Requirements. A State Environmental Policy Act (SEPA) environmental checklist is required for all vegetation management permits, in accordance with Chapter [16.04](#) BIMC. Upon receipt of a complete application, the director shall provide notice to the applicant and public in accordance with BIMC 2.16.020.K and commence the application review process. A notice of application with public comment period and a notice of decision shall be required in accordance with BIMC 2.16.020.K for all vegetation management permit applications.

3. Administrative Review. All vegetative management permits shall follow the review procedures set forth in BIMC [2.16.030](#).

4. An application review, exempt from subsections B.1 through 3 of this section, shall be allowed for removal of diseased or dying trees and vegetation; provided, that a report by a qualified arborist or consulting forester (approved by the city) indicates that such an action is necessary and no feasible alternative to removal exists, and provided that the decision criteria of subsection C.2 through 5 of this section can be satisfied.

C. Decision Criteria. A vegetation management permit may be approved or approved with conditions by the director if the plan can meet the following:

1. Harvesting meets the vegetation management standards of BIMC [16.22.060](#);
2. Erosion control measures are included as part of the plan;
3. All applicable open space and corridor standards are met;
4. Mitigation measures are proposed which reduce adverse impacts on surrounding property; and
5. All other provisions of this code are met. (Ord. 97-07 § 2, 1997)

16.22.060 Vegetation management standards.

Any property which is converting or likely to convert to a nonforest use shall provide either a conversion harvest plan or a selective harvest plan as follows.

A. Conversion Harvest Plan. The owner of any property which is being converted to a nonforest use shall provide a conversion harvest plan which meets the standards below:

1. Land clearing is permitted at the following percentages of the area existing in order to prepare for future nonagricultural development.
Percentage of area that may be cut.

Zoning District	Percent of area
R-.04	20%
R-1	40%
R-2,2.9,3.5 and 4.3	60%

2. If the property is being converted to agriculture or pasture use, the property owner shall submit a farm plan approved by the Kitsap Conservation District, or the USDA Natural Resource Conservation Service (NRCS) or which is developed by the owner or a consultant using USDA standards for water quality protection. If the land has not been used for agriculture or pasture within the last five years, then a nonfarmed buffer of 25 feet shall be left between the edge of the property and adjoining

nonagricultural parcels. As a condition of the vegetation management permit, the approved farm plan shall be implemented within one year after the completion of the conversion harvest.

3. Residual forest areas shall be in windfirm condition, clustered to the extent feasible and contiguous to other existing stands. Buffering of adjacent, developed properties shall be given high priority.

4. Unless otherwise allowed through an approved open space management plan, no cutting is allowed within any of the following areas:

- a. Critical areas or required buffers, as defined in Chapter [16.20](#) BIMC;
- b. Previously established noncut buffer areas;
- c. Greenways, scenic road corridors, view corridors or wildlife corridors designated by the comprehensive plan of Bainbridge Island or Bainbridge Municipal Code; and
- d. Any required perimeter landscape buffer that will be required upon development of the site in accordance with BIMC [18.15.010](#).

5. Remaining forested areas which are not addressed in subsections A.1 through A.4 of this section, may be harvested under a harvest plan approved by the city that meets the standards for tree retention specified in subsection B of this section.

6. A Class IV general forest practice permit issued by DNR is required.

B. Selective Harvest Plan. A property owner intending to harvest under a Class I (not exempt in BIMC 16.22.040.E), II or III, on property that has a potential to convert to a nonforest use shall provide a selective harvest plan which meets the standards below:

1. Up to 50 percent of the existing merchantable volume or 50 percent of the basal area of timber may be cut. A timber cruise report and silvicultural prescription demonstrating how the required volume retention goals will be met may be required.
2. Thinning of stands less than 18 inches DBH is permissible as long as the leave trees number more than 40 percent of the dominant and codominant trees which are disease free and undamaged.
3. In no event shall the total timber stand removal of the property exceed 50 percent of the merchantable volume or basal area of timber.
4. The harvested trees should be well distributed over the entire harvest area. Residual forest areas shall be in windfirm condition, clustered to the extent feasible and contiguous to existing stands. Buffering of adjacent, developed properties shall be given high priority.
5. Unless otherwise allowed through an approved open space management plan, no cutting is allowed within any of the following areas:
 - a. Critical areas or required buffers, as defined in Chapter [16.20](#) BIMC;
 - b. Any previously established noncut buffer areas;

- c. Designated greenways, scenic road corridors, view corridors or wildlife corridors unless the director determines that the proposed harvest will not affect the function of the corridor or greenway; and
- d. Any perimeter buffer established in accordance with BIMC [18.15.010](#).

6. A DNR Class II or III forest practice permit is required if mandated by state law.

C. A property owner intending to harvest under a Class I (not exempt in BIMC 16.22.040.E), II or III, on property that has a potential to convert to a nonforest use, may avoid the six-year development moratorium if the harvest plan meets the standards of subsection A or B of this section, the property owner submits a DNR conversion option harvest plan to the city of Bainbridge Island, and the following standards are met:

1. A property owner providing a DNR conversion option harvest plan shall record the city approved plan with the Kitsap County auditor and provide the city with a copy of the recorded document and the auditor's recording number prior to commencement of the timber harvest.
2. Another DNR conversion option harvest plan shall not be approved within six years from the approval date of a previous plan.
3. Failure to meet the requirements of the DNR conversion option harvest plan shall result in the placing of a six-year development moratorium on the property. (Ord. 2001-41 § 8, 2001; Ord. 97-07 § 2, 1997)

16.22.070 Submittal requirements.

A vegetation management permit application and fee, as established by city council resolution, shall be filed with the department of planning and community development on forms provided by the city, which shall contain the following:

- A. Name, address and telephone number of the property owner and forestry consultant, if any;
- B. Kitsap County tax account number and parcel number for the properties involved;
- C. The proposed dates the vegetation removal will take place;
- D. The approximate acreage of the harvest area, and the approximate acreage of existing forested areas with trees 20 feet or greater in height;
- E. The desired haul route;
- F. A copy of any DNR application, if required;
- G. A statement as to how the trees will be designated for removal or retention;
- H. A statement explaining how property lines will be marked;
- I. A statement as to whether timber harvesting has occurred on any portion of the proposed harvest area in the past six years;

J. A site assessment plan/harvest plan drawn to engineering scale showing the entire property. The harvest plan shall meet the standards of BIMC [16.22.060](#) and must show the following:

1. All boundaries;
2. Existing stands of trees, specifying predominant species, species mix and age class;
3. Location of critical areas and buffers as designated under Chapter [16.20](#) BIMC, designated open space, and designated scenic and/or wildlife corridors;
4. Proposed areas to remain in forest;
5. Proposed areas to be cleared of vegetation;
6. Proposed areas to be thinned of trees;
7. All existing and proposed access roads;
8. Proposed log landing areas;
9. Any structures on the property;
10. Topography, at 20-foot intervals. A USGS map is acceptable;
11. All adjacent residences within one and one-half times the height of the trees to be felled; and
12. Name, address and phone number of the timber harvest operator.

K. An erosion control plan;

L. Open space management plan, if applicable;

M. Greenways, scenic road, view or wildlife corridor plans, if applicable;

N. SEPA environmental checklist, if applicable. (Ord. 2001-41 § 8, 2001; Ord. 97-07 § 2, 1997)

16.22.075 Moratorium relief.

Pursuant to the provisions of this chapter, the city may grant relief from development moratoria imposed pursuant to Chapter [76.09](#) RCW prior to the expiration of the moratoria. (Ord. 99-03 § 1, 1999)

16.22.080 Release of moratorium.

A. Pursuant to the provisions of this chapter, a forest practice moratorium may be lifted prior to its expiration. Any property owner requesting a release of a development moratorium shall submit to the city an application for release of the moratorium on the form provided by the city, together with the fees established by resolution.

B. The city shall refer all applications for the release of a development moratorium to the hearing examiner. The hearing examiner shall review all applications for the release of a development moratorium under this section pursuant to the decision procedures set forth in BIMC [2.16.100](#).

C. Prior to the public hearing, the director shall provide a minimum public comment period of at least 14 days. Pursuant to the notice requirements of BIMC 2.16.020.K, the city shall provide written notice of the application for release along with notice of the public hearing to:

1. Property owners of record within 300 feet of the subject property;
2. Appropriate state agencies, such as the Washington State Departments of Ecology, Natural Resources and Fish and Wildlife;
3. Appropriate tribal governments; and
4. Any other interested parties requesting notice of the application and public hearing.

D. In considering an application for the release of a development moratorium, the hearing examiner may remand the application to the planning commission for review and recommendation, pursuant to the procedures set forth in BIMC [2.16.030](#) or 2.16.100.C.

E. Based upon public comment received at the public hearing, the decision criteria of BIMC [16.22.090](#) and the comments and recommendations of the planning commission, if any, the hearing examiner may authorize, conditionally authorize, or deny a release of the development moratorium. (Ord. 99-03 § 2, 1999: Ord. 97-07 § 2, 1997)

16.22.090 Decision criteria for release of moratorium.

All applications for the release of forest practice development moratoria shall be subject to the following decision criteria:

A. An application shall not be granted unless critical areas and their buffers, as governed by Chapter [16.20](#) BIMC, and shoreline areas, as governed by the Bainbridge Island shoreline master program, were not disturbed in the forest practice operation, or damage to such areas is reparable through restoration. In any case in which the release of a development moratorium is conditioned upon the restoration of the subject property, a restoration plan for the property shall be reviewed and approved by the director prior to the release of the development moratorium. The restoration plan shall be prepared by a professional whose qualifications and experience are satisfactory to the director. The restoration plan shall include monitoring and correction standards. A substantial part of the restoration work, as determined by the director at the director's discretion, must be completed prior to the issuance of any development permits.

B. Mitigation for the loss of significant trees shall be required prior to the release of any development moratorium. The appropriate mitigation for the loss of significant trees shall depend on the particular facts of each case and may include, but is not limited to:

1. Replacing the lost trees by replanting new trees of a similar species, nature and size. To the extent any lost trees are too large to be immediately replaced by replanting, such trees shall be replaced by the largest possible trees of the same species and nature which may be successfully replanted. The applicant and/or the applicant's successor-in-interest shall have an

obligation to monitor the survival of the replanted trees, and to replace any trees not successfully replanted, until the date the forest practice moratorium, had it not been released, would have automatically expired.

2. Developing a plan that replaces, to the greatest extent biologically practicable, the functions and values lost through the forest practice, such as providing wildlife habitat, visual screening from adjacent areas and storm water reduction.

C. An application shall not be granted unless the applicant places a conservation easement on the property that surrenders development rights to the city equal to the percent described in the table below. The percent of development right reduction below shall be calculated based upon the total number of development rights per acre of the subject property and shall be rounded to the nearest number; provided, that in all cases at least one development right shall remain with the subject property.

Zoning District of Subject Property	Percent of Development Right Reduction
R-.04	80%
R-1	60%
R-2,2.9,3,5 and 4.3	40%

(Ord. 99-03 § 4, 1999: Ord. 97-07 § 2, 1997)

16.22.095 Rescission of moratorium.

Upon application by the property owner, a development moratorium may be rescinded by the director if an approved forest practices application for the property has been withdrawn or expired and no harvest has taken place. (Ord. 99-03 § 5, 1999: Ord. 97-07 § 2, 1997)

16.22.097 Permit revocation and penalties.

A. A vegetation management permit may be revoked by the director upon the finding of any one or more of the following:

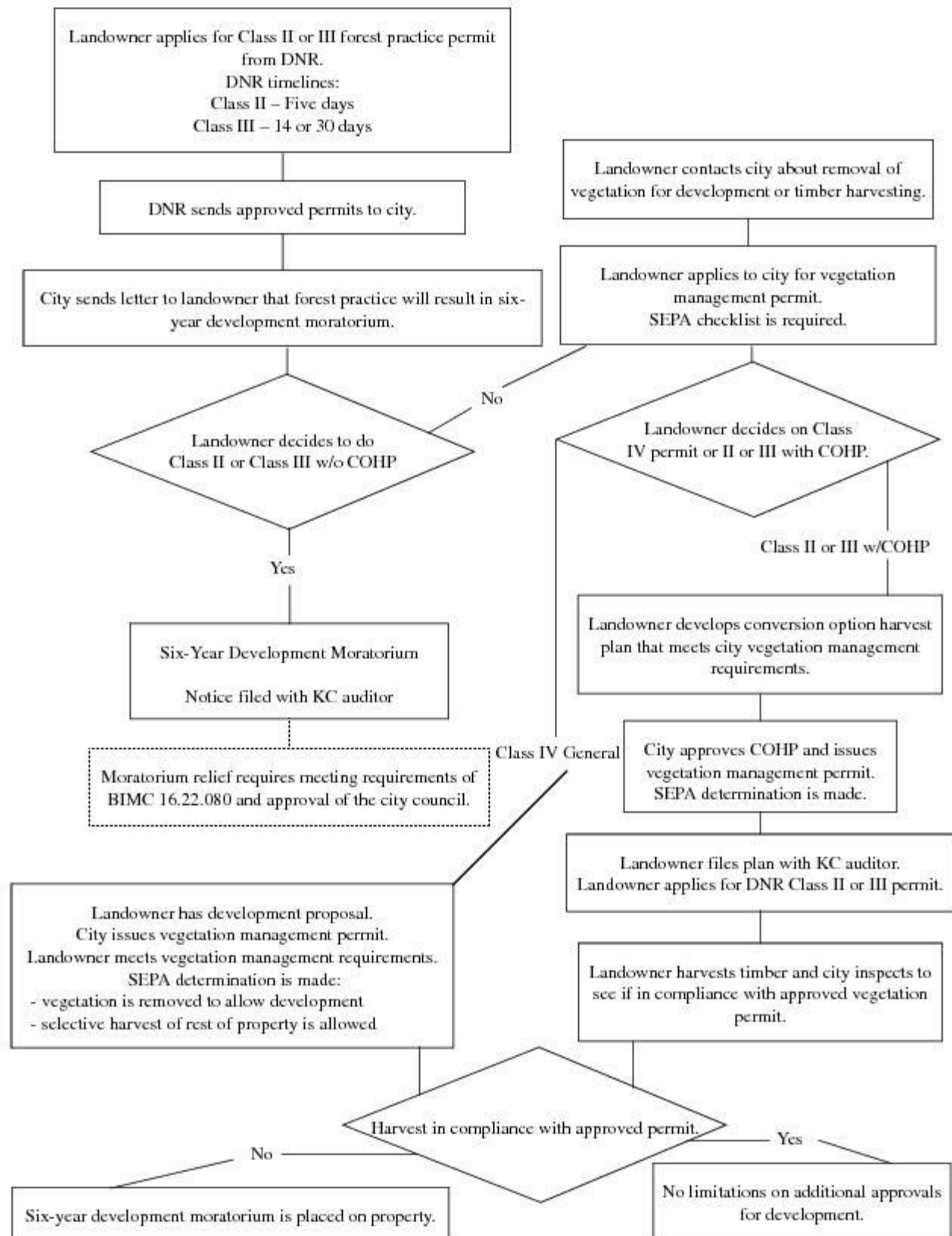
1. That the approval was obtained by deception, fraud or other intentional or misleading representation; or
2. That the permit granted is being exercised contrary to the terms or conditions of such approval; or
3. That the permit for which the approval was granted was so exercised as to be detrimental to the public health or safety.

B. If the owner violates the requirements of an approved harvest plan, the city shall place a six-year development moratorium on the subject property.

C. Any property owner or individual cutting vegetation or timber in violation of this chapter shall replant the property, and to the extent biologically practicable, shall return the property to the condition of the property prior to the violative cutting. The property on which the violation occurs shall be subject to a moratorium on the city's acceptance of a development permit of any kind relating to the property for a period of six years from the last date of the violation.

D. In addition to the penalties set forth above, this chapter shall be enforced, and penalties for violations of this chapter shall be imposed, pursuant to Chapter [1.26](#) BIMC; provided, that under BIMC [1.26.090](#), an additional civil penalty shall be imposed on any property owner or individual cutting vegetation or timber in violation of this chapter in the amount of \$20,000 for each acre of forest cut. (Ord. 99-03 § 6, 1999)

16.22.100 Flowchart for timber harvests.



(Ord. 97-07 § 3, 1997)

16.22.115 Appeals.

The decision of the hearing examiner shall be final unless, within 21 days of issuance, it is appealed in accordance with Chapter [36.70C](#) RCW. (Ord. 2003-25 § 11, 2003: Ord. 99-03 § 7, 1999)

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ORDINANCE NO. 2018-11

AN ORDINANCE of the City of Bainbridge Island, Washington, repealing Chapter 16.22 *Vegetation Management* of the Bainbridge Island Municipal Code.

WHEREAS, the adopted City of Bainbridge Island Comprehensive Plan supports the protection of natural resources through the adoption of development regulations; and

WHEREAS, the City of Bainbridge Island (“City”) is required by the Growth Management Act (“GMA”) (see, e.g., RCW 36.70A.130) to conduct a periodic legislative review and update of its comprehensive plan and development regulations to ensure consistency with updated state laws and population and employment projections; and

WHEREAS, the City’s Comprehensive Plan acknowledges the finite nature of the Island’s natural resources and the unpredictable cumulative impacts of climate change in our region by including integration of the precautionary principle to protect and preserve natural resources in accordance with WAC 365-195-920; and

WHEREAS, on February 27, 2018, the City Council approved Ordinance 2018-01; the update to the City’s Critical Areas Ordinance; and

WHEREAS, the regulations to conserve and protect one type of critical area, aquifer recharge areas, were enhanced through the Critical Areas Ordinance update through the addition of Aquifer Recharge Protection Areas as a tree and vegetation protection measure in the R-0.4, R-1 and R-2 zones, areas that total almost 91% of the land area on Bainbridge Island; and

WHEREAS, the BIMC Chapter 16.22 *Vegetation Management* was added to the Bainbridge Island Municipal Code in 1997 and has not been amended since; and

WHEREAS, BIMC Chapter 16.22 *Vegetation Management* is a fusion of the provisions for different classes of forest practices defined by Chapter 76.09 RCW Forest Practices and the City’s prior open space requirements, which were revised in 2004; and

WHEREAS, the BIMC Chapter 16.22 *Vegetation Management* applies primarily in the R-0.4, R-1 and R-2 zones and the new Aquifer Recharge Protection Area approved with the updated Critical Areas Ordinance overlaps and conflicts with the vegetation preservation requirements in BIMC Chapter 16.22 *Vegetation Management*; and

WHEREAS, repealing BIMC Chapter 16.22 *Vegetation Management* provides greater clarity for property owners and City staff in understanding vegetation preservation requirements; and

WHEREAS, repealing BIMC Chapter 16.22 *Vegetation Management* does not absolve a property owner from obtaining a Forest Practice permit from the State Department of Natural Resources, when applicable, and

WHEREAS, notice was given on March 16, 2018, to the Office of Community Development at the Washington State Department of Commerce in conformance with RCW 36.70A.106; and

WHEREAS, the Planning Commission discussed Ordinance No. 2018-11 and held a public hearing on March 29, 2018 and after closing the public hearing, recommended approval of the ordinance to the City Council; and

WHEREAS, the City Council conducted a public hearing on Ordinance No. 2018-11 on April XX, 2018;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF BAINBRIDGE ISLAND, WASHINGTON, DOES ORDAIN, AS FOLLOWS:

Section 1. Chapter 16.22 *Vegetation Management* of the Bainbridge Island Municipal Code is hereby repealed in its entirety.

Section 2. This ordinance shall take effect and be in force on and after five days from its passage and publication as required by law.

PASSED BY THE CITY COUNCIL this ____ of _____, 2018.

APPROVED BY THE MAYOR this ____ of _____, 2018.

Kol Medina, Mayor

ATTEST/AUTHENTICATE:

Christine Brown, City Clerk

FILED WITH THE CITY CLERK:	April XX, 2018
PASSED BY THE CITY COUNCIL:	_____
PUBLISHED:	_____
EFFECTIVE DATE:	_____
ORDINANCE NUMBER:	2018-11