



PLANNING COMMISSION
SPECIAL MEETING AND PUBLIC HEARING
THURSDAY, JUNE 7, 2018
6:30 – 9:00 PM
COUNCIL CHAMBER
280 MADISON AVE N
BAINBRIDGE ISLAND, WA 98110

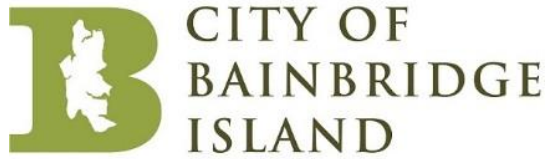
AGENDA

- 6:30 PM CALL TO ORDER
 Call to Order, Agenda Review, Conflict Disclosure
- 6:40 PM ORDINANCE 2018-20 SUBDIVISION DESIGN STANDARDS
 Workshop & Study Session
 Christy Carr, AICP, Senior City Planner
- 8:00 PM SHORELINE MASTER PROGRAM AMENDMENT RELATED TO
 CRITICAL AREAS ORDINANCE INTEGRATION
 Continued Public Hearing
 Christy Carr, AICP, Senior City Planner
- 8:30 PM ORDINANCE 2018-19 AMENDMENTS TO BIMC CHAPTERS
 16.18 LAND CLEARING & 18.15.010 LANDSCAPING ETC.
 Study Session
 Jennifer Sutton, AICP, Senior City Planner
- 8:45 PM PUBLIC COMMENT
- 8:55 PM NEW/OLD BUSINESS
- 9:00 PM ADJOURN

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

Public comment time 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

MEMORANDUM

Date: June 7, 2018
To: Planning Commission
From: Christy Carr, AICP
Senior Planner
Subject: **Proposed Revisions to Subdivision Standards and Land Use Review Procedures**

I. PURPOSE OF MEETING

The June 7, 2018 Special Planning Commission meeting will include a workshop and study session from 6:40 to 8:00 on the subject topic. Davis Studio Architecture + Design and Wenzlau Architects will provide a presentation and be available to answer questions from the public and Planning Commission. The purpose of the meeting is to:

- Provide opportunity for the public to review, comment, and ask questions on proposed revisions.
- Continue to gather input from the Planning Commission on proposed revisions.

II. RECOMMENDED PLANNING COMMISSION ACTION

There is no formal action recommended for tonight's meeting. It is anticipated the Planning Commission will:

- Review background material prior to meeting and be prepared to ask questions, as needed
- Provide specific input – e.g., areas of concern, requests for changes, policy direction – on proposed revisions. See specifically "Development Standards and Design Guidelines" included in the background material.
- Provide input on the role of the Planning Commission.

III. BACKGROUND MATERIAL

This meeting is a continuation of discussion started at the May 24, 2018 Planning Commission meeting. Background material provided for your review includes:

- "Development Standards and Design Guidelines" (Attached) – This document, prepared by Davis Studio Architecture + Design and Wenzlau Architects, presents the overall approach of new subdivision standards.

- BIMC Title 17, Subdivisions and Boundary Line Adjustments (**Existing code**) (Available online): <http://www.codepublishing.com/WA/Bainbridgeland/#!/Bainbridgeland17/Bainbridgeland17.html>
- Draft Ordinance 2018-20 Title 17 Revisions (Attached) – This draft document shows the proposed revisions to BIMC Title 17 in strikethrough/underline format. It is a rough draft, and intended largely to show how the development standards and design guidelines will be incorporated into the code language.
- “Roles of City Council, Planning Commission, Design Review Board, and Hearing Examiner in Land Use Permits” – Memorandum from James E. Haney, Attorney at Law.

IV. TIMELINE AND NEXT STEPS

This work is being completed within the timeline of the existing moratorium of acceptance of certain land use applications, including all subdivisions. The current moratorium is set to expire on July 9, 2018. The City Council will consider next steps for the moratorium based on the work completed and presented at the June 19, 2018 City Council meeting.

- A subset of Planning Commission members will attend the Design Review Board meeting on **Monday, June 4, 2018 from 2:00 – 5:00 pm** to discuss proposed revisions to land use review procedures.
- Staff will provide a briefing to City Council on **Tuesday, June 5, 2018 at 8:20 pm** (time approximate). This is a regular update on the moratorium workplan, which includes proposed revisions to subdivision standards and land use review procedures.
- The Planning Commission will hold a public hearing on **Thursday, June 14, 2018 at 7:00 pm** to take public testimony on proposed Ordinance 2018-20 (revisions to subdivision standards and land use review procedures). It is anticipated the Planning Commission will provide a recommendation at this meeting on the ordinance to City Council following the public hearing and discussion.
- The City Council will consider Ordinance 2018-20 and next steps for the moratorium at their June 19 and 26, 2018 meetings, with potential action on June 26, 2018.

Chapter 17.04 PURPOSE AND GENERAL PROVISIONS

Sections:

17.04.010 Purpose.

17.04.020 General provisions.

17.04.010 Purpose.

A. The purpose of this title is to regulate the division of land into short subdivisions, long subdivisions, and large lot subdivisions to promote the public health, safety and general welfare of the citizens of the city in accordance with state law and the city's comprehensive plan. To carry out this purpose and further the comprehensive plan policies addressing residential subdivision of land, this title establishes a flexible lot process for short and long subdivisions that promotes the preservation and consolidation of natural areas ~~open space~~ and clustering of development within residential subdivisions. This process facilitates the fair and predictable division of land, maintains the current character of the city, encourages efficient and cost-effective provisions for infrastructure, limits the development impact area, minimizes impervious surface area and provides for greater flexibility in the division and establishment of residential lots.

~~B. A further purpose of this title is to:~~

- ~~1. Prevent the overcrowding of land;~~
- ~~2. Lessen congestion in the streets and highways;~~
- ~~3. Provide for adequate light and air;~~
- ~~4. Facilitate adequate provision for water, sewage, storm water drainage, parks and recreation areas, sites for schools and school grounds and other public requirements;~~
- ~~5. Provide for proper ingress and egress;~~
- ~~6. Provide a variety of housing opportunities; and~~
- ~~7. Maintain the quality of life of the city.~~

C. Through this title, the city will also allow for the subdivision of land for nonresidential, multifamily, and mixed use, and accomplish uniform monumenting of land divisions and conveyance by accurate legal description.

D. An additional purpose of this title is to provide criteria for summary administrative approval of boundary line adjustments that satisfy public concerns of health, safety and welfare, or where arranging or rectifying boundary lines is otherwise requested.

E. A final purpose of this title is to comply with the provisions of RCW Title [58](#) (Boundaries and Plats) or its successors, and other applicable law of Washington State, and no provision of this title shall be interpreted to authorize or require actions inconsistent with those laws. (Ord. 2011-02 § 2 (Exh. A), 2011)

17.04.020 General provisions.

A. Location of Substantive Standards. This title sets forth substantive standards for the layout and design of short, long, large lot, nonresidential, and multifamily subdivisions. All such divisions of land must also comply with substantive standards in BIMC Titles [15](#) (Buildings and Construction), 16 (Environment), and 18 (Zoning) unless the standards in those titles have been explicitly modified or waived.

B. Location of Review and Approval Procedures. The procedures for approval of short, long, large lot, nonresidential and multifamily subdivisions, as well as the vesting of rights related to those types of approvals, are set forth in BIMC Title 2 (Administration and Personnel). All such provisions require

consistency with the requirements of RCW Title [58](#) (Boundaries and Plats) or its successors as applicable to the type of land division being proposed.

C. Compliance with RCW Title [58](#).

1. General.

a. Every long, large lot, nonresidential or multifamily subdivision shall comply with the provisions of RCW Title [58](#). Every short subdivision as defined in RCW Title [58](#) shall comply with the provisions of the Bainbridge Island subdivision regulations, which have been adopted pursuant to RCW [58.17.060](#). A proposed division of land, as defined in RCW [58.17.020](#), shall be considered under the subdivision or short subdivision ordinance, and zoning or other land use control ordinances, in effect on the land at the time a fully completed application for preliminary plat approval of the subdivision, or short plat approval of the short subdivision, has been submitted to the city.

b. For purposes of compliance with RCW Title [58](#) (Boundaries and Plats) or its successors, the Bainbridge Island subdivision regulations shall consist of this title, as well as applicable substantive standards in BIMC Titles 15 (Buildings and Construction), 16 (Environment), and 18 (Zoning), applicable procedures set forth in BIMC Title 2 (Administration and Personnel), and related local regulations or ordinances adopted in accordance with state law. Large lot subdivisions and multifamily or nonresidential subdivisions are forms of subdivisions regulated pursuant to RCW [58.17.040](#)(2) or its successors, and shall be subject to the requirements of RCW Title [58](#) applicable to subdivisions, as modified by any applicable provisions of the BIMC.

c. The limitations imposed by this section shall not restrict conditions imposed under Chapter [43.21C](#) RCW.

2. Specific Provisions. Without limiting the generality of subsection C.1 of this section, the Bainbridge Island subdivision regulations and all applications for short, long, large lot, nonresidential and multifamily subdivisions pursuant to those regulations shall be consistent with the following provisions of RCW [58.17.033](#), [58.17.060](#), and [58.17.140](#) regarding requirements for application, approval, and time limitation and extension.

D. Limitations on Dedications and Fees. Pursuant to RCW [58.17.110](#)(2) or its successors, dedication of land, provision of public improvements to serve the subdivision, and/or impact fees imposed under RCW [82.02.050](#) through [82.02.090](#) or their successors may be required as a condition of subdivision approval. No dedication, provision of public improvements, or impact fees imposed under RCW [82.02.050](#) through [82.02.090](#) or their successors shall be allowed that constitutes an unconstitutional taking of private property. The legislative body shall not as a condition to the approval of any subdivision require a release from damages to be procured from other property owners.

E. Application Materials. Materials required to be submitted with an application for a short or long subdivision, subdivision, large lot subdivision, nonresidential or multifamily subdivision or boundary line adjustment are available in the Bainbridge Island ~~A~~administrative Mmanual.

F. Interpretation. This title shall be liberally interpreted and construed to secure the public health, safety, morals, and welfare, to implement the Bainbridge Island Comprehensive Plan, and to comply with all applicable requirements of Washington State law, and the rule of strict construction shall have no application. (Ord. 2011-02 § 2 (Exh. A), 2011)

Chapter 17.12
SUBDIVISION- COMMUNITY DESIGN STANDARDS

Sections:

- 17.12.010 Applicability.
 17.12.020 ~~Flexible lot design requirement for single family~~ General requirements for residential subdivisions.
 17.12.030 ~~Open space/cluster standards and homesite locations for single family residential subdivisions~~ Residential subdivision design guidelines.
 17.12.040 ~~General~~ Specific residential subdivision standards.
 17.12.050 ~~Multifamily and nonresidential~~ subdivisions.
 17.12.060 Special requirements for critical and shoreline sensitive areas designated resource lands.

17.12.010 Applicability.

This section sets forth standards for (A) short subdivisions, (B) long subdivisions, (C) large lot subdivisions, and (D) nonresidential and multifamily subdivisions. ~~These requirements are summarized in Table 17.12-1.~~ Procedures for boundary line adjustments are set forth in BIMC Title 2.

~~Table 17.12-1: Subdivision Requirements by Type of Subdivision~~

Subdivision Standards Type of Subdivision	Open Space- Flexible Lot Standards- (BIMC- 17.12.030.A)	Cluster Flexible- Lot Standards- (BIMC- 17.12.030.B)	General- Subdivision- Standards- (BIMC- 17.12.040)	Multifamily- and- Nonresidential- Standards- (BIMC- 17.12.050)
Short Subdivision (2 to 4 Lots)- [1]	-	-	-	-
Open Space Option	-	-	-	-
Cluster Option	-	-	-	-
Long Subdivision (5+ Lots)	-	-	-	-
Open Space Option	-	-	-	-
Cluster Option	-	-	-	-
Large Lot Subdivisions	-	-	-	-
Commercial and Multifamily- Subdivisions	-	-	-	-

[1] — BIMC 17.28.020.49 defines the number of lots permitted in a short subdivision.
 (Ord. 2011-02 § 2 (Exh. A), 2011)

17.12.020 ~~Flexible lot design requirement~~ General requirements for single family residential subdivisions.

A. Requirements.

~~1. All single-family residential short and long subdivisions within the city shall be designed in accordance with the city's adopted flexible lot (flexlot) requirements. If, due to site or design constraints, no homesite with supporting infrastructure can be located on a subject property, no division of land is permitted.~~

~~2. Some of the flexible lot design requirements are outlined in this title and in BIMC Title 18.~~

B. Pre-Existing Lots. Lots that have previously received final approval from the city, or that have previously received final approval from Kitsap County prior to inclusion within the city boundaries, and that do not comply with the ~~adopted flexible lot design requirements~~ development standards and design guidelines in this chapter shall be considered existing nonconforming lots, but any future resubdivision of any such lots shall comply with current ~~adopted flexible lot design requirements~~.

~~C. Two Types of Flexible Lot Design Available. Applicants for a short or long subdivision or resubdivision shall comply with the standards in this title applicable to open space design or the standards applicable to cluster design. If an applicant does not notify the city of his or her intention to submit a cluster design, the open space design standards shall apply. In some cases, however, site constraints such as the size and shape of the parcel or the presence of areas subject to Chapter 16.12 BIMC (Shoreline Master Program) or Chapter 16.20 BIMC (Critical Areas) result in only one of the options being feasible. The cluster design option is not available to properties located in the R 2.9, R 3.5, R 4.3, R 5, R 6, R 8, and R 14 zoning districts.~~

D. Large Lot Subdivisions. As authorized by RCW 58.17.040(2) or its successors, the city regulates the division of land into large lots. Large lot subdivisions shall comply with the requirements of BIMC 17.12.040 (General residential subdivision standards), the requirements of BIMC 17.12.060 (Special requirements for critical and shoreline areas ~~sensitive areas and designated resource lands~~), if applicable, and the requirements of BIMC Title 18 for the zone district in which the property is located. ~~Large lot subdivisions are not a form of flexlot and therefore are not subject to cluster or open space design requirements.~~ (Ord. 2017-02 § 17, 2017: Ord. 2011-02 § 2 (Exh. A), 2011)

17.12.030 Residential subdivision design guidelines.

The purpose of these design guidelines is to define the qualities of subdivisions that meet the guiding principals, goals, and policies of the city's Comprehensive Plan and to serve as a tool for guiding individual projects to meet those expectations through the city's land use review procedures. The design guidelines offer a forum for the public to participate in discussions about new subdivisions in their neighborhood, and as a means of allowing flexibility in the application of development standards and zoning requirements. An applicant may be granted a departure from the development standards and zoning requirements by demonstrating that an alternative design better meets the intent of the design guidelines.

The following design guidelines are applicable to all residential subdivisions:

See attached design guidelines.

17.12.030 — Open space/cluster standards and homesite locations for single family residential subdivisions.

All short and long subdivisions, except large lot subdivisions, shall comply with the standards in either subsection A or and B of this section, and shall also comply with the standards of BIMC 17.12.040 (General residential subdivision standards) and with the standards of BIMC 17.12.060 (Special requirements for critical and shoreline sensitive areas) as applicable. In the case of an application for a housing design demonstration program pursuant to BIMC 2.16.020.Q, the open space requirements of this section shall not be used, and the open space provided in the subdivision shall be evaluated pursuant to BIMC 2.16.020.Q.

A. Open Space Short or Long Subdivisions. All short and long subdivisions shall comply with the standards of this subsection A unless the applicant chooses to instead comply with the standards of subsection B of this section (Cluster Short and Long Subdivisions):

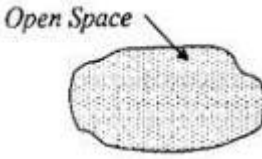
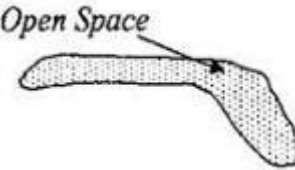
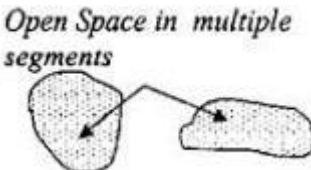
1. Open Space Objectives. Open space shall accomplish one or more of the following objectives:

- a. Conservation and enhancement of natural or scenic resources, including wildlife habitat;
- b. Protection of streams and/or the water supply;
- c. Conservation of soils, wetlands, beaches or tidal marshes;
- d. Enhancement of the value to abutting or neighboring parks, forests, wild preserves, nature-reservations or sanctuaries;
- e. Enhancement of recreational and community agricultural opportunities;
- f. Preservation of farmland and historic sites;
- g. Preservation of unique natural land or rock features;
- h. Preservation of visual qualities along highway, road and street corridors or scenic vistas.

2. Open Space Design Guidelines. The area designated for open space preservation shall be configured in a manner that enhances and promotes the natural character of the island and open space characteristics of the property. Open space configuration shall satisfy the following guidelines:

- a. Open space should be concentrated in large, consolidated, usable areas; and
- b. Open space should connect to adjacent off-site open space areas, designated greenways and/or critical areas; and
- c. Open space should be designed to preserve views from off-site of the subject property; and
- d. Open space should enhance or retain Island character through the minimization of roadside disturbance of roadside vegetation; and
- e. The area of the open space should be delineated with a low perimeter to area ratio as shown by the examples in Table 17.12.030-1.

Table 17.12.030 1 Configuration of Open Space

Consolidated open space with a low perimeter to area ratio	Open space with a high perimeter to area ratio	Unconsolidated open space
(PREFERRED)	(NOT ACCEPTABLE)	(ACCEPTABLE)
		

3. Prioritization of Valued Open Space. The relative desirability of different types of open space is ranked in Table 17.12.030 2, and proposed open space subdivisions shall design open spaces to include areas with higher priority rankings if possible. If a subdivision site contains a particularly exceptional or rare open space feature that is lower in priority, the applicant and/or city may choose to preserve that feature over those higher in the table. Where valued open space features are present and some portion of those features is adjacent to the same or other listed valued features in Table 17.12.030 2, the protected open space should be designed to include those areas contiguous to valued open space features on adjacent properties.

Table 17.12.030 2: Valued Open Space Features for Open Space Short and Long Subdivisions

Priority	Open Space Feature	Notes
1.	Critical Areas (as defined in Chapter 16.20 BIMC), Areas Contiguous with Critical Areas and Their Buffers	All critical areas and their associated buffers shall be preserved.
2.	Native Forests and Significant Trees	Significant trees identified consistent with the standards of the landscaping ordinance (BIMC 18.15.010) should be preserved.
3.	Trails and Greenways	Trails and greenways should be preserved.
4.	Pastures, Meadows, Orchards, and Farmland	Pastures, farmland and land areas currently or traditionally used in agriculture should be preserved. Where possible, the size and configuration of pasture and farmland areas should permit commercially viable farming.
5.	Shoreline View Areas	Shoreline areas identified consistent with the provisions of the shoreline management plan (Chapter 16.12 BIMC) that are suitable for public access and habitat area should be considered.
6.	Mature Vegetation on Ridgelines	Mature vegetation found on ridgelines of community significance (as viewed from off site) should be preserved.

Priority	Open Space Feature	Notes
7.	Wildlife Corridors	Designated wildlife corridors as adopted by Resolution No. 2001-12 should be preserved.

A. 4. Amount of Open Space Required.

6. Open Space Ownership. Ownership of open space area shall be established consistent with one of the following forms of ownership:

a. Private Ownership. Open space may be held in private ownership if established by easements, restrictive covenants, open space management plan, or other similar legal means; or

b. Common Ownership. Open space may be held in common by a home or property owners' association or other similar organization. For the purposes of this title, ownership of and/or conservation easement being held by a land trust, or other similar conservancy organization, shall be considered common ownership. If this ownership pattern is selected, covenant, conditions, and/or restrictions shall be required; or

c. Public Ownership. Designated open space areas shall not be required to be dedicated to the city or other public agency, and the owner shall not be required to permit public access to designated open space areas. However, if the owner offers to dedicate, the city or other public agency may choose to accept ownership of open space. Consequently, upon approval and acceptance by the city council, open space shall be dedicated to the public.

a. Basis. In determining the open space area requirement stated in subsection A.4.b of this section, the city has relied on the "Analysis of Open Space Report" dated July 15, 2003, and amended April 30, 2004, and the other reports, statutes and documents referenced in the recitals to the ordinance codified in this section ("open space documentation"). The open space documentation shall be incorporated into the record of every short or long subdivision application. In reviewing a short or long subdivision application, the city shall consider the open space documentation as presumptively valid and applicable to the short or long subdivision application.

b. Amount Required.

i. The area provided for open space shall be based on and consistent with the existing valued open space features (listed in Table 17.12.030-2) on the subject property, up to a maximum of 25 percent of the area of the property being subdivided, unless additional open space area is otherwise provided pursuant to subsection A.5 of this section.

ii. All lands subject to critical area regulations by Chapter 16.20 BIMC shall remain subject to those regulations regardless of whether they are included in the required open space designation.

iii. If a property being subdivided contains valued open space features as described in Table 17.12.030-2 that exceed 25 percent of the gross land area, the maximum required area for open space designation is still 25 percent, unless it includes protected critical area as regulated by Chapter 16.20 BIMC.

iv. If the gross land area contains less than 25 percent in open space features, then the designated open space is identified accordingly. Designated open space areas shall not be required to be dedicated to the public, and the owner shall not be required to permit public

access to designated open space areas. Landscape buffers may be included in the open space calculation as specified in Tables 18.15.010-3 and 18.15.010-4.

5. Open Space Incentives.

a. ~~Short Subdivisions.~~ If an applicant provides an additional 15 percent of permanently protected open space above the maximum 25 percent required by subsection A.4 of this section, then a short subdivision may include the division or redivision of two or more existing lots, up to nine lots consistent with the procedures and standards contained in this title.

b. ~~Long Subdivisions.~~ If an applicant provides an additional 15 percent of permanently protected open space above the maximum 25 percent required by subsection A.4 of this section, then lots within the subdivision that are served by public sewer service may have reduced minimum lot areas below 5,000 square feet in size. Accessory dwelling units shall not be permitted on any lot that is below 5,000 square feet in size as approved by this open space incentive option.

B. Amount of Community Space Required

6. ~~Open Space Community Spaces Ownership.~~ Ownership of open space areas Community Spaces shall be established consistent with one of the following forms of ownership:

a. ~~Private Ownership.~~ Open space Community Spaces may be held in private ownership if established by easements, restrictive covenants, open space management plan, or other similar legal means; or

b. ~~Common Ownership.~~ Open space Community Spaces may be held in common by a home or property owners' association or other similar organization. For the purposes of this title, ownership of and/or conservation easement being held by a land trust, or other similar conservancy organization, shall be considered common ownership. If this ownership pattern is selected, covenant, conditions, and/or restrictions shall be required; or

c. ~~Public Ownership.~~ Designated open space areas shall not be required to be dedicated to the city or other public agency, and the owner shall not be required to permit public access to designated open space areas. However, if the owner offers to dedicate, the city or other public agency may choose to accept ownership of open space. Consequently, upon approval and acceptance by the city council, open space shall be dedicated to the public.

7. ~~Uses Allowed in Open Space.~~ The following uses are allowed in those designated open space areas that are not part of a required landscape buffer (unless zoning regulations of BIMC Title 18, provisions of the shoreline master program per Chapter 16.12 BIMC, or critical areas regulations of Chapter 16.20 BIMC restrict that use):

a. ~~Passive recreation, including pervious trails;~~

b. ~~Agricultural uses and fencing necessary for animal control, excepting those agricultural uses that require buildings;~~

c. ~~Potable water wells and well houses;~~

d. ~~Low impact fencing or signs marking the open space boundary or critical area boundary;~~

e. ~~On-site sewage treatment system use approved by the director for all residential zones, if the applicant can demonstrate that (i) the proposed use will not adversely affect the function or characteristics of the specific open space, (ii) the system is approved by the Kitsap County health~~

district, and (iii) construction of the system will not require the removal of significant trees, native forests, vegetation within a required buffer for designated critical areas subject to Chapter 16.20 BIMC, or vegetation within areas designated for protection under the shoreline master program pursuant to Chapter 16.12 BIMC;

f. Storm drainage system use approved by the director for all residential zones if the applicant can demonstrate that (i) enhanced vegetation will be provided so that the facility appears as a natural feature, (ii) the proposed use will not adversely affect the function or characteristics of the specific open space, (iii) the system meets the design standards of Chapters 15.20 and 15.21 BIMC, including low impact development designs, and (iv) the system design must contribute to the function and characteristics of the open space feature by providing the following:

i. The design will include natural contours with slopes no greater than 2:1 for any above-ground storm detention facilities; and

ii. Enhanced vegetation will be provided in conjunction with the storm drainage facility in order to make it a more natural feature; and

iii. Pedestrian trails should be considered as part of the design; and

iv. While fencing of designated open spaces or critical areas may be required by the director pursuant to subsection A.8.a of this section, separate fencing of storm drainage facilities or areas shall only be installed if necessary to protect public safety. Where fencing is required, low impact fencing shall be used, and chain link fences are prohibited unless superseded by state law.

g. Playgrounds and tot lots, picnic shelters and benches, community gardens, bus shelters, community art, or fountains may be allowed within a designated open space area, provided the proposed use will not adversely affect the function or characteristics of the specific open space.

h. Solar panels, small wind energy generators, composting bins, rainwater harvesting barrels, cisterns, and rain gardens/swales, as defined in Chapter 18.36 BIMC, may be allowed within a designated open space area, provided the proposed feature will not result in the damage or removal of significant trees.

8. Open Space Natural Areas /Critical Area Fencing, Signage and Management Standards. The following fencing and management standards apply to designated open space areas. In addition to the standards listed in this subsection, designated open spaces containing sensitive areas shall comply with any additional management standards required to protect those areas pursuant to BIMC 17.12.060 (Special requirements for sensitive areas), Chapter 16.12 BIMC (Shoreline Master Program) and Chapter 16.20 BIMC (Critical Areas) as applicable.

a. Either fences and/or signs delineating open space and critical area buffers are required. The director shall determine which option (fence or sign) is required, based on the likelihood of encroachment into designated open space areas.

i. If fencing is required:

(A) Low impact fences are preferred and must be constructed in accordance with the definition in BIMC 17.28.020.30; and

(B) The director has the authority to raise the maximum height of fencing to ensure that the fence is adequate to exclude livestock while allowing passage for intended wildlife species.

ii. If signs are required:

(A) They shall be constructed in accordance with the definition in BIMC 17.28.020.37; and

(B) They shall be generally spaced at intervals of 50 feet, unless otherwise approved by the director due to reasons such as topography, configuration of open space, distance from other features, etc.

iii. If signage is required and encroachments into the designated open space occur, the director may require that the owner install fencing and/or additional signage to prevent future encroachments. Required fencing and signs must be maintained in good repair, with repair or replacement to occur within 60 days of notification from the city that repair or replacement is required.

b. Open Space Natural Areas Management Plan Required. An applicant shall submit a draft open space management plan (OSMP) as described in the Bainbridge Island administrative manual, for review as part of the preliminary plat application. Final approval of the OSMP will occur at the time of final plat approval. The open space management plan shall include:

i. A list of all approved uses for the open space areas. Where uses in separate open space areas vary, the specific location of each use shall be depicted graphically.

ii. A maintenance plan for open space areas that clearly describes the frequency and scope of maintenance activities for open space areas and that meets all requirements set forth in the Bainbridge Island administrative manual.

c. The approved OSMP must be filed with the Kitsap County Auditor. In the event that the open space area is not maintained consistent with the open space management plan, the city shall have the right to provide the maintenance of the open space and bill the owner for the cost of maintenance.

B. Cluster Short and Long Subdivisions. If an applicant chooses to apply for a cluster short or long subdivision, the open space provisions of subsection A of this section shall not apply. Clustering shall be accomplished through the design standards of BIMC Title 17 and Chapter 18.12 BIMC. The cluster design option is not available to properties located in the R 2.9, R 3.5, R 4.3, R 5, R 6, R 8 and R 14 zoning districts. The following requirements shall apply to cluster short and long subdivisions:

1. Homesite Clustering. The purpose of clustering is to facilitate the efficient use of land by reducing disturbed areas, impervious surfaces, utility extensions and roadways. Homesites shall be located in neighborhood groups cluster groupings and the efficient location of infrastructure shall be used to maximize the undeveloped area. Four or more homesites shall constitute a cluster grouping in a long subdivision, and two or more homesites shall constitute a cluster grouping in a short subdivision.

a. All homesites in a cluster grouping shall adjoin or be located a maximum of 25 feet apart from another homesite.

b. The city encourages design of homesite cluster groups that create open areas large enough to accommodate crop agriculture, when such areas are created. The applicant shall record covenants making it clear to lot buyers that crop agriculture may take place on the open areas.

c. The location of homesite cluster groups is not required to be located near any existing home on the property.

~~2. Homesite Area.~~

~~a. The homesite area is for development of the primary residential dwelling and accessory buildings for each lot within the subdivision.~~

~~b. In the R-0.4 and R-1 zoning districts, a homesite area with a maximum area of 10,000 square feet shall be provided for each lot and shall be depicted on the face of the plat. In the R-2 zoning district, a homesite area with a maximum area of 7,500 square feet shall be provided for each lot and shall be depicted on the face of the plat.~~

~~c. Repealed by Ord. 2017-02.~~

~~d. Repealed by Ord. 2017-02.~~

~~e. Other allowed uses and structures, including well houses, may be located within the lot and outside the homesite area; provided, that all other applicable requirements of the BIMC are satisfied.~~

~~f. Designated homesites shall not include designated critical areas or their buffers.~~

~~g. Fencing or signage of designated critical areas shall be required pursuant to subsection A.8.a of this section. (Ord. 2017-02 §§ 18, 19, 2017; Ord. 2011-02 § 2 (Exh. A), 2011)~~

17.12.040 General Specific residential subdivision standards.

All residential short, long, multifamily and large lot subdivisions shall comply with the following standards.

A. Compliance with BIMC Titles 16 and 18 and RCW Title 58. ~~Lot areas, dimensions, and other characteristics shall comply with the requirements of BIMC Title 18 applicable to the zone district where the land is located, including landscaping and/or vegetated buffers.~~ In addition, each subdivision plat shall comply with all applicable provisions of RCW Title 58 (Boundaries and Plats) or its successors. Subdivisions including sensitive critical areas or their required buffers shall also comply with the provisions of BIMC 17.12.060.

Perimeter and roadside landscape buffers may be required pursuant to 18.15.010.

B. Homesites. Residential homesites shall be located consistent with the design standards of BIMC Title 17 and Chapter 18.12 BIMC.

C. Water Supply Systems. Locations of individual or community water supply systems and associated wellhead protection areas required by the health district shall comply with all applicable standards established by the health district.

D. Septic Systems. Locations of individual or community drainfields and associated reserve drainfields shall comply with all applicable standards established by the health district.

E. Roads and Pedestrian Access.

1. Roads and access complying with the “City of Bainbridge Island Design and Construction Standards and Specifications,” and all applicable requirements of the BIMC, shall be provided to all proposed lots consistent with the standards contained within this subsection.

2. A ~~variation~~ deviation from the road requirements and standards contained within the “City of Bainbridge Island Design and Construction Standards and Specifications” may be approved by the city engineer ~~through the minor variance process described in BIMC Title 2.~~

3. Existing roadway character shall be maintained where practical. This may be accomplished through the reduction of roadway width consistent with subsection E.2 of this section, the minimization of curb cuts, and the preservation of roadside vegetation. To minimize impervious surfaces, public rights-of-way, access easements and roadways shall not be greater than the minimum required to meet standards unless the city engineer agrees that the additional size is justified.

4. Connections to existing off-site roads that abut the subject property shall be required where practicable, except through critical areas and/or their buffers.

5. Street names and traffic regulatory signs shall be provided, and their locations shall be indicated on the plat/plan. The location of mailboxes and traffic regulatory signs is only required to be indicated on the plat/plan when other public improvements are required.

6. Transit stops shall be provided as recommended by Kitsap Transit.

7. Pedestrian and bicycle circulation and access within a subdivision and onto the site shall be provided through walkways, paths, sidewalks, or trails and shall be consistent with the Island-Wide Transportation Plan. Pursuant to RCW 58.17.110(1) sidewalks shall be provided, where necessary, to assure safe walking conditions for students who walk to and from school. Special emphasis shall be placed on providing pedestrian access to proposed recreational and/or open space areas.

F. No City Maintenance of Streets in Short Subdivisions. Streets within a short subdivision shall not be maintained by the city unless such streets have been dedicated as a right-of-way, improved to current city standards, and accepted as part of the approved short subdivision. Therefore, unless accepted, the responsibility for maintenance shall lie with the owners of the lots.

G. Improvements.

1. Where the buildout of a subdivision is divided into phases, land dedications and infrastructure development will be required on a pro rata basis as each phase is developed unless the applicant negotiates an alternative phasing schedule with the city. This will be required to be documented on a plat note.

2. On any approved large lot, no further lot divisions shall be approved until the required improvements are installed by the applicant and approved by the city.

3. All large lot subdivisions shall have the following improvements developed and/or installed prior to recording:

a. Streets shall be cleared, grubbed, and rocked or graveled to provide adequate year-round passage.

b. Appropriate drainage, including erosion control, facilities shall be provided consistent with a plan approved by the city engineer prior to clearing and construction of any plat improvements. (Ord. 2017-02 § 20, 2017; Ord. 2011-02 § 2 (Exh. A), 2011)

H. All residential short and long lot subdivisions shall comply with the following standards.

See attached development standards.

17.12.050 ~~Multifamily and n~~Nonresidential subdivisions.

Subdivisions established for ~~multifamily and~~ nonresidential uses are not subject to subdivision design guidelines ~~open space or cluster flex lot provisions~~, and shall comply with each of the following:

A. All provisions of BIMC Title 18 (Zoning) applicable to the zone district where the property is located and the type of development anticipated. This requirement shall include, without limitation, compliance with lot areas, dimensions, and design, mobility and access, landscaping, screening, and vegetative buffers.

B. All provisions of BIMC Title 16 (Environment) applicable to the area where the property is located and the type of development anticipated.

C. All applicable provisions of RCW Title 58 (Boundaries and Plats) or its successors.

D. As an option, nonresidential and multifamily residential subdivisions may provide open space pursuant to BIMC 17.12.030.A. (Ord. 2011-02 § 2 (Exh. A), 2011)

17.12.060 Special requirements for critical and shoreline sensitive areas and designated resource lands.

A. Critical Areas.

1. Any portion of a short or long subdivision, large lot subdivision, nonresidential or multifamily subdivision that contains a critical area as defined in Chapter 16.20 BIMC must conform to all applicable requirements of that chapter.

2. Any portion of a short or long subdivision, large lot subdivision, or a nonresidential or multifamily subdivision shall comply with the fencing and signage requirements of BIMC 16.20 ~~BIMC 17.12.030.A.8.a or B.2.g~~, as applicable.

~~3. When required by RCW 36.70A.060 or its successors, the final short or long subdivision, large lot subdivision, nonresidential or multifamily subdivision must contain a notice that the subject property is on or within 300 feet of lands designated agricultural lands, forest lands or mineral resource lands.~~

B. Shoreline Master Program Areas. Any portion of a short or long subdivision, large lot subdivision, nonresidential or multifamily subdivision located within the jurisdiction of the shoreline master program, as defined in Chapter 16.12 BIMC, must conform to all requirements of that chapter. (Ord. 2011-02 § 2 (Exh. A), 2011)

C. Designated Resource Lands. When required by RCW 36.70A.060 or its successors, the final short or long subdivision, large lot subdivision, nonresidential or multifamily subdivision must contain a notice that the subject property is on or within 300 feet of lands designated agricultural lands, forest lands or mineral resource lands.

DRAFT DEVELOPMENT STANDARDS & DESIGN GUIDELINES

June 1, 2018

Prepared by Davis Studio Architecture + Design and Wenzlau Architects

DEVELOPMENT STANDARDS

The following Guidelines shall be followed for the creation of short and long subdivisions.

A) NATURAL AREAS

Consistent with the Critical Areas and preservation of island character, all site plans shall protect related sensitive areas and existing forest stands consistent with dimension standards. Natural areas must be permanently protected with deed restrictions. Natural areas may be within proposed lots and shall be designated with similar deed, covenants or easement. Natural areas are not required to be public.

- 1) Natural Space requirement shall vary based upon zone.
- 2) Sites without Critical Areas, shall achieve minimum percentage natural areas through protection of forested areas.
- 3) Sites where Critical Areas and forested areas do not meet minimum natural area requirement, one or a combination of the following Natural Area Options is required:
 - a. Site Restoration
 - b. Creation or preservation of farmland
 - c. Creation or preservation of existing meadows or natural features
- 4) Sites may utilize options 2) a, b, c to achieve minimum percentage where ARPA is less than 65%.
- 5) Natural Area Options shall be limited to areas outside of Homesites, and shall be subject to same protections as Natural Areas.
- 6) Area associated with and Tree protection zone shall count towards minimum Natural Area requirement.
- 7) Constructed wetlands (for management of stormwater, when consistent with design guidelines, shall be considered Natural Areas, when located within existing clearing. Ponds may be located within Community Space within R-0.4 zones.
- 8) Natural Area minimum within the MUTC may be achieved by compliance with tree retention requirements.
- 9) Trail access, along with future off site trail access, which connects to adjacent neighborhoods or open spaces shall be permanently dedicated for public use.

B) COMMUNITY SPACES

To promote community interaction within neighborhoods, proposed site design shall include community spaces. Community Space can include active and passive recreation spaces, areas for food production, etc. Community spaces may be within proposed lots and shall be permanently designated for use by all community members with deed, covenants or easement. Community areas are not required to be public.

- 1) Community space requirement shall vary based upon zone.
- 2) Community space may be located within lots, but must be outside of Homesites.

- 3) Trail access, along with future off site trail access, which connects to adjacent neighborhoods shall be permanently dedicated for public use.

DESIGN GUIDELINES

The following Guidelines shall be followed for the creation of all subdivisions. The applicant will need to show to staff, the Design Review Board and the Planning Commission, how each of these Guidelines have been addressed in the preliminary design phases of a project prior to the Pre-Application. The Guidelines will include specific criteria to identify intent and set basis for compliance.

A) NATURAL ENVIRONMENT

1. Preserve Natural Areas

Intent: To preserve existing natural areas including forests and other significant natural features.

Guideline: Site design shall integrate preservation of forests, natural features or proposed alternatives into community design.

2. Farmlands and Meadows

Intent: To preserve the rural character of fields and meadows

Guideline: Meadows and farmlands shall be counted as part of natural areas.

3. Site Restoration

Intent: Restore ecological functions to disturbed areas.

Guideline: Sites where Natural Areas are less than minimum requirement may restore previously disturbed or non-native conditions with site restoration. Restoration Areas shall achieve predevelopment infiltrations conditions with soil amendments and native planting. Community spaces, where compacted during development, shall have soil amended to predevelopment conditions.

4. Recognize Special Trees

Intent: Protect special trees

Guideline: Special trees located outside of natural areas shall be protected.

5. Natural Storm Ponds

Intent: Constructed wetlands to manage stormwater shall appear as natural feature.

Guideline: Constructed wetlands shall be designed with shallow slopes and native vegetation to appear as natural feature. Fencing where used shall be visually open and less than 3'6" tall. Constructed wetlands may be considered as natural Space when located within existing clearing.

6. Integrated Infiltration

Intent: Integrate infiltration (septic and stormwater)

Guideline: Emphasis shall be given to integration of surface infiltration strategies including dispersion systems, raingardens, pervious paving and natural ponds.

7. Wildlife Corridors

Intent: To preserve wildlife corridors

Guideline: Where wildlife corridors are mapped Natural Areas shall be connected to adjacent off-site natural areas to allow for wildlife corridors.

B) SITE DESIGN

8. Community Spaces

Intent: Promote community interaction/connection with use of outdoor spaces

Guideline: Community space(s) shall be centrally located with adjacency to majority of the Homesites. Types of preferred spaces include central greens, pea patches, gardens, orchards, play fields etc.

9. Community Buildings - option

Intent: To provide indoor community space for shared activities, if desired

Guideline: Create commons building within the Community Space for workshop, tool storage, social gatherings, etc. Community Buildings.

10. Solar Access

Intent: Ensure daylight is allowed to Homesites for energy production and well-being.

Guideline: Homesites shall be oriented in relation to clearing to provide solar access.

11. Cluster Homesites

Intent: To promote community connection and reduce development impact, Homesites shall be located into discrete groupings.

Guideline: Homesites shall be located with maximum separations from adjacent Homesites, this will vary by zone.

12. Neighborhood Groups

Intent: To create smaller groupings of homes within larger scaled communities

Guideline: Projects with more than 10 homes shall create separate Homesite Cluster with its own Community Space. Neighborhood Cluster shall be no less than 4 homes.

13. Trail Connections

Intent: To create connections between neighborhoods

Guideline: Projects shall provide a pedestrian connection through the site to adjacent established trails. Sites without adjacent trails shall provide public easement identifying potential future trail connections.

14. Internal Pathways

Intent: To provide safe walking routes within communities

Guideline: Each project shall establish a network of walking paths which connect Homesites to Community and Natural Spaces.

15. Local Food Production – option

Intent: Facilitate local food production with community gardens

Guideline: Community spaces can include areas for pea patches, community garden or farm

16. Natural Edges

Intent: To avoid fenced rear yards facing public ROW.

Guideline: For site where rear yards face the existing public street, the rear fence line shall be set back a minimum of 15' and planted with full screen buffer on the street side of the fence. The fence shall be open and limited to 3'-6" tall.

17. Facing Public Ways

Intent: To reinforce neighborliness of homes facing the street

Guideline: Homes along public streets shall have their entry oriented to the street. Porches and outdoor spaces are encouraged. Fencing shall be limited to 3'-6" maximum height. Homes on corner lots may face side yard to street. Rear facades are not allowed to Face ROW unless Natural Edge is provided.

18. Minimize Driveways

Intent: In order to minimize driveway paving, garages are allowed to be located close to access way.

Guideline: Where garages are located within a Homesite, the garage may be located adjacent to the access way, when it is balanced by adjacent open entry space of equal width, providing access to the front entry.

19. Recognize Historic and Cultural Resources

Intent: Sites should identify and preserve historic and cultural resources

Guideline: Site plans shall preserve or recognize with appropriate signage, features determined to be of historic or cultural significance by local experts.

C) REDUCED SITE IMPACTS

20. Narrow Roadways

Intent: Reduce impervious surfaces by using minimum road length and width

Guideline: Site design shall utilize 12' road surface with pull outs unless wider standard is required. Shared parking and roads serving multiple Homesites is encouraged.

21. Clustered Parking

Intent: Reduce impervious surfaces by eliminating roadways and driveway associated with homesite.

Guideline: Remote, clustered parking is encouraged to reduce impervious surfaces. A landscaped island shall be provided between each 7 parking spaces. Covered parking, if provided, is limited to 7 spaces per building.

22. Limit Area of Disturbance

Intent: to reduce disturbance of natural areas

Guideline: Areas of construction activity shall be limited to homesites. Activity in community areas is limited to footprint approved improvements. During construction perimeter of all homesites and development areas shall be fenced with 6' tall construction fencing.

23. Innovative Septic

Intent: Septic Systems: need to meet County Health Department standards.

Guideline: if permitted by the Health Department Septic fields are not required to be located on individual lots and can be located in community spaces or appropriate natural spaces. Also, community septic systems should be encouraged, if permitted.

D) HOMESITES

24. Homesite Footprint

Intent: To create flexible building site for home, outdoor spaces, vehicle parking (where applicable)

Guideline: Applicant shall establish homesite footprint within allowable size and coverage which provides flexibility to accommodate desired range of home sizes and layouts.

25. Varied Home Design

Intent: to provide a range of house designs to add visual interest

Guideline: The home designs shall be varied in floor plan, elevations and massing to achieve a minimum of 1 plan for each 4 homes. Homes shall be dispersed within the neighborhood. Home types are encouraged to have a cohesiveness to the overall design.

26. Housing Diversity

Intent: to provide a range of household sizes and affordability

Guideline: The house sizes shall be varied such that 20% for the homes must be 25% smaller than average home size and 20% may be 25% larger than average home size.

27. Useable Sideyards

Intent: To ensure useable spaces between buildings

Guideline: When homes are separated by less than 10', the average setback shall be not less than 10' to ensure the spaces are usable and allow for greater solar access. No average shall apply to attached homes.

28. Sustainability

Intent: to ensure site planning supports strategies for sustainability

Guideline: all homes and community buildings should be designed to reduce their environmental footprint, reducing consumption of limited resources and be built to high levels of sustainability standards, supported by City-wide green building code.

DEVELOPMENT & DIMENSIONAL STANDARDS

The following changes to the standards are recommended to implement Design Principles and Design Guidelines. The code update will include modifications to the Dimensional Standards Table 18.12.020 based upon the specifics of each zoning designation, see attached exhibit.

1. Natural Space is required
2. Community Space is required
3. Parking may be located outside of individual lots
4. Lots may be separated from public ROW or private access ways.
5. Maximum Homesite, no minimum-maximum lot size unless set by Kitsap County Health
6. No maximum lot coverage (will be controlled by maximum homesite coverage)

7. Subdivision within MUTC is allowed
8. Zero lot line is allowed

DRAFT

MEMORANDUM

TO: Mayor Medina and Bainbridge Island City Council
Douglas Schulze, City Manager
Joe Levan, City Attorney
Gary Christensen, Director of Planning and Community Development
City of Bainbridge Island Planning Commission
City of Bainbridge Island Design Review Board
City of Bainbridge Island Hearing Examiner

FROM: James E. Haney

DATE: June 1, 2018

RE: Roles of City Council, Planning Commission, Design Review Board, and Hearing Examiner in Land Use Permits

I. INTRODUCTION

I have been asked by the City Attorney to provide you with a memorandum outlining the ways in which the roles of the City Council, Planning Commission, Design Review Board, and Hearing Examiner could be altered in order to increase (and possibly decrease) those roles in the review of land use project permits. This memorandum incorporates significant input from the City Attorney.

As a preliminary matter, it is important to remember that Chapter 36.70B RCW (the Regulatory Reform Act) places some specific constraints on the land use permitting process, including a requirement that there be ***no more than one public hearing on any land use permit and no more than one closed record appeal***. The City has flexibility in determining which of its land use approval bodies holds any required public hearing and which, if any, of its land use approval bodies holds the closed record appeal, but the law constrains the City to have only one of each and that plays a significant role in how the various land use approval bodies must interact.

It's also important to consider as a threshold matter the sheer complexity of land use law and the requirement that every land use permitting decision for which a hearing is required must be supported by written findings and conclusions. Professional hearing examiners, for example, are more used to preparing such findings and conclusions than city councils and citizen advisory bodies and this can serve a city well for the sake of clarity and in situations in which a decision is challenged. City councils and advisory bodies can certainly learn to draft or enter quality

findings, but that task often falls to city planning staff and/or to the city attorney when there is no hearing examiner involved. As a general rule, hearing examiners are much more familiar with the rules that govern those who are acting in a quasi-judicial (i.e., administrative court-like) capacity than is the case for members of city councils and advisory bodies, and that familiarity can be significant in having a system that is legally fair and impartial, both in reality and as a matter of perception.

With such preliminary considerations in mind, the remainder of this memorandum lays out the role envisioned for each of the land use approval bodies in state law, the role laid out for these bodies in the Bainbridge Island Municipal Code (BIMC), and the ways in which those roles might be restructured to provide more or less involvement from each of the land use approval bodies.

II. BAINBRIDGE ISLAND CITY COUNCIL

State Law Role:

While the role of a city council in legislative matters such as the adoption and amendment of comprehensive plans and development regulations is clearly defined under state law, its role in land use permit approvals is more flexible and is generally governed by whatever land use permitting ordinances the city adopts. With respect to the adoption and amendment of comprehensive plans and development regulations, state law requires that the “planning agency” of the city (the planning commission) hold at least one public hearing on the adoption or amendments. The city council must then adopt or amend the comprehensive plan or development regulations and may, but is not obligated to, hold additional public hearings of its own prior to taking final action. Because the adoption or amendment is legislative and must be accomplished by ordinance, a city council cannot delegate this power and must be the final step in the process.

With respect to land use permits, however, this power is generally administrative, and the council may delegate it or keep it as it sees fit, unless state law specifically requires council involvement. Site specific rezones is the one activity where council involvement is required, because site specific rezones must be approved by ordinance and the council is the only body that has the authority to adopt ordinances.

BIMC Role:

Under the BIMC as it currently exists, the City Council has retained a role in three land use project permit decisions: (a) the approval of final long subdivisions; (b) the approval of site-specific rezones; and (c) the approval of permits considered under consolidated permit review whenever the council is the approval authority on any one of the consolidated permit applications.

Possible Changes to Increase Council Involvement:

If the City Council desires to increase its involvement in land use permit matters, there are multiple ways in which the City Council could do so. First, the hearing examiner system the City currently has is optional under state law. In other words, while the City has the authority to create a hearing examiner and to delegate authority to that examiner to hear and decide certain types of applications, like conditional use permits, preliminary plats, shoreline permits, etc., and to hear and decide appeals from SEPA and permitting decisions made by staff, the Council does not have to delegate that authority and could abolish the hearing examiner system and retain authority over any or all of the decisions that are currently delegated.

Pros of such an approach include:

- The Council would have decision-making authority in some or all of the matters now decided by the Hearing Examiner.

Cons of such an approach include:

- The workload currently shouldered by the Hearing Examiner would be transferred to the Council.
- The Council would also have new constraints on its ability to communicate with its constituents on land use permitting matters since the appearance of fairness statutes, which are intended to prohibit communications outside of the hearing process, would apply.

Second, state law provides that the City Council may, by ordinance, specify that a hearing examiner's decision has either (a) the effect of a recommendation to the Council, or (b) on every type of land use permit other than a site-specific rezone, the effect of a final decision. If the Council wants to retain the hearing examiner system but to gain more authority over the land use permits considered by the Hearing Examiner, the Council could change the effect of the Hearing Examiner's decisions from the current final decision to a recommendation. Again, one must keep in mind that land use permitting processes are limited to one open record hearing and one closed record appeal, so if the Hearing Examiner conducted the public hearing on a land use permit application before making a recommendation, the Council's review would be limited to the record created by the Examiner and the Council could not take additional evidence.

Pros of this approach include:

- The Council would have the final decision-making authority in some or all of the matters now decided by the Hearing Examiner, but without taking on all of the Hearing Examiner's workload.

Cons of this approach include:

- The additional workload that would get shifted from the Hearing Examiner to the Council;
- Appearance of fairness constraints;
- The limitation on taking additional evidence;
- Since no additional evidence can be taken, it may be difficult to support a decision that differs from the Hearing Examiner's recommendation.

Third, if the Council wants to retain the hearing examiner system and continue to have the Hearing Examiner make final decisions, the Council could insert itself as an appellate body above the Hearing Examiner and prior to court review. Under the Land Use Petition Act, Chapter 36.70C RCW, all final land use decisions of a city are appealable to superior court within 21 days after the decision is issued.

Currently, the City has provided in the BIMC for decisions by the Hearing Examiner to be appealable directly to the superior court. If the Council wanted to increase its involvement, it could amend the BIMC to make Hearing Examiner decisions appealable to the Council and only final Council decisions appealable to the courts. The Hearing Examiner would hold the hearing and make a decision and because of the "one open record hearing, one closed record appeal" limitation, the Council could not take new evidence but would decide the appeal based on the Hearing Examiner's record and appeal criteria that would have to be set forth in the City's regulations.

Pros of this approach include:

- The Council would have final authority on some or all of the matters currently determined by the Hearing Examiner, but because the authority would be limited to appeals, not all of the Hearing Examiner's workload would shift to the Council.

Cons of this approach include:

- Appearance of fairness limitations;
- The limitation on new evidence;
- The limitation on the ability to overturn the Hearing Examiner's decision without finding that the Hearing Examiner erred in some way.

Possible Changes to Decrease Council Involvement:

The above discussion indicates how the City Council could increase its involvement in land use permits, but it is possible to decrease the Council's role as well. Of the three roles the City Council has retained, two are mandated by state law. As noted above regarding the first role, state law requires that site-specific rezones be approved by ordinance (because they amend the zoning map, which is adopted by ordinance). Regarding the second role, the Regulatory Reform

Act mentioned above also requires the City to have a consolidated permit process whereby a developer seeking multiple permits that would ordinarily go to more than one land use approval body can have those permits consolidated for review by one body only, with that body being the highest city authority that would review any of the permits. In Bainbridge Island, that authority is the Council, and if the permits applied for are included a site-specific rezone, all consolidated permits could be elevated to the Council level.

However, regarding the third role over which the City Council has retained authority, final long subdivision approvals, such a role is not required for the Council by state law. In 2017, the state legislature amended the state subdivision law to allow city councils to delegate this authority to another land use approval authority, e.g., the hearing examiner, the planning director, or the planning commission. State law does not require the council to delegate the authority, so the Bainbridge Island City Council could remain the approval body for final long subdivisions, but it no longer has to. If the Council wants to decrease its involvement in land use permitting, this is a way it could do so.

Pros of such an approach include:

- As described below, some cities have, for example, delegated final long subdivision approval authority to the Hearing Examiner on the theory that the Examiner is in the best position to determine whether the conditions the Examiner imposed on the preliminary plat have been met.
- Other cities have delegated (or are considering delegating) final long subdivision approval authority to staff based on the theory that the decision is ministerial, and that staff is capable of making such a determination.
- Such a delegation would decrease the Council's workload to some extent, and allow the Council to remove itself from a quasi-judicial role in which it currently engages and which can be a difficult role for Councilmembers due to appearance of fairness considerations.

Cons of such an approach include:

- The Council would be delegating a decision its making currently to some other body or person (e.g., hearing examiner, planning director, planning commission) and would thereby reduce its decision-making authority.
- The workload of the Hearing Examiner, Director of Planning and Community Development, and/or Planning Commission would increase to some extent.

III. PLANNING COMMISSION

State Law Role:

As noted above, planning commissions have a clear role under state law in the legislative processes used in adopting and amending comprehensive plans and development regulations. As the "planning agency" of a city, the planning commission must hold at least one public hearing

on any proposed comprehensive plan or development regulation adoption or amendment and must make a recommendation on the same to the city's legislative body, i.e., the city council.

With respect to land use permitting actions, however, cities have the choice to decide what role to provide their planning commissions. The hearing examiner system is optional under state law and it is possible for a city to empower their planning commission to perform all of the functions that a hearing examiner can perform, e.g., hearing and deciding/making recommendations on project permits such as conditional use permits, preliminary plats, and shoreline permits, and hearing appeals from city staff decisions. The role of the planning commission is whatever the city decides it to be, within certain constraints, as described in more detail below.

BIMC Role:

Under the BIMC, the Bainbridge Island Planning Commission's role in land use permitting is limited to making recommendations on major site plan and design reviews and housing demonstration projects, and, when requested by the Director of Planning and Community Development or the Hearing Examiner, on other permits such as shoreline substantial development permits, major conditional use permits, and major variances. In order to avoid violating the "one open record hearing and one closed record appeal" requirement, the Planning Commission makes these recommendations after conducting a public meeting, not a public hearing.

Possible Changes to Increase Planning Commission Involvement:

If the City Council wishes to increase the Planning Commission's role in the permitting process, it has a couple of options. Because the hearing examiner system is an alternative to using the Planning Commission to conduct permit hearings, it would be possible to amend the BIMC to transfer all or any part of the Hearing Examiner's functions to the Planning Commission. The Planning Commission could replace the Hearing Examiner as the primary hearing authority on particular permit applications or on all permit applications.

Pros of such an approach include:

- To give the Planning Commission more input or control over those applications the Council decides to give the Planning Commission jurisdiction over.

Cons of such an approach include:

- Shifting some or all of the Hearing Examiner's workload to the Planning Commission and thereby detracting from the Commission's ability to complete its other work.
- Imposing the appearance of fairness limitations discussed above on the Planning Commission, and making it harder for the Commission to separate its legislative policy-making role from an adjudicatory permitting role.

- Most jurisdictions have gone to the hearing examiner system in order to avoid these negatives and the few jurisdictions that have continued to use a planning commission for such decisions are small enough that the commission's workload is not seen as an issue.

The other option to increase the Planning Commission's role is to work within the current construct and increase the Planning Commission's authority to make recommendations. As noted above, the Planning Commission is required to make recommendations on major site plan and design review projects and on housing demonstration projects, but the Commission makes a recommendation on other permits only if requested to do so. A way to increase the Planning Commission's role would be to expand the number of permit types on which the Planning Commission may weigh in or to make the receipt of a Planning Commission recommendation mandatory.

Pros of such an approach include:

- To give the Planning Commission a more formal and mandatory role in land use permitting.

Cons of such an approach include:

- The same cons as would be the case if the Planning Commission was substituted for the Hearing Examiner (although the workload shift would be less).
- Possible impacts on the timely processing of permits.
- Under the Regulatory Reform Act mentioned above, review of most permits is required to be completed within 120 days after a complete application is filed. Adding a mandatory Planning Commission recommendation into some permits could make this timeline difficult or impossible to meet and would, at the very least, lengthen the time by which such decisions are made.

Possible Changes to Decrease Planning Commission Involvement:

If the Council desires to decrease the Planning Commission's involvement in land use permitting, it could eliminate the Planning Commission's mandatory recommendation on major site plan and design review projects and housing demonstration projects, or on the ability of the Hearing Examiner or the Director of Planning and Community Development to request Planning Commission review in other matters. This would be done by amending the BIMC to change those roles. Because state law does not mandate Planning Commission involvement in any particular development application, the Council would be free to take any action to alter the Planning Commission's role that it sees fit.

Pros of such an approach include:

- The Planning Commission would have a decreased workload, which would require less of a commitment from its members.

- The Commission would have more time to focus on legislative matters, rather than matters involving specific projects.
- Less need for staff support in assisting the Planning Commission with its work.

Cons of such an approach include:

- Less of an opportunity to receive Planning Commission and public input on certain projects.
- Could increase the Council's workload in considering matters for which the Council currently receives input from the Planning Commission.

IV. DESIGN REVIEW BOARD

State Law Role:

There are no state law provisions governing the matters that can be assigned to design review boards. The creation, composition, and duties of such boards are entirely within the discretion of the jurisdiction creating them.

BIMC Role:

Under the BIMC, the City's Design Review Board (DRB) serves in an advisory capacity to the Director of Planning and Community Development, the Hearing Examiner, and the Planning Commission on site plan and design reviews, conditional use permits, and housing design demonstration project applications. Applications related to single-family residences such as family day care homes, minor/major home occupations, and single-family residential height variations are exempt from DRB consideration. In addition, applications related to utility facilities and to outdoor recreation facilities are exempt from DRB consideration. In order to avoid violation of the "one open record hearing and one closed record appeal" requirement, the DRB makes its recommendations after conducting a public meeting, not a public hearing.

Possible Changes to Increase DRB Involvement:

Because the DRB has no mandatory role in land use permitting under state law, the City Council is free to increase or decrease the DRB's role from that currently prescribed by the BIMC. There are two ways in which the DRB's role could be increased. First, the City could expand the number and type of permit types which the DRB reviews, i.e., remove the exceptions from DRB review that are set forth in the BIMC or extend the DRBs involvement beyond site plan and design review, conditional use permits, and review of housing design demonstration project applications. Second, the City Council could make the design standards used by the DRB even more robust than they are now. While either of these options is available, the ability to make them effective may be limited by the need to balance the roles of the land use approval bodies involved in the process and the desires of the community for more (or less) design regulation.

Pros of such an approach include:

- To give the DRB a more formal and mandatory role in land use permitting.
- To allow for enhanced adherence to design guidelines and standards.

Cons of such an approach include:

- Possible impacts on the timely processing of permits.
- As mentioned above, under the Regulatory Reform Act review of most permits is required to be completed within 120 days after a complete application is filed. Adding a mandatory DRB recommendation into some permits could make this timeline difficult or impossible to meet and would, at the very least, lengthen the time by which such decisions are made.

Possible Changes to Decrease DRB Involvement:

As far as decreasing the DRB's role, the City could do so in at least three ways: (a) decrease the number and type of permits for which design review is required; (b) make the City's design review standards less robust; or (c) assign design review to another body, e.g., the Planning Commission or Hearing Examiner. The City Council is free to expand or contract the DRB's authority as the Council believes is appropriate.

Pros of such an approach include:

- The DRB would have a decreased workload, which would require less of a commitment from its members.
- The DRB could focus more on legislative matters, rather than matters involving specific projects.
- Less need for staff support in assisting the DRB with its work.

Cons of such an approach include:

- Less of an opportunity to receive DRB and public input on certain projects.
- Could decrease adherence to design guidelines and standards.
- Could increase the Council's workload in considering matters for which the Council currently receives input from the DRB.

V. HEARING EXAMINER

State Law Role:

As mentioned a few times above, the hearing examiner system is optional under state law. Cities adopting the hearing examiner system have the option to decide which permit applications and

decisions will be assigned to the examiner. These may include, but are not limited to, applications for preliminary and final plat approval, conditional use permits, variances, and shoreline permits, appeals from administrative permit decisions, and appeals from SEPA threshold determinations and EIS adequacy decisions. Cities also have the option of: (a) giving the hearing examiner's decision the effect of a recommendation to the city council; or (b) giving the hearing examiner's decision the effect of a final decision subject to appeal to the city council within a specified time limit; or (c) except in the case of a site-specific rezone, giving the hearing examiner's decision the effect of a final decision appealable to the superior court (which is the current system for the City of Bainbridge Island).

BIMC Role:

Under the BIMC, the Hearing Examiner has been given the broadest authority that it is possible for the City to give a hearing examiner under state law, with one exception. The BIMC currently provides that the decision to approve or disapprove a final long subdivision lies solely with the City Council. While this was a requirement of state law prior to 2017, the state legislature amended the state subdivision law last year to allow a city council to delegate this function.

Possible Changes to Increase Hearing Examiner Involvement:

The only way to increase the Hearing Examiner's involvement in land use permitting in the City of Bainbridge Island would be to delegate the City Council's authority over the approval or disapproval of final long subdivisions to the Examiner.

Pros of such an approach include:

- Some cities have done this on the theory that the Hearing Examiner is in the best position to determine whether the conditions the Examiner imposed on the preliminary plat have been met.
- Other cities have delegated (or are considering delegating) final long subdivision approval authority to staff based on the theory that the decision is ministerial, and that staff is capable of making such a determination.
- Such a delegation from the Council to the Hearing Examiner would decrease the Council's workload to some extent, and allow the Council to remove itself from a quasi-judicial role in which it currently engages and which can be a difficult role for Councilmembers due to appearance of fairness considerations.

Cons of such an approach include:

- The City Council would lose some decision-making authority by delegating a decision its making currently to the Hearing Examiner.
- Such a delegation would increase the Hearing Examiner's workload to some extent.

Possible Changes to Decrease Hearing Examiner Involvement:

With respect to decreasing the Hearing Examiner's role in land use permitting, the options set forth above for increasing the Council's role, the Planning Commission's role, and the DRB's role virtually all involve a commensurate reduction in the role of the Hearing Examiner. Again, because the hearing examiner system is entirely optional and because there are various options for how to structure the authority of the hearing examiner within an adopted system, the Council has flexibility to determine what role best fits the City's needs.

Pros for this approach include:

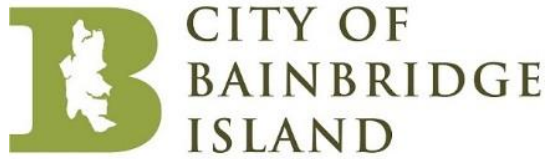
- Would allow for an increase in the role of the Council, the Planning Commission, and/or the DRB in the land use permitting process.
- The City wouldn't have to pay to support the Office of the City's Hearing Examiner.

Cons for this approach include:

- A strong argument in favor of retaining the hearing examiner system and giving the Hearing Examiner a preeminent position in the City's land use permitting process is the complexity of land use law and the requirement that every land use permitting decision for which a hearing is required must be supported by written findings and conclusions.
- Professional hearing examiners are more used to crafting such findings and conclusions than city councils and citizen advisory bodies and this can serve a city well in terms of clarity and when a decision is challenged.
- Citizen advisory bodies can certainly learn to draft or enter quality findings, but that task often falls to the city planning staff and/or to the city attorney when there is no hearing examiner involved.
- If the City decides to decrease the role of the Hearing Examiner in land use permitting, it should consider how this function will be performed.

VI. CONCLUSION

The City of Bainbridge Island has many options for how it structures its land use permitting system. Currently, the City has given the Hearing Examiner the broadest possible powers that state law allows, with the exception of power over final long subdivision approvals. Washington law is very flexible, however, and provides few restraints on the way in which cities can structure the permitting process. The City Council can increase or decrease the role of any of its land use approval bodies in the process until it finds the right balance to meet the desires of those bodies and the community at large.



DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

MEMORANDUM

Date: June 7, 2018
To: Planning Commission
From: Christy Carr, AICP
Senior Planner
Subject: Shoreline Master Program (SMP) Amendment – Critical Areas Integration

I. PURPOSE OF AGENDA ITEM

While the City Council recently adopted an updated critical areas ordinance (CAO), it does not apply to the shoreline jurisdiction. The shoreline jurisdiction is regulated through the City's shoreline master program (SMP), not the CAO. As such, the City's SMP needs to be amended to integrate the CAO update.

The June 7, 2018 Special Planning Commission meeting will include a public hearing at 8:00 on the subject topic. The purpose of the agenda item is to:

- Receive public testimony on the SMP Amendment related to critical areas integration. Public testimony on other topics will not be accepted during the public hearing.
- Discuss SMP Amendment related to critical areas integration, including any recommended changes to public hearing draft (dated May 24, 2018).

II. RECOMMENDED PLANNING COMMISSION ACTION

Provide recommendation to City Council on SMP Amendment related to critical areas integration after public testimony and Commission discussion.

III. BACKGROUND MATERIAL

This meeting is a continuation of the public hearing started at the May 24, 2018 Planning Commission meeting. Links to the following background materials are provided on the City's website:

<http://www.bainbridgewa.gov/184/Shoreline-Master-Program>

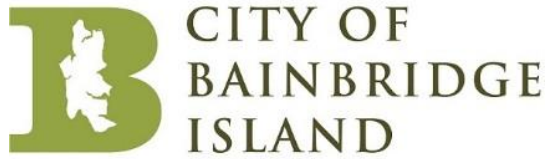
- SMP Draft Amendments – May 24, 2018 Public Hearing Draft: This document includes the text of the entire SMP. Proposed revisions related to critical areas are found throughout the document in **red strikethrough/underline text**. The majority of the substantive revisions are in **Section 4.1.5**.

- SMP Draft Amendments – Integration Approach: This document provides a summary of the approach used to integrate the adopted critical areas ordinance into the SMP. The substantive provisions and standards of the critical areas ordinance are integrated directly into the SMP; that is, for the most part, critical areas will be regulated the same, whether in the shoreline jurisdiction or other parts of the island. The critical areas regulations proposed for the SMP are based on administrative provisions of the Shoreline Management Act requirements of the SMP Guidelines. The integration approach is intended to provide consistency between the critical areas ordinance (BIMC 16.20) and Shoreline Master Program (BIMC 16.12) to the extent possible. **This SMP Amendment is not intended to reconsider substantive provisions and standards of the critical areas ordinance already adopted by City Council and currently in effect for areas outside the shoreline jurisdiction.**

IV. TIMELINE AND NEXT STEPS

This SMP Amendment is being processed through a joint public process with the Department of Ecology. After the Planning Commission provides a recommendation, the draft amendment (including any changes based on public comment and Planning Commission input) will be forwarded to the Department of Ecology for an initial determination of consistency with the Shoreline Management Act. Following that step, and any resolution of inconsistencies, the draft amendment will be presented to City Council for consideration and local adoption.

The Planning Commission will continue discussion on proposed revisions to other sections of the SMP at their first regular meeting in July.



DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

MEMORANDUM

Date: June 7, 2018
To: Planning Commission
From: Jennifer Sutton, AICP
Senior Planner
Subject: Revisions to BIMC Chapter 16.18 *Land Clearing* and Section 18.15.010 *Landscaping, screening, and tree retention, protection and replacement*

I. BACKGROUND

The Tree/LID Ad Hoc Committee is a temporary Council Ad Hoc committee created to comprised of three Councilmembers and two Planning Commissioners and has been meeting since February 2014 to review the City's tree and landscaping regulations. Currently, Ad Hoc Committee members are:

Councilmember Ron Peltier
Councilmember Sarah Blossom
Councilmember Rasham Nassar

Commissioner Jon Quitslund
Commissioner Mack Pearl

Realizing that reviewing the regulations in their entirety is a large task, the Ad Hoc Committee organized their work by first focusing on tree and landscaping regulations that apply to the Mixed Use Town Center (MUTC) /High School Road (HS) zoning districts (Ordinance 2015-04) and then regulations that applied to developments outside the Winslow Core (Ordinance 2016-01).

The last phase of the Tree/LID Ad Hoc Committee's work is to review tree regulations that apply to existing single-family development. Trees and vegetation on existing single-family properties are regulated by BIMC Chapters 16.12 *Shoreline Master Program* and 16.20 *Critical Areas* where applicable, and outside of those sensitive areas, tree removal and property maintenance type activity is regulated by [BIMC Chapter 16.18 Land Clearing](#).

The Ad Hoc Committee also discussed whether to add single-family tree retention standards to both existing single-family properties, and existing undeveloped single-family properties. Outside of shoreline and critical area regulations, tree retention standard are located in [BIMC Section 18.15.010.G](#). Currently, tree retention requirements only apply to commercial, mixed-use and multifamily developments. The tree retention requirements are in addition to any required perimeter or roadside buffer, which may be required for single-family subdivisions, commercial, mixed-use and multifamily developments, pursuant to [BIMC Section 18.15.010.D & E](#).

II. SUMMARY OF CHANGES IN ORDINANCE 2018-19

There is enough changes and reorganizing proposed for [BIMC Chapter 16.18 Land Clearing](#) that the chapter is proposed to be repealed and replaced in full. Substantive changes include:

- Chapter title changed to *Tree Removal, Forest Stewardship and Vegetation Maintenance*
- Permit name changed from *Clearing Permit* to *Tree Removal/Vegetation Maintenance Permit*
- The purpose of the chapter is more explicit and expansive.
- All tree and vegetation activities within shoreline areas, critical areas or their buffers are subject to a minor shoreline or minor critical area permit instead of a permit under BIMC Chapter 16.18 (see Ordinance page 3, BIMC 16.18.030).
- The time-period for limited tree removal without a permit lengthened from 12-months to 36-months (see Ordinance page 3, BIMC 16.18.040.B).
- Currently, outside of the Mixed Use Town Center/High School Road Districts, a property owner may remove 6 significant trees without needing to get a permit. This regulation is proposed to be split by property size, with properties less than one acre in size only allowed to remove 3 significant trees without a permit (see Ordinance page 3, BIMC 16.18.040.B).

Although there will be some clarification and consistency changes to [BIMC Section 18.15.010 Landscaping, screening, and tree retention, protection and replacement](#) the most impactful change proposed for these regulations in Ordinance 2018-19 is new tree retention requirements for single-family properties, both developed and undeveloped. The tree retention requirement is based upon tree units/acre, described in [BIMC Section 18.15.010.G](#). The changes are described in a series of tables attached to this memo.

III. RECOMMENDED PLANNING COMMISSION ACTION

There is no formal action recommended for tonight's meeting. It is anticipated the Planning Commission will:

- Review background material prior to meeting and be prepared to ask questions, as needed
- Provide specific input – e.g., areas of concern, requests for changes, policy direction.

IV. NEXT STEPS

The Planning Commission will hold a public hearing on **Thursday, June 14, 2018 at 8:15 pm** to take public testimony on proposed Ordinance 2018-19. The Planning Commission may make a recommendation to City Council at this meeting following the public hearing and discussion or continue discussion to a later Planning Commission meeting.

Revised **BIMC Chapter 16.18**
Tree Removal, Forest Stewardship and Vegetation Maintenance

16.18.010 Overview.

- A. The policies presented in this chapter rest on an assumption that in the care of trees and vegetation on their property, citizens will be guided by common sense and best practices, responsive to the Purposes stated in section **16.18.025** below. Sanctions may be applied to activities that are found by the planning director to be reckless and destructive, and to any action or negligence that adversely affects a neighboring property, pursuant to the provisions of section **16.18.110** and other applicable provisions of the Code.
- B. To a large extent, work carried out in landscaped yards and forested areas does not require a permit (see **16.18.040** below). However, property owners who are considering major changes to the landscape and trees on their property should seek advice and professional services from a licensed arborist who is certified by the American Society of Consulting Arborists or the International Society of Arboriculture, or a landscape professional who is certified by the City.
- C. This chapter is one of several in the Municipal Code that pertain to the care of trees, vegetation, and forested areas on Bainbridge Island. Its policies and non-regulatory provisions pertain especially to the plans and ongoing activities of Island residents, outside of their homes or places of business but on their own property, when the use and enjoyment of the property involves stewardship and maintenance of trees and vegetation.

16.18.020 Findings.

- A. Forested areas and trees on individual lots are integral parts of Bainbridge Island's character; they enhance the City's appearance and livability, as well as providing significant environmental benefits and natural resource values.
- B. Conserving and managing the Island's forested areas and native vegetation is a central goal of the Bainbridge Island *Comprehensive Plan*: see Guiding Principles 1 & 5 and related Policies; Goals LU-6, 12 & 13; EN-3, 4, 5, 18 & 19; WR-3 & 4; and Policies LU 4.10 & EN 15.3.
- C. Trees are valued by homeowners and, when well cared for, enhance property values.
- D. Reckless and unnecessary removal of trees and understory vegetation, combined with extensive disturbance of soils, cause loss of habitat and wildlife, runoff and soil erosion, degradation of surface water and aquifer recharge, and adverse impacts on air quality, as well as loss of aesthetic appeal.
- E. The community forest resources of the Island are best understood as a mosaic, with some large and many small pieces, on publicly owned and private properties. When clearing for

development further fragments the mosaic, both individual and community interests are affected.

- F. On Bainbridge Island and elsewhere, examples exist to demonstrate that development for residential and other uses can be compatible with careful conservation of forest conditions and other natural features; and that such development can be cost-effective, attractive, energy-efficient, and well adapted to our climate.

16.18.025 Purposes.

This Chapter is adopted for the following purposes:

- A. To promote the public health, safety, and general welfare of Bainbridge Island citizens without preventing the reasonable use of private property.
- B. To preserve and enhance the City's physical and aesthetic character, to promote the healthy functioning of our Island's natural systems, and to provide economic benefits to the community, for the sake of present and future generations.
- C. To implement the purposes of the State Growth Management Act relating to conservation of natural resources, pursuant to RCW 36.70A.
- D. To implement goals and policies in the current [Comprehensive Plan](#), the [Community Forest Management Plan \(2006\)](#), the [Bainbridge Island Open Space Study \(October 2008\)](#), and the [Bainbridge Island Community Wildfire Protection Plan \(2010\)](#), or subsequent updated versions.
- E. To promote forest stewardship practices and carefully planned development that results in minimal disturbance to the prior conditions of a property and neighboring properties.
- F. To implement a long-range policy of maintaining the Island's forest canopy cover while taking measures to prevent wildfires and protect structures in accordance with recommendations of the Bainbridge Island Fire Department.
- G. To allow limited tree and vegetation removal to provide for solar access, agriculture and gardens.
- H. To promote infiltration of stormwater and aquifer recharge; to minimize erosion and prevent pollution; to prevent landslides; to protect the waters of Puget Sound and the quality and quantity of water in wells.
- I. To maintain in a healthy state significant trees, clusters of trees, and forested areas, allowing for thinning, pruning, removal of invasive and undesirable vegetation, selective harvest and replanting, developing and maintaining trails, and removal of dead, or dangerous trees.

16.18.030 Applicability.

Provisions of this chapter apply citywide to all properties where trees and naturally occurring vegetation are found, except where other chapters of the Municipal Code apply as described below:

- A. This chapter does not apply to any portion of a property that is identified as critical area(s) pursuant to BIMC Chapter 16.20 *Critical Areas* (i.e., wetland, fish and wildlife conservation area, geologically hazardous areas, frequently flooded areas and a designated aquifer recharge protection area [ARPA]) or a prescribed critical area buffer zone. In these areas, including an ARPA if one has been designated pursuant to BIMC Section 16.20.100, the regulations of BIMC Chapter 16.20 *Critical Areas* apply. Additionally, the regulations of this chapter do not apply to any property with a designated and approved ARPA.
- B. This chapter does not apply to the portion(s) of a shoreline property within 200 feet landward of an Ordinary High Water Mark, where the regulations of BIMC 16.12 (the *Shoreline Master Program*) apply.

16.18.040 Activities Allowed without a Permit.

The following activities are allowed without a Tree Removal and Vegetation Maintenance Permit, subject to any other applicable City regulations, i.e. BIMC 15.20 *Stormwater Management*:

- A. Routine landscaping and maintenance of vegetation, such as pruning and planting, removal of invasive/exotic species, management of brush and seedling trees. The City encourages pruning to comply with ANSI standards to maintain long term health. This includes maintenance of trees and vegetation required to be retained or planted through a land use permit such as a subdivision, site plan review, or conditional use permit.
- B. Removal of some healthy significant trees (see **16.18.120 Definitions**) is allowed. On a lot that is one acre or larger, a property owner may, without a permit, remove no more than **six** significant trees in any 36-month period. On a lot less than one acre in size, removal of **three** significant trees in any 36-month period is allowed without a permit. This exception does not apply if the tree removal is not consistent with any tree retention provisions of BIMC 18.15.010 (*Landscaping, Screening, and Tree Retention, Protection and Replacement*), BIMC 17.12 (*Subdivision Design Standards*) or requires the designation of a ARPA pursuant to BIMC Section 16.20.100.
- C. Removal of trees and ground cover in emergency situations involving immediate danger to life or structure or substantial fire hazards. If one is required, a clearing permit shall be obtained as soon as possible after the emergency situation is stabilized.
- D. Removal of dead, or fallen trees. The City encourages property owners to leave dead trees in place for ecological benefit such as wildlife snags or nursery logs where possible.

- E. Removal of trees and ground cover in emergency situations involving danger to life or habitable buildings, or to eliminate substantial fire hazards.
- F. Routine maintenance activities in rights-of-way and required roadside buffers, including removal of hazard trees and invasive/exotic species, trimming of overgrown hedges, and planting to replace removed vegetation (see BIMC Chapter 12.04)
- G. The installation and maintenance of fire hydrants, water meters, and pumping stations, and street furniture by the city or utility companies or their contractors
- H. Limbing of significant trees to remove dead or hazardous branches, and to improve the tree's form and long-term vitality, provided that such work is done by an arborist.

16.18.050 Activities Requiring a Permit.

The following activities require an applicant to obtain a Tree Removal / Vegetation Maintenance Permit prior to commencing:

- A. A permit is required for any tree removal or vegetation maintenance in an area required to be retained or planted, pursuant to BIMC 18.15.010, through a land use permit such as a subdivision, a site plan review, or a conditional use permit. There are also tree retention requirements in BIMC 18.15.010 for the single-family residential zones, R-0.4, R-1, R-2, R-2.9, R-3.5 and R-4.3 zones (see below). Routine maintenance as described in section **16.18.040.D** above is exempt from this requirement.
- B. For properties located outside of the Mixed Use Town Center and High School Road zoning districts, a tree removal permit is required for removing more than the number of significant trees allowed without a permit, pursuant to section **16.18.040.I** above. The planting of a replacement tree or trees may be required.
- C. For developed properties located within the Mixed Use Town Center and High School Road zoning districts, a tree removal / vegetation maintenance permit is required for removing any tree eight inches in diameter or greater, measured 4.5 feet above grade. The applicant must demonstrate that the requested removal meets one of the following criteria:
 - 1. The tree is dead, or determined to be hazardous, as certified by an International Society of Arboriculture (ISA) Tree Risk Assessment Qualified (TRAQ) arborist; or
 - 2. The removal is necessary to allow reasonable use or enable permitted construction, and no alternative is feasible; or
 - 3. The removal is necessary to maintain utilities, provide access, or fulfill the terms of an easement or covenant recorded prior to the adoption of the ordinance codified in this chapter.
- D. For undeveloped properties within the Mixed Use Town Center and High School Road zoning districts, a tree removal / vegetation maintenance permit is required to remove **any**

tree except trees that are hazardous, dead, fallen, or contributing to an emergency. The tree removal permit will be reviewed for consistency with any applicable provisions of **BIMC 18.15.010** that would apply to future development permits.

16.18.060 General Regulations and Standards.

- A. While non-native and invasive species should be kept under control and eradicated if possible, native understory vegetation shall be maintained and land disturbing activity shall be kept to a minimum. Stump pulling and use of heavy equipment are not allowed without a tree removal / vegetation maintenance permit.
- B. On the undeveloped or underdeveloped portion(s) of forested acreage in the R-0.4, R-1, and R-2 zones that may be developed in the future, at least 65% of native vegetation shall be retained, anticipating a Site Assessment Review and the designation of a ARPA pursuant to BIMC 15.19 and 16.20.100, respectively. Properties with less than 65% native vegetation, may not reduced except through an approved *ARPA Stewardship Plan* (described in BIMC 16.20.180.H).
- C. With an approved *ARPA Stewardship Plan* (described in BIMC 16.20.180.H), property owners are authorized to implement long range plans without obtaining tree removal / vegetation maintenance permits for piece-meal work.
- D. If the amount of tree removal, vegetation maintenance and/or land disturbing activity will impact more than 7,000 sq. ft. of area or more than 35% of the property, whichever is less, a Site Assessment Review will be required pursuant to BIMC 15.19, prior to application for a tree removal permit. This applies to one-time removal and to cumulative tree removal / land disturbing activities.
- E. An applicant shall protect any trees or landscaped area that must be retained during approved tree removal or vegetation maintenance work, pursuant to the protection provisions of 18.15.010.C.4.
- F. Once a portion of a property is cleared, the property owner shall ensure that invasive species do not reestablish or expand into cleared areas.
- G. Any tree or vegetation removal or maintenance undertaken without a permit pursuant to this section shall be done to ensure long-term health of the trees or vegetation. A property owner shall follow the ANSI A300 (Part 1 – 2017) Tree, Shrub and Other Woody Plant Management – Standard Practices (Pruning) or 60% live-crown ratio, whichever standards is more appropriate for the species.
- H. A forest practice permit from the State Department of Natural Resources may be required pursuant to RCW 76.09. Failure to obtain a forest practice permit when applicable shall be grounds for denial of all applications for permits or approvals, including building permits and subdivision approvals, relating to non-forestry uses of the land for a period of six years, in accordance with RCW 76.09.060.

16.18.070 Tree Removal / Vegetation Maintenance Permit Administration and Review Process.

- A. For activities requiring a permit, the process begins with submission of a complete application, usually after discussion of the proposed activity with a member of the Planning staff.
- B. Tree removal activities shall comply with this chapter's provisions for permits and related regulations. Permits for tree removal / vegetation maintenance may require the planting of replacement trees and/or other City permits such as a *Site Assessment Review* (BIMC Chapter 15.19).
- C. The planning director shall grant a tree removal/ vegetation maintenance permit if the application meets the requirements of this chapter and is consistent with other relevant city codes, including but not limited to Chapters 15.19, 15.20, 16.12, 16.20, 17.12, 18.15.010 BIMC. If the tree removal permit application is denied, the decision may be appealed pursuant to BIMC 16.18.100.
- D. No work authorized by a tree removal/ vegetation maintenance permit shall commence until a permit notice has been posted by the applicant at a conspicuous location on the subject property. The notice shall remain posted in said location until the authorized tree removal has been completed.
- E. Any tree removal/ vegetation maintenance permit granted under this chapter shall expire one year from the date of issuance. Upon a showing of good cause, the permit may be extended for six months by the planning director. Approved tree removal permits shall not be amended without authorization of the planning director.
- F. A tree removal / vegetation maintenance permit may be suspended or revoked by the planning director because of incorrect information supplied or any violation of the provisions of this chapter.

16.18.080 After-the-fact Tree Removal/Vegetation Maintenance Permit.

- A. In response to a report that one or more trees have been removed improperly or vegetation maintenance activity did not comply with any section of the BIMC, the City's Code Enforcement Officer shall investigate. If in fact the reported activity was legitimate without a permit, no action will be taken. If the reported activity would have been allowed if a permit had been applied for, an after-the-fact Tree Removal/Vegetation Maintenance Permit shall be issued. The person or persons responsible for unauthorized tree removal shall be made aware of all the conditions for approval and any applicable regulations and remedies. The fee for an after-the-fact permit shall be established by a resolution of the City Council.
- B. If in fact the reported activity would not have been permitted, entirely or in some particulars, the Code Enforcement Officer, in consultation with the Director or the City Attorney, shall

follow the procedures for **Enforcement and penalty** in this chapter or another applicable chapter of the BIMC.

16.18.090 Performance assurance.

- A. The planning director may require, as a condition for the granting of a permit, that the applicant furnish a performance assurance in a form approved by the planning director, in order to obligate the applicant, after the approved tree removal has been accomplished, to complete all required replanting, erosion control, and cleanup on the property. The surety device shall be in an amount equal to the estimated cost of such services, with surety and conditions satisfactory to the planning director.
- B. In order to stay enforcement, the director may choose to enter into a voluntary correction agreement (VCA). This is a civil contract entered between the City and the applicant. The VCA will outline several performance items that will be required within an agreed-upon time frame.

16.18.100 Appeals.

Appeals of the planning director's decision on a tree removal permit application shall be in accordance with the administrative decision procedures established in Chapter 2.16 BIMC.

16.18.110 Violation – Enforcement and penalty.

- A. In addition to any other sanction or remedy that may be available, a violation of or failure to comply with any provision of this chapter shall be a civil infraction and shall be subject to enforcement and civil penalties as provided in Chapter 1.26 BIMC.
- B. A violation of or failure to comply with any provision of this chapter shall be a misdemeanor punishable, upon conviction, as provided in BIMC 1.24.010.A.
- C. Any fines collected through enforcement of this chapter shall be directed to the city's tree fund, Chapter 3.39 BIMC.

16.18.120 Definitions.

"Applicant" means a person, corporation, or organization that files an application for a land use or development permit with the city: either the owner of the land in question, or the authorized agent of such a person.

"Aquifer recharge protection area (ARPA)" means a portion of a development site comprised of native or equivalent vegetation in which existing vegetation, topography and supporting soils

are free of development, uses or activities detrimental to the aquifer recharge of the total site area.

“Arborist, ISA Certified” means an arborist holding a current International Society of Arboriculture (ISA) Certified Arborist credential.

“Arborist” means an individual engaged in the profession of arboriculture who, through experience, education, and related training, possesses the competence to provide for or supervise the management of trees and other woody plants. Must be concurrently an International Society of Arboriculture (ISA) Certified Arborist to perform any role required of a Certified Arborist.

“Arborist, ISA Certified” means an arborist holding a current International Society of Arboriculture (ISA) Certified Arborist credential.

“Arborist, Tree Risk Assessment Qualified (TRAQ)” means an arborist who has successfully completed the International Society of Arboriculture (ISA) TRAQ training course and assessment and holds a valid ISA TRAQ credential.

“Clearing” means the destruction and removal of vegetation by manual, mechanical, or chemical methods.

“Invasive / exotic species” means opportunistic plant species (either native or non-native) that colonize disturbed ecosystems and may come to dominate the plant community in ways that are seen by us as reducing the values provided by the previous plant community.

“Land disturbing activity” means any activity that results in a change in the existing soil cover (both vegetative and nonvegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to, clearing, grading, filling and excavation. Compaction that is associated with stabilization of structures and road construction shall also be considered a land disturbing activity. Vegetation maintenance practices are not considered land disturbing activity. Stormwater facility maintenance is not considered land disturbing activity if conducted according to established standards and procedures.

“Low impact development (LID)” means a stormwater and land use management strategy that strives to mimic pre-disturbance hydrologic processes of infiltration, filtration, storage, evaporation and transpiration by emphasizing conservation, use of on-site natural features, site planning, and distributed stormwater management practices that are integrated into a project design.

“Low impact development best management practices (LID BMPs)” means distributed stormwater management practices, integrated into a project design, that emphasize pre-disturbance hydrologic processes of infiltration, filtration, storage, evaporation and transpiration. LID BMPs include, but are not limited to: bioretention, rain gardens, permeable pavements, roof downspout controls, dispersion, improvements to soil quality and depth, minimal excavation foundations, vegetated roofs, and water re-use.

“Significant tree” means a live: (1) an evergreen tree 10 inches in diameter or greater, measured four and one-half feet above existing grade; or (2) a deciduous tree 12 inches in diameter or greater, measured 4.5 feet above existing grade; or (3) in the Mixed Use Town Center and High School Road zoning districts, any tree eight inches in diameter or greater, measured 4.5 feet above existing grade; or (4) any trees located within a required critical area or critical area buffer as defined in Chapter 16.20 BIMC.

“Vegetation” means plant matter, including trees, shrubs and ground cover.

New Tree Retention for New SFR's in R-2.9, R-3.5 & R-4.3 Zones &

SFR Developed Properties in the R-0.4, R-1, R-2:

Amendment to Table 18.15.010-1: Landscape Requirements by Zone District

Landscape Requirements for Land Uses and Districts	Significant Tree and Tree Stand Retention	Perimeter Landscape	Roadside Buffer	Parking Lot Landscaping	Total Site Tree Unit (TU) Requirements 18.15.010.G	Planting Requirements	Irrigation	Maintenance
<u>Single-family Residential properties in R-2.9, R-3.5 and R-4.3 zones</u>	<u>X</u>				<u>X</u> 30 TU/Acre See Table Below	<u>X</u>	<u>X</u>	<u>X</u>
<u>Developed Single-family Residential properties in the R-0.4, R-1, R-2 without ARPA designation (16.20.100</u>	<u>X</u>				<u>X</u>			

3/21 Tree Committee Recommendation: Developed Single-family Residential properties in the R-0.4, R-1, R-2: Retention Requirements when proposed tree removal below ARPA threshold (18.15.010.G):

Developed Properties ≤ 40,000 sq. ft.) could clear up to 2,000 sq. ft.; more with ARPA stewardship plan (16.20.180.H)

Developed Properties Between 40,000 sq. ft. and 100,000 sq. ft. in size could clear up to 4,000 sq. ft.; more with ARPA stewardship plan (16.20.180.H)

Developed Properties > 100,000 sq. ft. in size could clear up to 6,999 sq. ft. (note: ARPA designation threshold 7,000 sq. ft.; 16.20.100)

Ad Hoc Committee recommended that new retention requirement ratios for R 2.9, 3.5 & 4.3 zones would be based on 30 Tree Units/ Acre, currently in 18.15.010.G. Created the table below to estimate 30 TU/Acre Ratio

PROPERTY SIZE	TREE UNIT	PROPERTY SIZE	TREE UNIT
≤ 4,000 sq. ft.	3.0	20,001 – 24,000 sq. ft	18.0
4,001 – 8,000 sq. ft.	6.0	24,001 – 28,000 sq. ft	21.0
8,001 – 12,000 sq. ft.	9.0	28,001 – 32,000 sq. ft	24.0
12,001 – 16,000 sq. ft	12.0	32,001 – 36,000 sq. ft	27.0
16,001 – 20,000 sq. ft	15.0	36,001 – 40,000 sq. ft	30.0

NOTE: 1 ACRE=43,560 SQ FT ½ ACRE = 21,780 SQ. FT. ¼ ACRE = 10,890 SQ. FT.

For Reference: Existing BIMC Table 18.15.010-5: Tree Unit Conversion Table for Preserved Trees [1]

DBH	Tree Units	DBH	Tree Units	DBH	Tree Units
3 – 5	1.0	24 – 26	6.2	39 – 40	10.8
6 – 10	1.2	27 – 28	7.0	41 – 42	11.4
11 – 12	1.4	29 – 30	7.8	43 – 44	12.0
13 – 15	2.0	30 – 31	8.4	45 – 46	12.6
16 – 18	3.2	32 – 33	9.0	47 – 48	13.2
19 – 20	3.8	34 – 36	9.6	49+	13.8
21 – 23	4.6	37 – 38	10.2		

[1] For multi-stemmed trees, measure the DBH of each trunk separately, multiply each of these measurements by itself, add up these amounts, and calculate the square root of that total to find the DBH for the tree as a whole.

Excerpt from Table 18.12.020-2

ZONING DISTRICT DIMENSIONAL STANDARD	R-0.4	R-1	R-2	R-2.9	R-3.5	R-4.3	R-5	R-8	R-14
Standard Lots	100,000 sq. ft.	40,000 sq. ft.	20,000 sq. ft.	15,000 sq. ft.	12,500 sq. ft.	10,000 sq. ft.	8,500 sq. ft.	5,400 sq. ft.	3,100 sq. ft.