
CALL TO ORDER – Call to Order, Agenda Review, Conflict Disclosure
REVIEW OF MINUTES – March 14, 2019
PUBLIC COMMENT – Accept public comment on off agenda items
DESIGN REVIEW BOARD UPDATE
DEVELOPMENT CODE HOUSEKEEPING CHANGES
NEW/OLD BUSINESS
ADJOURN

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

Chair William Chester called the meeting to order at 7:00 PM. Planning Commissioners in attendance were J. Mack Pearl, Don Doman, Jon Quitslund, Lisa Macchio, Kimberly McCormick Osmond and Joe Paar. City Staff present were Senior Planner Jennifer Sutton and Administrative Specialist Carla Lundgren who monitored recording and prepared minutes.

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

REVIEW OF MINUTES – March 14, 2019

Motion: I move to approve the minutes.

Doman/Quitslund: Passed Unanimously

PUBLIC COMMENT – Accept public comment on off agenda items

Michael Zigich, Citizen – Spoke of concern regarding three issues relating to the Shoreline Master Program (see attached written statement).

DESIGN REVIEW BOARD UPDATE – Discussion Only

Don Doman – Planning Commission Liaison

DEVELOPMENT CODE HOUSEKEEPING CHANGES – Discussion Only

Jennifer Sutton, AICP, Senior Planner

Commissioner McCormick Osmond asked for the redlined version of the code changes to add context to the proposed changes to be provided at the next meeting before proceeding.

NEW/OLD BUSINESS

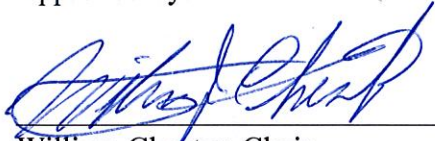
Commissioner Doman stated he would not attend the Planning Commission meetings in May and June.

Senior Planner Jennifer Sutton reviewed the upcoming meeting schedule and asked the Commissioners to reflect on the decision to host all Public Participation Meetings (PPM) at the Planning Commission Meetings given the number of PPM's each year.

ADJOURN

The meeting was adjourned at 8:20 PM.

Approved by:



William Chester, Chair



Carla Lundgren, Administrative Specialist



PLEASE PRINT

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2019 Planning Commission Project Schedule

PROJECT	APRIL	MAY		JUNE		JULY		STAFF
	25	9	23	13	27	11	25	
ARL Comprehensive Plan Amendment					SS	PH		C.Carr/J.Sutton
Housekeeping Cleanup Ord./ SPR & CUP Decision Criteria	SS							Jennifer Sutton
1 st Affordable Housing Ord.	SS		PH					Jennifer Sutton
SMP			SS		SS			Christy Carr
CAO Housekeeping		SS		SS		PH		Christy Carr
ADU Ordinance				SS	PH			Jennifer Sutton
IZ Code Changes								Jennifer Sutton
TDR Code Changes					SS	PH		C.Carr/J.Sutton
Aveterra Composting Code Request								Annie Hillier
DEVELOPMENT PROJECTS								
Bainbridge Hildebrand SPR	PPM							Kelly Tayara
Winslow Hotel SPR/CUP		PM/R	PM/R					Olivia Sontag
2 Lot Short Plat		PPM	PPM					Ellen Fairleigh

PACKETS DUE AT NOON ON FRIDAY BEFORE MEETING

A = Action
B = Briefing
D = Decision

JM = Joint Meeting
OH = Open House
P = Process

PH = Public Hearing
PM = Public Meeting
PPM = Public Participation Meeting

R = Recommendation
SS = Study Session
W = Workshop

Planning Commission Meeting
March 28, 2019

My name is Michael Zigich and I live on Rockaway Beach Road.

This evening I would like to discuss three issues related to the Shoreline Master Program.

Nonconforming structures definition change by the Planning Department.

Submission of approved amendments to the Shoreline Master Program to the Washington State Department of Ecology.

A process for measuring “No Net Loss of Ecological Functions” in the Shoreline Master Program.

Nonconforming Structures Definition Change

At the City Council Meeting on January 8, 2019 Senior Planner Carr presented a memorandum (first document in your packet) titled “Shoreline Master Program Amendment”. The recommended change from the original Planning Commission nonconforming structures definition is shown on page two of the memorandum.

I believe the Planning Commission’s definition for nonconforming structures should be maintained, since it specifies the actual “effective date of the applicable Shoreline Master Act/SMP provision” (November 26, 1996). This clarification helps to make it easier for the general public to understand the definition.

Submission of approved amendments to WS DOE

Page three of the memorandum titled "Shoreline Master Program Amendment" shows a flow chart of the steps required for submission of the approved amendments to the Washington State Department of Ecology. The first step in the process was the adoption of Resolution 2019-5 by the City Council, which occurred on January 8, 2019. Resolution 2019-5 is the next document in your packet.

Resolution 2019-5 states in Section 2 (bottom of second page) "The Director of Planning and Community Development is authorized to submit the draft Shoreline Master Program amendment and all supporting documents required to accompany the Shoreline Master Program amendment to the Washington State Department of Ecology for initial review in accordance with WAC 173-26-104".

I have three questions:

Why has the Planning Department not submitted the Shoreline Master Program amendment to the Washington State Department of Ecology?

What can the Planning Commission do to help expedite the submission of the Shoreline Master Program amendment?

Will the Shoreline Master Program amendment be submitted to the Washington State Department of Ecology in April of 2019?

Measurement of "No Net Loss of Ecological Functions"

How can we be sure the Bainbridge Island Shoreline Master Program is really protecting the Puget Sound and the shoreline environment?

The principle cited most often is "No Net Loss of Ecological Functions". I believe changes are required in the Shoreline Master Program to **objectively** measure "No Net Loss of Ecological Functions".

To objectively measure "No Net Loss of Ecological Functions" requires that a **baseline** be developed and that **periodic testing** be conducted to monitor actual results. The current Shoreline Master Program does **not have** a baseline or require periodic testing as part of the program.

The first step in developing a baseline would be to determine what parameters would be measured. The next step would be to determine sampling locations, since there are different ecological zones on the shoreline of Bainbridge Island. Then samples would be gathered and tested to form the baseline measurement for each parameter in each location.

Once the baseline is developed periodic testing at each selected location would objectively show whether the "No Net Loss of Ecological Functions" requirement of the Shoreline Master Program was being met.

I believe the Planning Department, Planning Commission and any appropriate advisory committees should work **together** to determine the parameters and locations to be sampled to establish the baseline and determine the frequency of future

testing. I think this should be the next phase in the review of the Shoreline Master Program.

The citizens of Bainbridge Island **deserve** to know if the Shoreline Master Program is really protecting the Puget Sound and shoreline of Bainbridge Island.

I would be happy to answer any questions.

Michael Zigich
michaelrzigich@sbcglobal.net



CITY OF BAINBRIDGE ISLAND

Department of Planning and Community Development

Memorandum

Date: January 8, 2019
To: City Council
From: Christy Carr, AICP
Senior Planner
Subject: Shoreline Master Program Amendment

I. INTRODUCTION – WHERE WE LEFT OFF

At its December 11, 2018 business meeting, the City Council directed staff to bring back language differentiating between single family accessory structures and essential single family accessory structures. No other changes to the draft amendment were requested by the City Council. The City Council did not provide any input on other proposed revisions or policy questions.

With the exception of deleting the aquifer recharge protection area (ARPA) from the critical areas chapter and some minor word choice revisions, no changes were made based on public comments as provided in the summary of public comments provided at the December 11, 2018 City Council meeting.

As such, the draft amendment is relatively unchanged from the September 11, 2018 public hearing draft, with the following exceptions, highlighted in yellow:

- The ARPA is deleted.
- The allowable expansion for single-family primary structures changed from no limit to a limit of up to 500 square feet (footprint expansion) over the life of the structure.
- The term “essential single family residential accessory structure” is retained, and these structures may be rebuilt in the same footprint if destroyed by any means.
- (Non-essential) residential accessory structures must be rebuilt to current standards if destroyed by any means.

II. ADDITIONAL REVISIONS NEEDING COUNCIL REVIEW

In addition, staff is requesting input on revised language not previously discussed by the City Council, highlighted blue:

- Revisions to SMP 4.0.1.7, related to conflicts within the SMP and with the Bainbridge Island Municipal Code (BMC).
- Revisions to the definition of nonconforming structures.

SMP 4.0.1.7: This section has been referred to as "the most restrictive clause" and is seen by some members of the public as a means to apply the most restrictive or onerous standard, even if it is not applicable. While, to staff's knowledge, this has not occurred even once since the adoption of the City's 2014 SMP, staff would like input from the City Council on whether or not to change the language in SMP 4.0.1.7.

The City currently handles conflicts between code sections in one of two ways: (1) by making a code interpretation under BMC 2.16.020.D.3 when a person files an interpretation request; or (2) by making an interpretation as part of the processing of a development application. Both of these actions result in an appealable decision. Ecology suggested the language in the public hearing draft SMP in order to avoid creating a separate process and to essentially make the default the interpretation that best meets the objectives and purposes of the Shoreline Management Act. Subsequently, staff developed the following revised language to be more specific (new language is underlined and strikeout text is used to show language to be removed):

Public
hearing
draft
language

Where provisions of this Master Program or other provision in BMC conflict, liberal construction pursuant to RCW 90.58.900 shall apply to give full effect to the objectives and purposes of the Act. ~~the more restrictive provisions shall apply unless specifically stated otherwise.~~

Proposed
revised
language

Where provisions of this Master Program or other provisions in BMC conflict, ~~the more restrictive provisions shall apply unless specifically stated otherwise.~~ the conflict shall be resolved by the Director of Planning and Community Development by applying the provision that provides the most protection of shoreline ecological functions consistent with the purposes and intent of the Shoreline Management Act. If the Director's decision is made in response to a code interpretation request filed under BMC 2.16.020.D, the decision shall be appealable in the same manner as other code interpretations. If the Director's decision is made in the processing of a development permit, the Director's decision shall be appealable as part of the permit decision.

→ Definition of nonconforming structures: The current recommendation from the Planning Commission is to do away with the "existing development" term and instead rely on the more commonly used "nonconforming structure." In the draft language recommended by the Planning Commission, the term "nonconforming structure" means

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

This definition is based on WAC 173-27-080, which says that:

"Nonconforming development" or "nonconforming structure" means an existing structure that was lawfully constructed at the time it was built but is no longer fully consistent with present regulations such as setbacks, buffers or yards; area; bulk; height or density standards due to subsequent changes to the master program.

Staff believes that using the nonconforming structure terminology would make the code clearer by resolving concerns raised by the public with regard to the use of a specific date. Staff recommends

revising what is currently being proposed by the Planning Commission and instead using the WAC definition as stated above, pending input from the City Council.

III. Tonight's Agenda Item

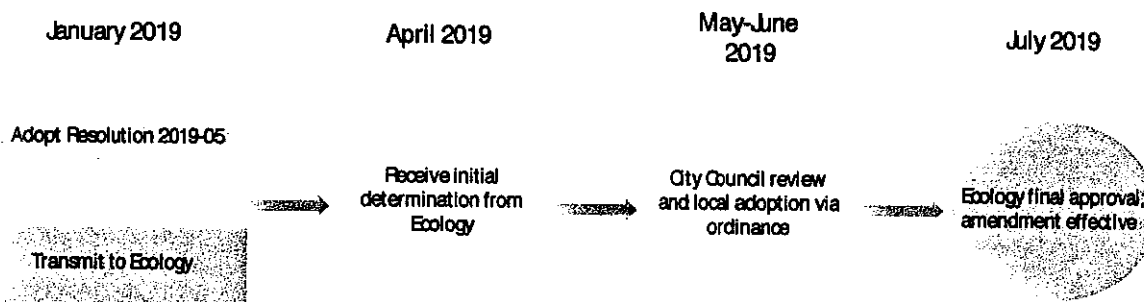
Three documents are provided for tonight's agenda item:

- The draft SMP amendment in strikethrough/underline format, highlighting Council's requested revisions related to essential residential accessory structures and miscellaneous revisions outlined above.
- Clean versions of the draft SMP amendment (for better readability), including only those pages with significant changes (Section 4.1.5 and 4.2.1) – the clean versions do not include revisions in the full draft SMP amendment that have not received Council approval.
- Resolution 2019-05, Approving the draft SMP amendment related to critical areas and nonconforming structures, uses, and lots and authorizing staff to transmit the draft amendment to the Department of Ecology.

Staff anticipates that the City Council will: (a) provide input on revised language related to essential single family residential accessory structures, SMP 4.0.1.7, and the definition of nonconforming structures; and (b) approve Resolution 2019-05 authorizing staff to transmit the draft SMP amendment to the Department of Ecology.

IV. Next Steps

Once the City Council adopts Resolution 2019-05, staff will transmit the draft SMP amendment to Ecology for initial review.



RESOLUTION NO. 2019-05

A RESOLUTION of the City of Bainbridge Island, Washington, approving a draft Shoreline Master Plan amendment relating to critical areas regulations and nonconforming structures, uses, and lots and directing staff to submit the draft to the Department of Ecology for initial state review pursuant to WAC 173-26-104.

WHEREAS, the Washington Shoreline Management Act (Chapter 90.58 RCW), referred to herein as the "SMA"), recognizes that shorelines are among the most valuable and fragile resources of the state, and that state and local governments must establish a coordinated planning program to address the types and effects of development occurring along shorelines of state-wide significance; and

WHEREAS, pursuant to the SMA, the City of Bainbridge Island ("City") adopted a comprehensive update to its Shoreline Master Program (Ordinance No. 2014-04) in 2014; and

WHEREAS, WAC 173-26-090(1) directs local governments to review their shoreline master program and make amendments deemed necessary to reflect changing local circumstances, new information, or improved data; and

WHEREAS, the SMA and Chapter 173-26 WAC require that the City prepare and adopt amendments to the City's Shoreline Master Program that are based on state laws and rules set forth in Chapter 173-26 WAC; and

WHEREAS, RCW 36.70A.480(4) requires that shoreline master programs provide a level of protection to critical areas located within shorelines of the state that assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources; and

WHEREAS, on February 27, 2018, the City updated its Critical Areas Ordinance ("CAO") (Ordinance 2018-01); and

WHEREAS, the City desires to integrate the updated critical areas regulations into its Shoreline Master Program; and

WHEREAS, the City's updated critical areas regulations cannot be integrated into its Shoreline Master Program without an amendment; and

WHEREAS, at its October 12 and November 16, 2017, April 26, and August 30, 2018 meetings, the Planning Commission reviewed draft amendments to the Shoreline Master Program related to critical areas; and

WHEREAS, at its January 11, February 8, March 8 and 29, April 12 and 19, and August 30, 2018 meetings, the Planning Commission reviewed draft amendments to the Shoreline Master Program related to nonconforming structures, uses, and lots; and

WHEREAS, the City elected to use the optional joint review process for amending shoreline master programs pursuant to WAC 173-26-104; and

WHEREAS, the City and the Department of Ecology provided a 30-day formal comment period on a draft amendment related to critical areas regulations between May 8 and June 9, 2018, including a joint local/state public hearing on May 24, 2018 to consider the draft amendment; and

WHEREAS, the joint local/state public hearing on May 24, 2018 was continued to June 7, 2018; and

WHEREAS, at its June 7, 2018 meeting, the Planning Commission recommended that the draft amendment not be forwarded to the Department of Ecology until proposed revisions related to nonconforming structures, uses, and lots were included; and

WHEREAS, at its July 24, 2018 meeting, the City Council directed staff to include nonconforming structures, uses, and lots in the draft amendment and schedule a public hearing on the amendment on September 11, 2018; and

WHEREAS, the City and the Department of Ecology provided a 30-day formal comment period on a draft amendment related to critical areas regulations and nonconforming structures, uses, and lots between September 10 and October 10, 2018, including a joint local/state public hearing on September 11, 2018 to consider the draft amendment; and

WHEREAS, in accordance with WAC 173-26-104 and RCW 36.70A.106, a Notice of Intent was transmitted to the Washington State Department of Commerce; and

WHEREAS, a Determination of Non-Significance consistent with the State Environmental Policy Act (Chapter 43.21C RCW) was published, and no person filed an appeal; and

WHEREAS, at its October 2, 9, and 16, November 27, and December 11, 2018 and January 8, 2019 meetings, the City Council considered and deliberated about the draft amendment, including related to the public comment that was submitted regarding the amendment.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BAINBRIDGE ISLAND, WASHINGTON, DO RESOLVE AS FOLLOWS:

Section 1. The City's draft Shoreline Master Program amendment is hereby approved as shown on the attached **Exhibit A**, which is hereby incorporated into this resolution as if set forth in full.

Section 2. The Director of Planning and Community Development is authorized to submit the draft Shoreline Master Program amendment and all supporting documentation required to accompany the Shoreline Master Program amendment to the Washington State Department of Ecology for initial review in accordance with WAC 173-26-104.

PASSED by the City Council this 8th day of January, 2019.

APPROVED by the Mayor this 8th day of January, 2019.



Kol Medina, Mayor

ATTEST/AUTHENTICATE:


Christine Brown, CMC, City Clerk

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
RESOLUTION NO.

January 4, 2019
January 8, 2019
2019-05

Exhibit A: Draft Shoreline Master Program Amendment