CITY OF BAINBRIDGE ISLAND

PLANNING COMMISSION SPECIAL MEETING
AND PUBLIC PARTICIPATION MEETING
THURSDAY, MAY 23, 2019
6:00 – 9:00 PM
COUNCIL CHAMBER
280 MADISON AVE N
BAINBRIDGE ISLAND, WA 98110

AGENDA

6:00 PM PUBLIC PARTICIPATION MEETING
PBV Fairyland
Senior Planner David Greetham

7:00 PM CALL TO ORDER
Call to Order, Agenda Review, Conflict Disclosure

7:05 PM REVIEW AND APPROVE MINUTES
May 9, 2019

7:10 PM PUBLIC COMMENT
Accept public comment on off agenda items.

7:20 PM HOUSEKEEPING CLEAN-UP ORDINANCE
Study Session
Long Range Senior Planner Jennifer Sutton

8:15 PM SMP PERIODIC REVIEW
Study Session
Long Range Senior Planner Christy Carr

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

Planning Commission
Special Meeting Minutes
Thursday May 9, 2019

PUBLIC PARTICIPATION MEETING – Blackwood Short Plat (PRE51246 PRE)
CALL TO ORDER – Call to Order, Agenda Review, Conflict Disclosure
REVIEW OF MINUTES – April 11, 2019 and April 25, 2019
PUBLIC COMMENT – Accept public comment on off agenda items
AFFORDABLE HOUSING TASK FORCE REPORT OVERVIEW & PHASE I
AFFORDABLE HOUSING CODE CHANGES
CRITICAL AREAS ORDINANCE REVIEW & ASSESSMENT
NEW/OLD BUSINESS
ADJOURN

PUBLIC PARTICIPATION MEETING
Blackwood Short Plat (PLN51246 PRE)
Planner Ellen Fairleigh introduced Jeffrey Blackwood who presented the project.

CALL TO ORDER – Call to Order, Agenda Review, Conflict Disclosure
Chair William Chester called the meeting to order at 6:30 PM. Commissioners in attendance were Jon Quitslund, Lisa Macchio, Kimberly McCormick Osmond and Joe Paar. Don Doman and J. Mack Pearl were absent and excused. City Staff present were Long Range Senior Planners Jennifer Sutton and Christy Carr, Planner Ellen Fairleigh and Administrative Specialist Jane Rasely who monitored recording and prepared minutes.

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

REVIEW OF MINUTES – April 11, 2019 and April 25, 2019

> **Motion: I'll move approval of the minutes from April 11, 2019 to include the recorded motion for PLN51159, the High School Building 100. I move the approval of those minutes as distributed.**
> **Quitslund/Paar: Passed Unanimously**
>
> **Motion: I'd like to move approval of the minutes from April 25, 2019 as distributed.**
> **Quitslund/McCormick Osmond: Passed Unanimously**

PUBLIC COMMENT – Accept public comment on off agenda items
None.

AFFORDABLE HOUSING TASK FORCE REPORT OVERVIEW & PHASE I AFFORDABLE HOUSING CODE CHANGES

Senior Planner Jennifer Sutton introduced Charlie Wenzlau and Pat Callahan who were members of the Affordable Housing Task Force. A sub-committee of Commissioners Chester, Paar and Quitslund was formed to do an in-depth review of the recommendations made by the Affordable Housing Task Force in pages 14-16 of their report.

> **Motion: I make a motion that we make a recommendation to the Council to move forward immediately with a 12-year MFT program for all of Bainbridge.**
> **Paar/McCormick-Osmond: Passed Unanimously**

CRITICAL AREAS ORDINANCE REVIEW & ASSESSMENT

Senior Planner Christy Carr gave an overview of the one-year review timeline and its purpose.

NEW/OLD BUSINESS

Commissioner Lisa Macchio asked again about having a presentation to the Planning Commission by WSDOT for the Highway 305 planned roundabouts. Councilmember Blossom stated she would present their request to the Mayor, Deputy Mayor and the City Manager.

Chair Chester asked Ms. Carr for an update on the Design Guidelines process. The upcoming Planning Commission schedule was reviewed.

ADJOURN

The meeting was adjourned at 8:21 PM.

Approved by:

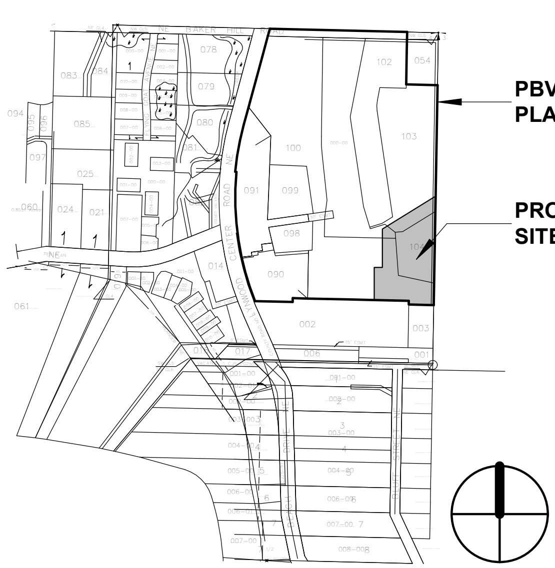
________________________________	________________________________
William Chester, Chair	Jane Rasely, Administrative Specialist

PBV FAIRYLAND

PROJECT DIRECTORY

OWNER:	PBPBS, LLC 5424 SANDPOINT WAY NE SEATTLE, WA 98105 TEL: (206) 527.3801 EMAIL: GGUSTAFSON@WINDERMERE.COM
ARCHITECT:	WENZLAU ARCHITECTS CHARLIE WENZLAU 490 MADISON AVENUE NORTH #105 BAINBRIDGE ISLAND, WA 98110 TEL: (206) 780.6882 FAX: (206) 780.9288 CHARLIE@WENZLAUARCHITECTS.COM
LANDSCAPE ARCHITECT:	FISCHER BOUMA 9141 SALMON RUN LANE BAINBRIDGE ISLAND, WA 98110 TEL: (206) 780.5651
CIVIL ENGINEER:	MAP, LTD. 11309 CLEAR CREEK ROAD SILVERDALE, WA 98383

VICINITY MAP



PROJECT INFORMATION

TAX PARCEL:	LOT E: #042402-1-100-2009 LOT H: #042402-1-103-2006 LOT J: #042402-1-104-2005
ADDRESS:	4746 LYNWOOD CENTER DRIVE NE BAINBRIDGE ISLAND, WA 98110
LOT AREA/DENSITY:	LOT E: .78AC (33,976 SF) PER BLA WITH LOT E LOT H: .21AC (9,132 SF) PER BLA WITH LOT H LOT J: .78AC (34,026 SF)
ALLOWABLE DENSITY:	PRE-BLA: 4 UNITS POST-BLA: 9 UNITS
ZONING:	R-5
SURROUNDING ZONING:	NORTH: R-5 SOUTH: R-5/NC EAST: R-1 WEST: R-5
SCOPE OF WORK:	7 RESIDENTIAL UNITS
LOT COVERAGE:	ALLOWABLE: 25% MAX.
HEIGHT LIMIT:	HEIGHT LIMIT: 25'
SETBACKS:	SETBACKS: FRONT: N/A SIDE: 15' COMBINED REAR: 15'
LANDSCAPE:	PERIMETER: NO REQUIREMENT (15' PER SPR APPROVAL)
CRTICAL AREAS:	SEVERE SOILS, SLOPE GREATER THAN 15%

DRAWING INDEX

5/10/2019 11:35:09 AM (DRAWING SCALED FOR 11" X 17" PAPER SIZE)

WENZLAU ARCHITECTS
490 MADISON AVE N., SUITE 105
BAINBRIDGE ISLAND, WA 98110
WWW.WENZLAUARCHITECTS.COM
M 206.780.6882

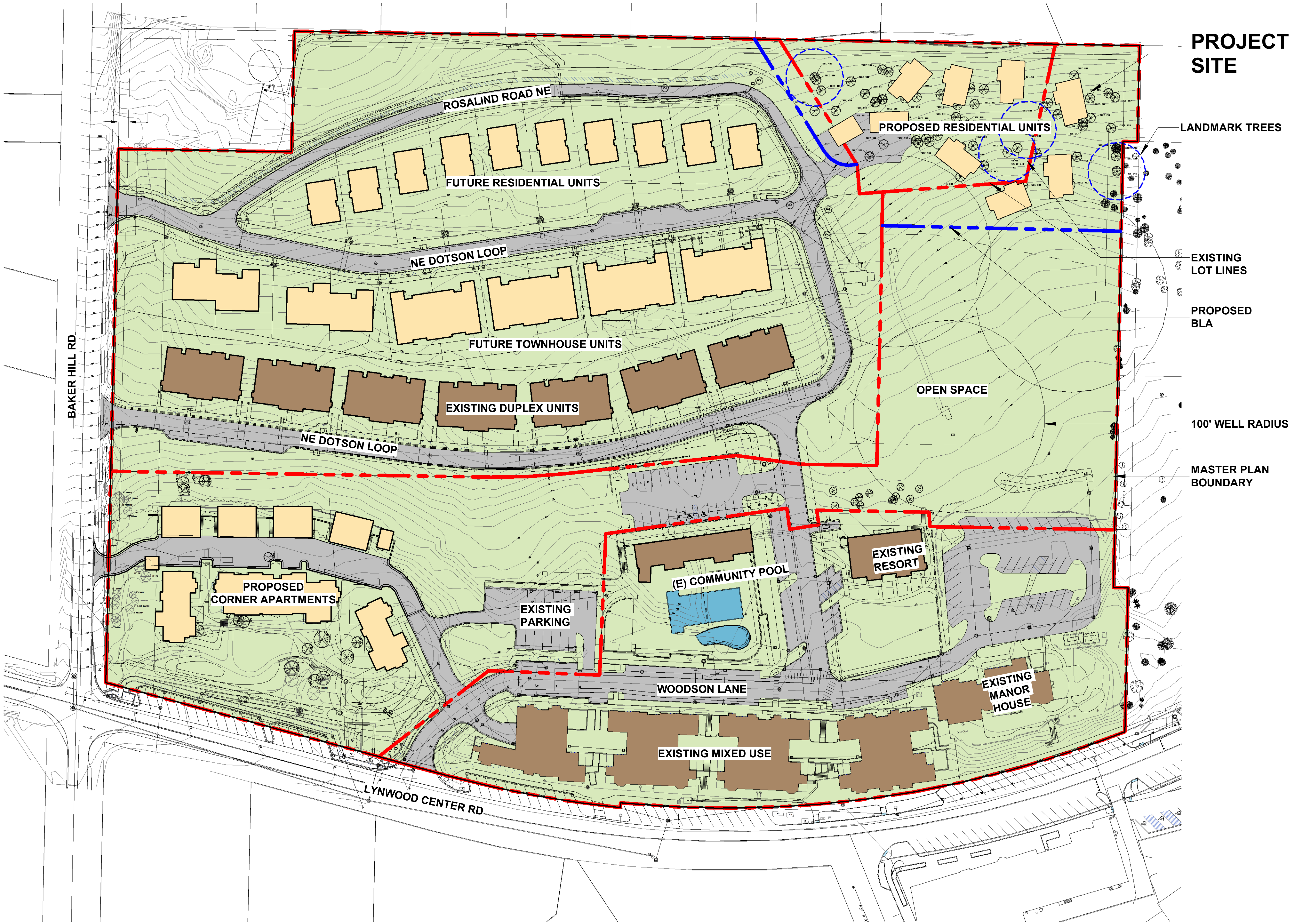
PBV FAIRYLAND
LYNNWOOD CENTER ROAD, NE
BAINBRIDGE ISLAND, WA 98110
OWNER: PBPBS, LLC

PUBLIC MEETING

PROJECT		1822
DATE		05/23/19
N0.	DESCRIPTION	DATE

COVER

A 1



1 MASTER SITE PLAN
1" = 100'-0"

0 40' - 0" 80' - 0"

5/10/2019 11:35:14 AM (DRAWING SCALED FOR 11" X 17" PAPER SIZE)

WENZLAU ARCHITECTS
490 MADISON AVE N., SUITE 105
BAINBRIDGE ISLAND, WA 98110
WWW.WENZLAUARCHITECTS.COM
206.780.6882

PBV FAIRYLAND

LYNNWOOD CENTER ROAD, NE
BAINBRIDGE ISLAND, WA 98110

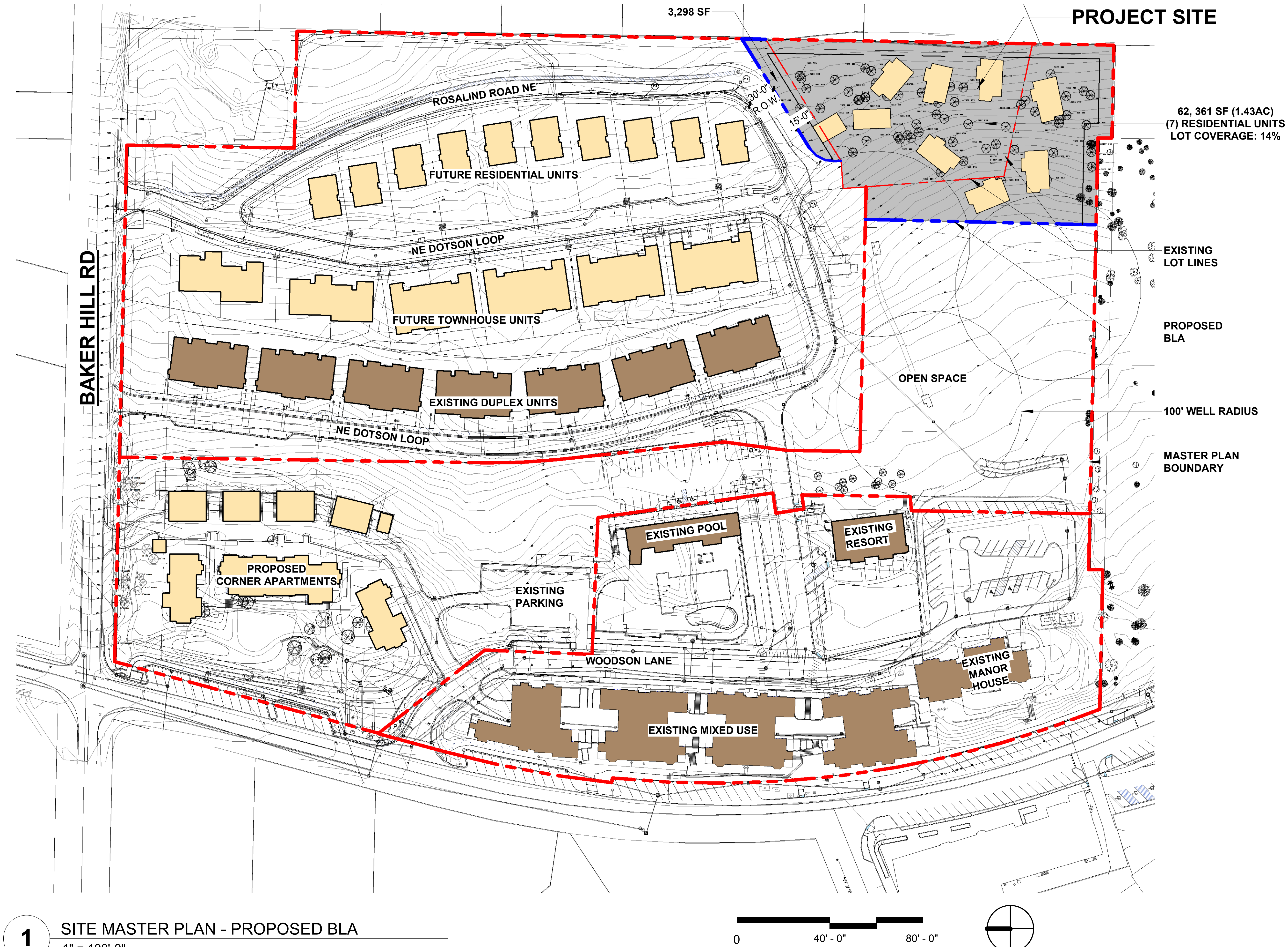
OWNER: PBPBS, LLC

PUBLIC MEETING

PROJECT		1822
DATE		05/23/19
NO.	DESCRIPTION	DATE

MASTER PLAN

A 2



1 SITE MASTER PLAN - PROPOSED BLA

1" = 100'-0"

5/10/2019 11:35:18 AM (DRAWING SCALED FOR 11" X 17" PAPER SIZE)

WENZLAU ARCHITECTS

490 MADISON AVE N., SUITE 105
BAINBRIDGE ISLAND, WA 98110
WWW.WENZLAUARCHITECTS.COM
206.780.6882

PBV FAIRYLAND

LYNNWOOD CENTER ROAD, NE
BAINBRIDGE ISLAND, WA 98110

OWNER: PBPBS, LLC

PUBLIC MEETING

PROJECT	1822
DATE	05/23/19

NO.	DESCRIPTION	DATE

BLA

A 3

CONTEXT MAP (NOT TO SCALE)

WENZLAU ARCHITECTS
490 MADISON AVE N., SUITE 105
BAINBRIDGE ISLAND, WA 98110
WWW.WENZLAUARCHITECTS.COM
T. 206.780 688

PBV FAIRYLAND

LYNNWOOD CENTER RD, NE
BAINBRIDGE ISLAND, WA 98110

OWNER: PBPBS, LLC

PUBLIC MEETING

PROJECT	1822
DATE	05/23/19

CONTEXT MAP

A 4

1 SITE PLAN
1/32" = 1'-0"

5/10/2019 11:35:24 AM (DRAWING SCALED FOR 11" X 17" PAPER SIZE)

WENZLAU ARCHITECTS
490 MADISON AVE N., SUITE 105
BAINBRIDGE ISLAND, WA 98110
WWW.WENZLAUARCHITECTS.COM
M 206.780.6882

PBV FAIRYLAND

LYNNWOOD CENTER ROAD, NE
BAINBRIDGE ISLAND, WA 98110

OWNER: PBPBS, LLC

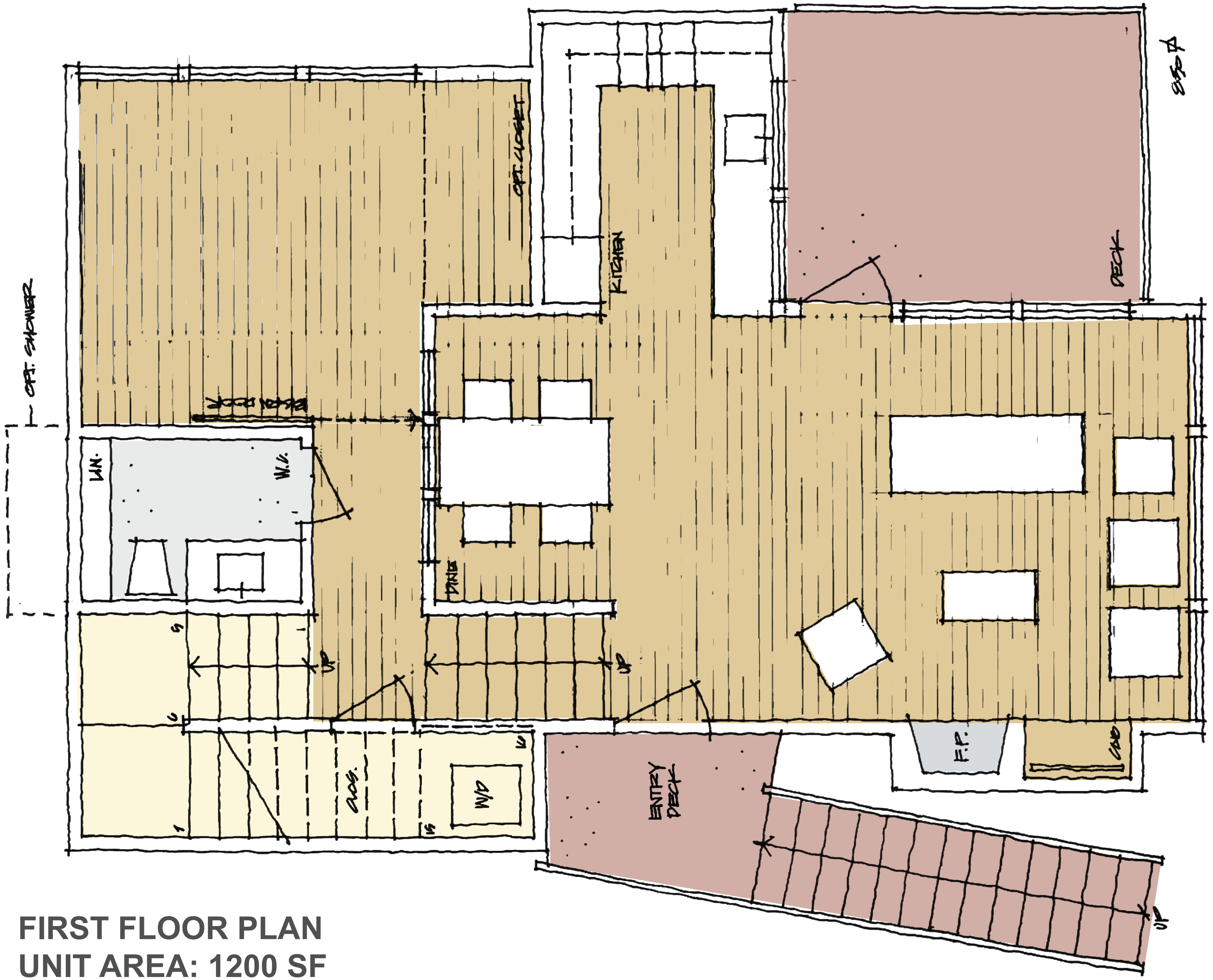
PUBLIC MEETING

PROJECT	1822
DATE	05/23/19

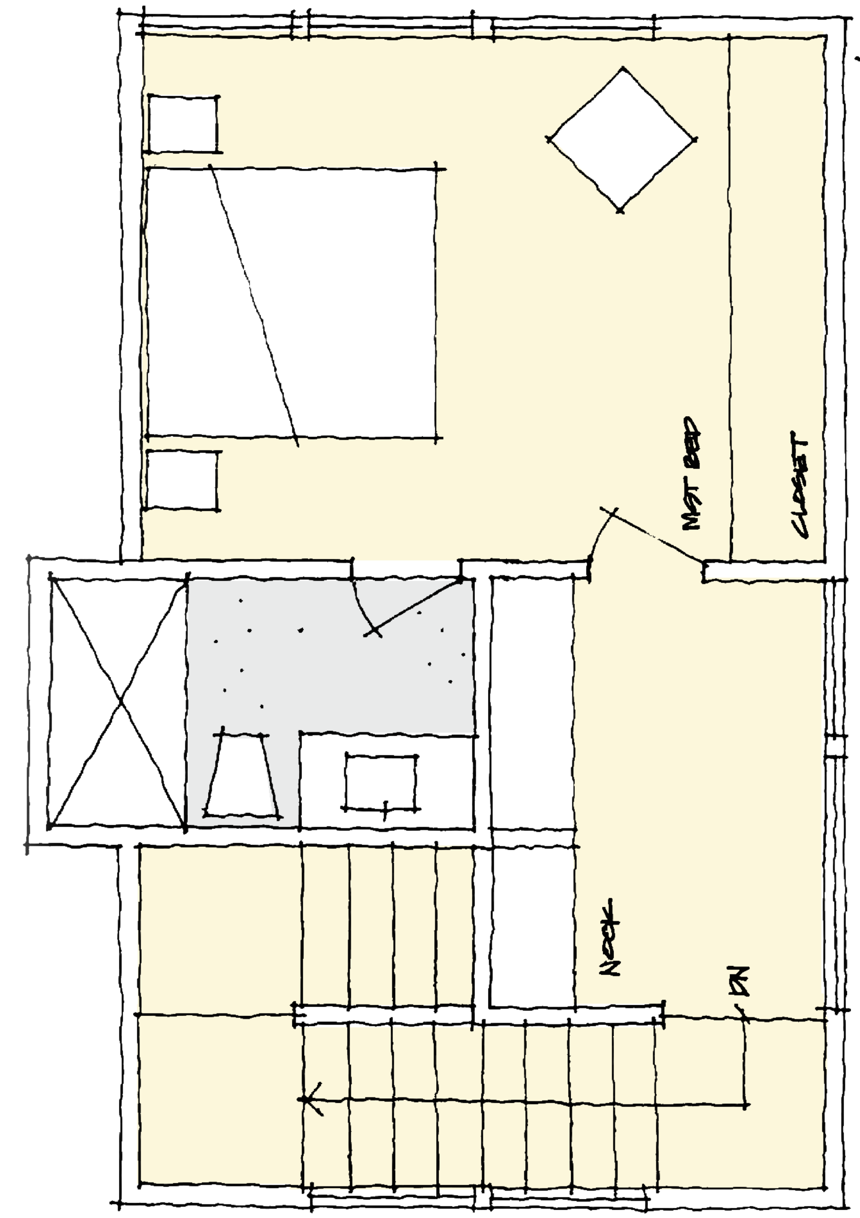
NO.	DESCRIPTION	DATE

PARTIAL SITE PLAN

A 5



FIRST FLOOR PLAN
UNIT AREA: 1200 SF



SECOND FLOOR PLAN

SCALE: 1/4" = 1'-0"

0 0' - 0 1/4" 0' - 0 1/2"

WENZLAU ARCHITECTS
490M ADISONA VE N., SUITE 105
BAINBRIDGE ISLAND, WA 98110
WWW.WENZLAUARCHITECTS.COM
T. 206.780 688

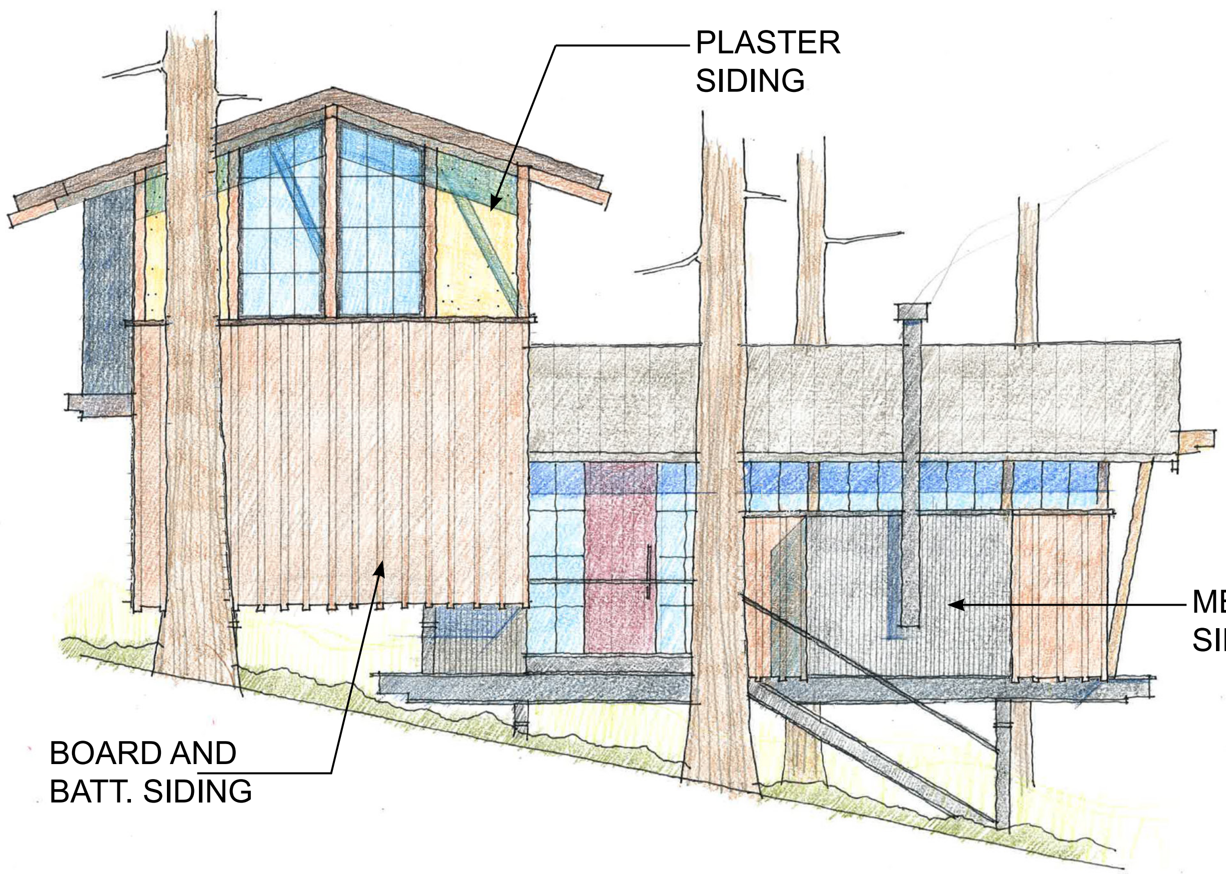
PBV FAIRYLAND
LYNNWOOD CENTER RD, NE
BAINBRIDGE ISLAND, WA 98110
OWNER: PBPBS, LLC

PUBLIC MEETING

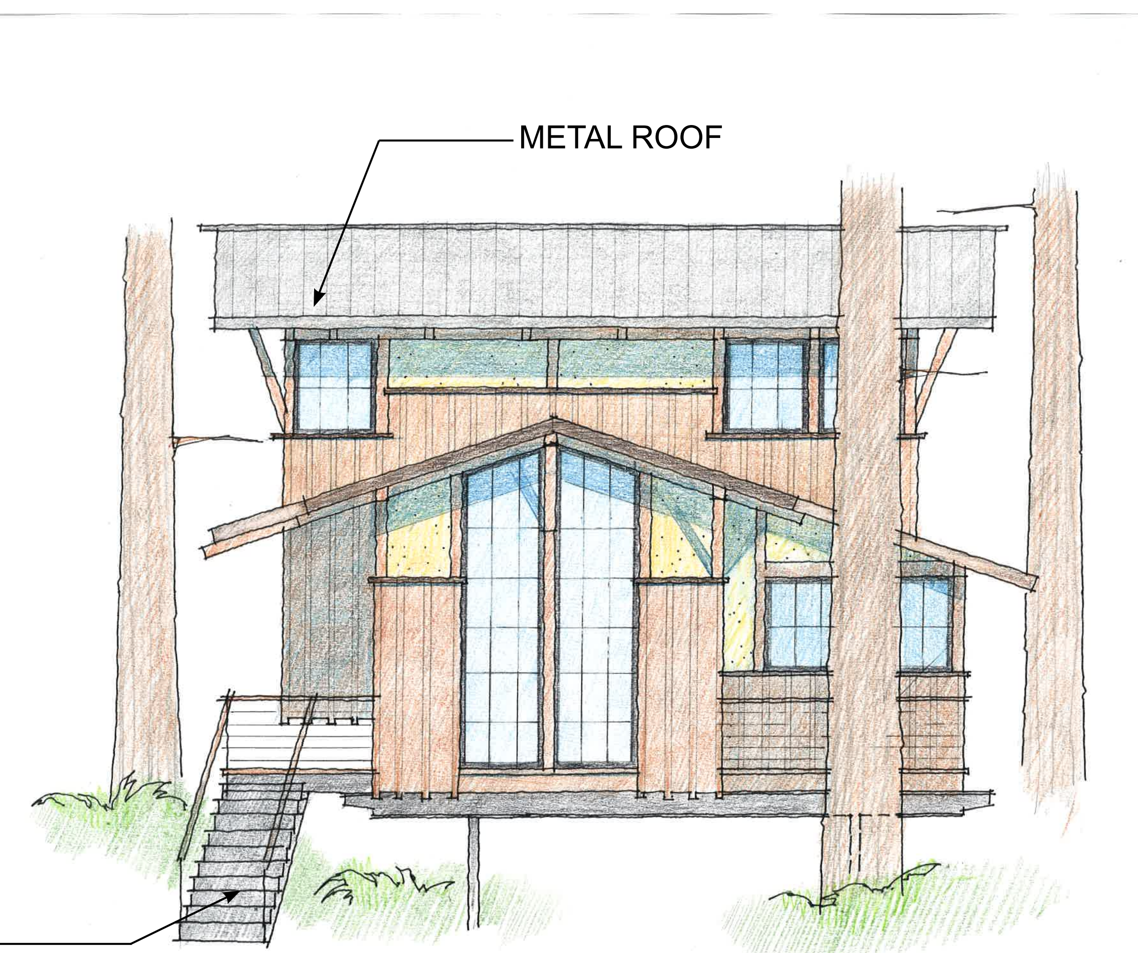
PROJECT	1822
DATE	05/23/19

FLOOR PLANS

A 6



NORTH ELEVATION



WEST ELEVATION

SCALE: 1/8” = 1’-0”

0 0' - 0 1/8" 0' - 0 1/4"

WENZLAU ARCHITECTS
490M ADISONA VE N., SUITE 105
BAINBRIDGE ISLAND, WA 98110
WWW.WENZLAUARCHITECTS.COM
T. 206.780 688

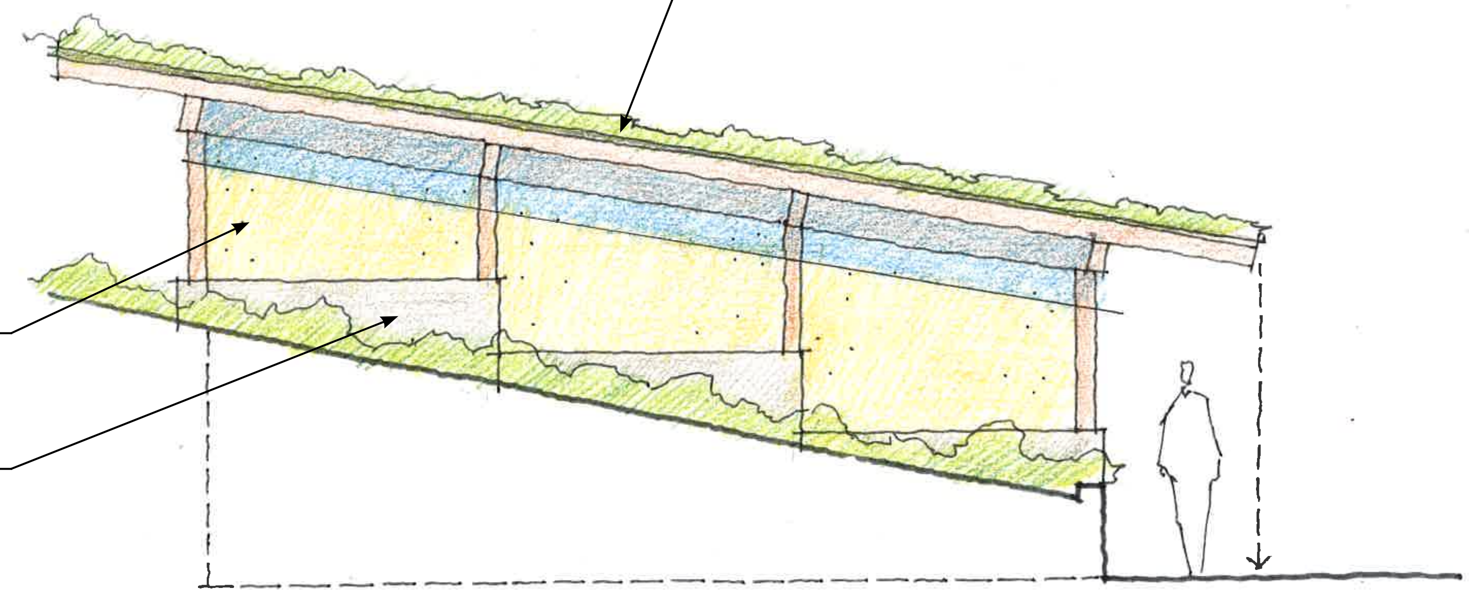
PBV FAIRYLAND
LYNNWOOD CENTER RD, NE
BAINBRIDGE ISLAND, WA 98110
OWNER: PBPBS, LLC

PUBLIC MEETING

PROJECT	1822
DATE	05/23/19

ELEVATIONS

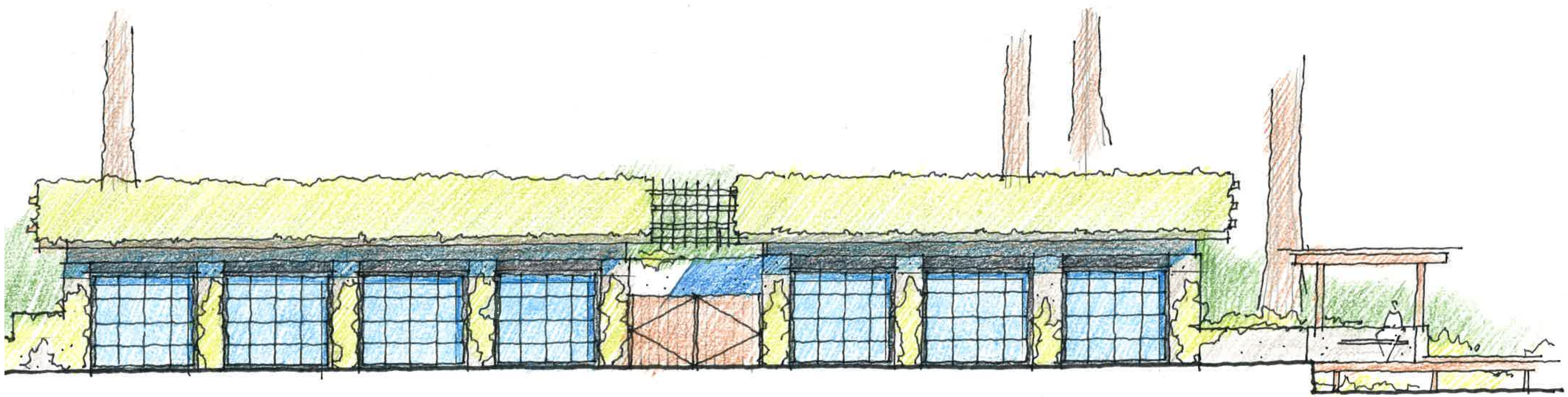
A 7



NORTH ELEVATION @ GARAGE

SCALE: 1/4" = 1'-0"

0 0' - 0 1/4" 0' - 0 1/2"



WEST ELEVATION @ GARAGE

SCALE: 1/8" = 1'-0"

0 0' - 0 1/8" 0' - 0 1/4"

WENZLAU ARCHITECTS
490M ADISONA VE N., SUITE 105
BAINBRIDGE ISLAND, WA 98110
WWW.WENZLAUARCHITECTS.COM
T. 206.780 688

PBV FAIRYLAND

LYNNWOOD CENTER RD, NE
BAINBRIDGE ISLAND, WA 98110

OWNER: PBPBS, LLC

PUBLIC MEETING

PROJECT	1822
DATE	05/23/19

ELEVATIONS

A 8

CITY OF BAINBRIDGE ISLAND

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

MEMORANDUM

Date:	May 23, 2019
To:	Planning Commission
From:	Jennifer Sutton, AICP Senior Planner
Subject:	Update to BIMC Chapter 16.16.030 Noise Variances & BIMC Chapters 2.14 & 2.16 Development Code "Housekeeping" Changes

I. BACKGROUND

The Department of Planning and Community Development staff have identified many areas of the development code (BIMC Chapters 2.14, 2.16 and 18) that could be clarified, updated or where there are errors in need of correction. For Planning Commission review, the proposed updates have been divided into three categories:

1) General "Housekeeping"
2) Reconsidering Planning Commission role in approving *Noise Variances*
3) Updates to the BIMC Sections 2.16.040 (*Site Plan and Design Review*) and 2.16.050/110 (*Conditional Use Permits*) related to clarifying applicability and exemptions and reviewing decision criteria.

The Planning Commission last discussed this agenda item on April 25. The discussion at that meeting focused primarily on:

- The Planning Commission role in granting noise variances (see BIMC Chapter 16.16.030);
- The City Attorney's suggestions for adopting Rules of Procedure for the Hearing Examiner (see BIMC Chapter 2.14 & 2.16.100);
- The staff proposal to have all zoning variances related to single-family residences be reviewed as minor variances (see BIMC Chapter 2.16.060);
- Removing (or reducing) the newly adopted requirement that future short plat applicants participate in a public participation meeting with the Planning Commission during the pre-application phase of development (see BIMC Section 2.16.070.D.3).

Policy direction that the Planning Commission gave staff at that meeting have been integrated into the attached strikeout/underline text. The Commission had expressed an interest in having most if not all of code sections where there was a change suggested. The summary table provides page numbers to the longer strikeout/underline version and provides an explanation for the proposed change. The attached strikeout/underline version shows the full sections where the changes may be informed by the entire section. However in longer code sections, staff only included the sections where there were changes proposed, such as BIMC Section 2.16.020 and the SMP Administration section, BIMC Section 2.16.165. All changes are highlighted for easier reading.

II. Meeting Purpose

The Planning Commission Study Session should become familiar with the proposed changes, and provide policy direction to staff for the changes that require it, such as the Commission's role in *Noise Variances* and *Minor Variances* for single-family residences.

III. Next Steps

June 13 or 27: Planning Commission Study Session on Proposed Update to Site Plan and Design Review (SPR, BIMC Section 2.16.040) and Minor/Major Conditional Use Permit Chapters (CUP, BIMC Section 2.16.050/110) and additional housekeeping changes to BIMC Title 18 *Zoning*.

A public hearing will then be scheduled depending on the Planning Commission review and calendar.

UPDATED Housekeeping & Clarification Title 2 Code Updates

Code Section	Suggested Edit, Correction
16.16.030	**Noise Regulations:** Change Noise Variance Procedure from Planning Commission Public Hearing to Administrative Decision by Planning or Public Works Director. Process would consider project information, nature of work to be done, mitigation measures.
2.14.030	Pages 1-2**;** Requested by Legal: Subsection 2.14.030.C.2.b updated related to Hearing Examiner (HEX) *Rules of Procedure*
Table 2.16.010-1	Pages 3-5; Update Tree Removal Permit Title, delete repealed Vegetation Management Permit; amend double asterisk under Table 2.16.020-1 could be revised to omit the language about sending decisions to SEPA agencies – decisions go to “agencies with jurisdiction”. Delete reference to Major SPR for B/I zone, see Section 2.16.040.
2.16.020.M	Pages 6-9 BIMC 2.16.020.M.2, General cleanup and clarification throughout noticing section.
2.16.020.Q	Page 10; City Surveyor fixing language related to changing short plats or subdivisions to be consistent with RCW 58.17.215 terminology. The terms “amendment” or “modification” updated to “alteration”
2.16.020.R	Page 10-12; Legal: Subsection 2.16.020.R.1.c updated related to Hearing Examiner *Rules of Procedure* and subsection R.2 is clarified
2.16.030	Pages 13-15 Applicability section updated to reflect that CAO and SMP permit procedures are now located in Chapter 2.16. Deleted outdated flowchart. Each permit section has its own flowchart.
2.16.060.B.1	Page 16-17; Check that minor variances are limited to these situations specifically. Consider if variances related to single-family residential development should always be considered minor.
2.16.070	Pages 19-28; City Surveyor fixing language related to changing short plats or subdivisions to be consistent with RCW 58.17.215 terminology. The terms “amendment” or “modification” updated to “alteration”
2.16.070.D	Pages 19-28 (see page 20)Reconsider requiring a Public Participation Meeting (PPM) for short plats as part of the preapplication process, 2.16.070.D.3. This PPM at the Planning Commission is a new requirement for short plats that was adopted in December as part of the larger *Land Use Permit Review Procedures* ordinance. A PPM has long been required for Long Subdivisions, and Major SPRs and CUPs, although the requirement for these to take place at a Planning Commission meeting was new. The city processes many more short plats (absence the moratorium) than any other type of permit, and this requirement, if it remains, will add substantially to the Commissions work schedule.
2.16.080	Pages 28-32; City Surveyor fixing language related to changing short plats or subdivisions to be consistent with RCW 58.17.215 terminology. The terms “amendment” or “modification” updated to “alteration”
2.16.100	Pages 33-35 Legal: 2.16.100.C.4,C.6, C.7 & C.9 updated related to HEX *Rules of Procedure*

Code Section	Suggested Edit, Correction
2.16.120	Pages 35; Major Variance Chapter; City Surveyor fixing language related to changing short plats or subdivisions to be consistent with RCW 58.17.215 terminology. The terms “amendment” or “modification” updated to “alteration”. No substantive changes proposed to major variance chapter
2.16.125	Pages 36-42 (see p 41); City Surveyor fixing language related to changing short plats or subdivisions to be consistent with RCW 58.17.215 terminology. The terms “amendment” or “modification” updated to “alteration”
2.16.160	Pages 42-45; City Surveyor fixing language related to changing short plats or subdivisions to be consistent with RCW 58.17.215 terminology. The terms “amendment” or “modification” updated to “alteration”
2.16.165.E.2.f	Page 46; Shoreline Exemption section References the same section of WAC twice- 2nd reference can be deleted
2.16.165.F.1	Page 47; Revise SSDP section “……fair market value exceeds $7,047 ~~$6,416~~ or any development…” to reflect State 2017 adjustment for inflation, which occurs on a five-year cycle.
2.16.165.F.4	Page 49; Needs to state that SSDP decisions get filed with WA State Dept. of Ecology and State Attorney General
2.16.165.H.3	Pages 51-54; Typo: This is the Shoreline CUP section, but it references shoreline variances
2.16.180	Page 55; Include a better description of the process for legislative review of land use regulations, to differentiate from area wide rezones – as written, it describes the process for area-wide rezones.

BIMC Chapter 16.16 Noise Regulations

16.16.001 Declaration of policy.
The city council finds that inadequately controlled noise adversely affects the health, safety and welfare of the people, the value of property, and the quality of the environment. Therefore, it is declared to be the policy of the city to minimize the exposure of citizens to the harmful, physiological and psychological effects of excessive noise. It is the express intent of the city to control the level of noise in a manner which promotes use, value and enjoyment of property, sleep and repose, and quality of the environment and commerce. (Ord. 2001-04 § 1, 2001)

16.16.005 Definitions.
"Self-help housing program" means an affordable housing program sponsored by a nonprofit housing organization, which requires that an owner perform a certain percentage of construction labor, earning a portion of equity in the home. These programs are also known as "sweat equity" programs. (Ord. 2001-04 § 2, 2001)

16.16.010 Motor vehicle noise performance standards.
WAC 173-62-020, 173-62-030 and 173-62-040 are adopted by reference. (Ord. 75-13 § 1, 1975)

16.16.020 Maximum environmental noise levels.
WAC 173-60-020, 173-60-040 and 173-60-090 are adopted by reference. WAC 173-60-050 is also adopted by reference, except as to WAC 173-60-050(3)(a). (Ord. 2001-04 § 3, 2001; Ord. 75-13 § 2, 1975)

16.16.025 Limitation on construction activities.
The following noise limitations apply to construction activities in residential zones (Class A EDNAs):

A. Construction activities within residential zones or within 100 feet of residential zones shall be prohibited between the hours of 7:00 p.m. and 7:00 a.m. on weekdays that do not constitute legal holidays.

B. Construction activities within residential zones or within 100 feet of residential zones shall be prohibited before 9:00 a.m. and after 6:00 p.m. on Saturdays that do not constitute legal holidays.

C. Construction activities within residential zones or within 100 feet of residential zones shall be prohibited on Sundays and all legal holidays except that work on the inside of an enclosed structure may occur between the hours of 10:00 a.m. and 4:00 p.m.

D. For purposes of this section, "construction activities" means any site preparation, assembly, construction, erection, demolition, substantial repair, alteration or similar action on property, buildings, structures or utilities. "Construction activities" shall not include activities involving projects by homeowners for home improvements, maintenance or repair of residential structures, grounds and appurtenances or homeowners building their house under a self-help housing program, which activities shall continue to be governed by BIMC 16.16.020.

16.16.030 Variance procedures.
A variance from the provisions of BIMC 16.16.020 may be granted by the Director of Planning and Community Development ~~planning commission~~ pursuant to the procedures outlined in 2.16.030 Administrative review – In general. For any such variance, application shall be made in writing and upon forms provided by the city and no variance shall be granted for longer than 30 days, except after a public hearing has been held. ~~The planning commission may, in its discretion, hold a public hearing on any application when substantial public interest is shown.~~ Any person may appeal the granting or denial of a

variance by the planning commission by filing an appeal with the Pollution Control Hearing Board pursuant to Chapter 43.21B RCW under the procedures of Chapter 371-08 WAC.

16.16.040 Designation of zoned areas.
The EDNA (Environmental Designation for Noise Abatement) is established as follows:

A. Residential zones, Class A EDNA;

B. Commercial zones, Class B EDNA;

C. Industrial zones, Class C EDNA. (Ord. 75-13 § 4, 1975)

16.16.050 Violation – Penalty.
A. Violations – Unlawful. The violation or failure to comply with any provisions of this chapter is declared to be unlawful.

B. Civil Infraction. Any violation of any provision of this chapter is a civil infraction as provided in Chapter 1.26 BIMC for which a monetary penalty may be assessed. The monetary penalty shall be as follows:

> 1. If a person violates this chapter and has not committed a violation under this chapter at any location within the city in the two-year period preceding the most recent violation, a warning citation shall be issued but no monetary penalty shall be assessed.
>
> 2. If a person violates this chapter and has previously committed one or more violations under this chapter at any location in the city within the two-year period preceding the most recent violation, a citation shall be issued assessing a monetary penalty as established by city council resolution.

16.16.060 Enforcement and authority – Civil infractions.
The police department and the code enforcement officer shall be responsible for the enforcement of this chapter and are authorized to issue, serve and file notice of infraction in the manner set forth in Chapter 1.26 BIMC for violations of the provisions of this chapter.

2.14.030 Hearing examiner.

A. Policy. The conduct of public hearings in quasi-judicial matters generally involves disputed issues. It is in the best interest of the residents of the city to create officers designated in this chapter as "hearing examiners," whose duties shall be judicial in nature. Whenever any ordinance of the city requires a public hearing to be conducted by the hearing examiner, the hearing shall be conducted in accordance with the procedures established in Chapter 2.16 BIMC.

B. Qualifications – Appointment – Term – Removal. Each hearing examiner shall be appointed by the city manager, confirmed by the city council, and shall serve for a term of two years. As required by WAC 242-02-040, each appointed hearing examiner shall be someone who has a demonstrated knowledge of land use planning and law and shall meet any additional qualifications specified by city council resolution. The appointed hearing examiner shall be removed only (1) upon conviction of a gross misdemeanor or felony, (2) because of physical or mental disability rendering the hearing examiner incapable of performing the duties of the office, (3) upon conviction of a violation of subsection D of this section, or (4) upon conviction of a violation of Chapter 42.23 RCW, the violation of which shall constitute a misdemeanor under this code.

C. Hearing Examiner Responsibilities and Duties.[1]

1. The hearing examiner is responsible for conducting hearings on and adjudicating quasi-judicial cases involving a variety of complex land use and regulatory compliance issues, and other issues which the city council may designate to the hearing examiner by ordinance or resolution. The hearing examiner shall issue decisions or recommendations based on relevant ordinances, regulations, policies, statutes, and other authorities.

2. Duties. In addition to any other duty established by ordinance or resolution, the hearing examiner:

a. Supervises and evaluates the work of employees as required;

b. Develops ~~procedural rules~~ rules of procedure for the scheduling and conduct of hearings and related matters, which shall be adopted by the city council by resolution. Such rules of procedure may be amended from time to time by resolution of the city council, ~~Such rules shall~~ will be published on the City's website and available from the office of the city clerk upon request;

c. Reviews properties that are the subject of hearings to become familiar with the terrain and relationships to other properties;

d. Receives and examines hearing related documents, and reviews case files, city codes and policies, environmental impact statements, plot plans and topographical maps;

e. Evaluates testimony and evidence, prepares records, enters final written findings, and imposes conditions to conform projects to city ordinances and land use policies;

f. Maintains knowledge of current relevant state and city land use laws, policies and related state and federal court decisions;

g. Prepares reports and correspondence to the city manager, city council, and planning commission as requested;

h. Prepares and submits annual written reports to the city manager and city council, including how many hearings have been conducted, the final outcome of hearings, the time required to issue decisions and the cost of hearings;

i. Meets with the city manager, city council, planning commission and staff as requested, to identify conflicts in the code; and

j. When necessary, recommends candidates for pro tem hearing examiner, for approval by the city manager.

D. Noninterference in Performance of Duties. No person shall attempt to influence the hearing examiner in the performance of duties. The hearing examiner shall not discuss the merits of any case considered by the hearing examiner until all city review and court appeals have been concluded and a final decision has been rendered. Any violation of this provision shall be deemed a misdemeanor and may be punished pursuant to Chapter 1.24 BIMC.

E. Legal Counsel for Hearing Examiner. General legal advice to the hearing examiner will be provided by the city attorney, except that in a contested case where the city will be represented by the city attorney, the mayor may appoint independent counsel to render legal advice to the hearing examiner, the cost of which shall be borne by the city.

F. Disqualification of Hearing Examiner.

1. The hearing examiner on his or her own initiative may enter an order of disqualification in the event of personal bias or prejudice or to preserve the appearance of fairness.

2. Prior to any hearing on a matter, a party may file an affidavit, which is a sworn statement in writing and under oath, stating that such party cannot have a fair and impartial hearing by reason of the hearing examiner's personal bias or prejudice. The hearing examiner shall rule on the affidavit prior to making other ruling and prior to the hearing. No party shall be permitted to file more than one such affidavit under this section in regard to any one proceeding. (Ord. 2011-23 § 1, 2011; Ord. 2011-02 § 2 (Exh. A), 2011)

2.16.010 Land use procedures summary table.

Table 2.16.010-1: Summary Table of Land Use Procedures

R = Review and Recommendation, (R) = Optional Review, D = Decision, A = Appeal, P = Public Hearing, (P) = Optional Public Hearing						
	DRB	**Planning Comm.**	**Director**	**Hearing Examiner**	**City Council**	**Courts**
Administrative Approvals						
~~Clearing Permit~~ Tree Removal/Vegetation Maintenance Permit			D	A		
Conversion Option Harvest Plan Permit			D	A		
Minor Conditional Use	(R)	(R)	D	A		
Minor Variance		(R)	D	A		
Agricultural Conditional Use			D	A		
Large Lot Subdivisions (Prelim)	R	R	D	A		
(Final)			D			A
Minor Shoreline Variance [1]		(R)	D	A		A [2]
Minor Shoreline Conditional Use [1]		(R)	D	A		A [2]
Public Works Administrative Decisions			D			A
SEPA Determinations			D	A		
Shoreline Substantial Development Exemption [1]			D	A		
Shoreline Substantial Development [1]		(R)	D	A		A [2]

R = Review and Recommendation, (R) = Optional Review, D = Decision, A = Appeal, P = Public Hearing, (P) = Optional Public Hearing						
	DRB	**Planning Comm.**	**Director**	**Hearing Examiner**	**City Council**	**Courts**
Short Subdivisions (Prelim)	(R)	(R)	D	A		
(Final)			D	A		A
Sign Permits			D			A
Minor Site Plan and Design Review	(R)	(R)	D	A		
Major Site Plan and Design Review ~~(Any SPR in the B/I district must be processed through a major SPR)~~	R	R	D	A		
Critical Area Permit – Major and Minor			D	A		
All other administrative decisions: This includes agricultural retail plans, boundary line adjustments (See BIMC 2.16.090), building and other construction permits, building administrative decisions~~, clearing permits~~, BIMC interpretations~~, vegetation management permit~~, extension of construction noise hours (See BIMC 16.16.025), and any other administrative land use decision authorized by this code to be made by the director.						
Quasi-Judicial Decisions by the Hearing Examiner						
Conditional Use Permits	R	R	R	D/P		A
Variances		(R)	R	D/P		A
Reasonable Use Exception (See BIMC 16.20.080)		(R)	R	D/P		A
Major Shoreline Variances [1]		(R)	R	D/P		A [2]
Major Shoreline Conditional Use Permits [1]	R	R	R	D/P		A [2]
Long Subdivisions (Prelim)	R	R	R	D		A
Quasi-Judicial Decisions by City Council						
Long Subdivisions (Final)			R		D	A

R = Review and Recommendation, (R) = Optional Review, D = Decision, A = Appeal, P = Public Hearing, (P) = Optional Public Hearing						
	DRB	**Planning Comm.**	**Director**	**Hearing Examiner**	**City Council**	**Courts**
Site-Specific Rezones		(R)	R	R/P	D	A
Consolidated Project Review						
See BIMC 2.16.170						
Legislative Approvals						
Adoption or Amendment of Development Regulations		R/P	R		D (P)	A
Comprehensive Plan Amendments		R/P	R		D (P)	A
Legislative Area-Wide Rezones		R/P	R		D (P)	A
Special Area Plans		R/P	R		D (P)	A

[1] City decisions on shoreline variances, shoreline substantial development permits, and shoreline conditional use permits must be reviewed by the Washington Department of Ecology pursuant to WAC 173-27-130 and RCW 90.58.140(10). The Department of Ecology may approve, approve with conditions, or deny the application.

[2] The hearing examiner's decision is forwarded to the Department of Ecology (DOE) for decision. The DOE decision is then appealable to the Shoreline Hearings Board. (See BIMC 2.16.165.I.)

2.16.020 General provisions.

2.16.020.M. Notice Requirements.

1. Land Use Notice Summary Table.

Table 2.16.020-1 Land Use Notice Summary Table

	Mail, Fax, E-mail, or Other to Applicant	Mail, Fax, or E-mail to Depts., Public, and Others	Publishing in Newspaper	Posting Notice at Official Locations	Posting Sign on the Property
Notice of Complete Application	X				
Notice of Application and Public Comment Period*		X	X	X	X
Notice of Public Hearing	X	X	X	X	X
Notice of Decision and Appeal Period	X	X **			

* May be combined with SEPA notice.

** Notice only goes to parties that commented during public comment period and any agencies with jurisdiction~~; if the application includes SEPA, notice of decision goes to SEPA agencies also~~.

~~2. Types of Notifications for Land Use Decisions. All applications, except those exempted in subsection M.2 of this section, require the following notifications:~~

~~a. Notice of complete application; and~~

~~b. Notice of application and public comment period*; and~~

~~c. Notice of public hearing, if a public hearing is required; and~~

~~d. Notice of decision and appeal period.~~

~~* If the optional process is used pursuant to subsection M.8 of this section, this will include SEPA comment period.~~

3. Exemptions from Public Notice Requirements on Land Use Decisions. The following land use applications do not require a notice of application and public comment period or notice of decision:

a. A building permit or other construction permit~~, unless a notice of intent to construct in geologically hazardous areas is required under BIMC 16.20.140~~.

b. An administrative decision that is categorically exempt under SEPA (Chapter 43.21C RCW), unless the permit application procedures require a public comment period or public hearing. Flexible lot design short or long plats are not exempt from notice requirements.

4. Notice of Complete Land Use Decision Application.

a. Within 28 days after receiving a land use permit application, the department director shall ~~either mail, fax, or otherwise~~ provide to the applicant a written determination, stating either that the application is complete or that the application is incomplete and what is necessary to make the application complete. If the application is determined to be incomplete, the department director will request additional information in writing.

b. Within 14 days after an applicant has submitted all additional information identified by the department director as being necessary for a complete application, the department director shall notify the applicant whether the application is complete or what additional information is necessary.

c. If the department director does not provide a written determination as to whether the application is complete within the 28 days, the application shall be deemed complete as of the twenty-eighth day.

5. Notice of Application and Public Comment Period.

a. Time of Notice. Within 14 days of a notice of complete application, the department director shall issue a notice of application for any land use application except for those applications that are exempted pursuant to subsection M.3 of this section. The notice of application shall provide a minimum comment period of 21 days. However, for projects requiring review under the State Environmental Policy Act (SEPA), the notice of application shall provide a minimum comment period of 14 days; the SEPA threshold determination shall not be issued prior to the expiration of the notice of application comment period.

b. Method of Notice. The notice of application shall be provided to the public and other government agencies with jurisdiction over some aspect of the application by the following means:

i. Distributing written notice to property owners at addresses listed on the property tax records of Kitsap County within 500 feet of any boundary of the subject property and including any property within 500 feet of any contiguous property in the applicant's ownership;

ii. Posting notice in the official posting places of the city, including the city website;

iii. Publishing notice in the official newspaper of the city;

iv. Posting the subject property in a manner prescribed by the city; and

v. Distributing notices to government agencies.

c. Notice of Application Contents. The content of the notice shall comply with the requirements of state law and shall contain that information set forth in the administrative manual.

d. Transportation Notice. If the application is for a short subdivision or a large lot subdivision that is adjacent to the right-of-way of a state highway or within two miles of the boundary of a state or municipal airport, not later than 10 days after the short subdivision application is filed, the director shall provide a notice of the application, including a legal description and location map, to the State Secretary of Transportation. The Department of Transportation shall, within 15 days after receiving the notice, submit a statement to the director who furnished the notice, including any information that the Department of Transportation deems to be relevant about the effect of the proposed short subdivision or large lot subdivision upon the legal access to the state highway, the traffic carrying capacity of the state highway and the safety of the users of the state highway. If comments are not received within 15 days, the director may extend the comment period by an additional 15 days to allow for Department of Transportation comments.

6. Notice of Public Hearing. Notice for an application requiring a public hearing shall be provided in the following manner:

a. Time of Notice. The hearing examiner shall provide notice of the public hearing at least 15 days prior to the hearing or as otherwise provided by law.

b. Method of Notice. The hearing examiner shall provide notice of an appeal hearing as provided in this subsection M.6.b and shall provide public notice for any other public hearing by:

i. Posting notice in the official posting places of the city, including the city website; and

ii. Publishing notice in the official newspaper of the city at least 14 days prior to the hearing or as otherwise provided by law; and

iii. Distributing notice to the applicant and appellant, if applicable; and

iv. Distributing written notice to property owners at addresses listed on the property tax records of Kitsap County within 500 feet of any boundary of the subject property and including any property within 500 feet of any contiguous property in the applicant's ownership; and

v. Distributing notice to any person who has submitted a written request for notice of the hearing; and

vi. Posting the subject property in a manner prescribed by the city.

c. Public Hearing Notice Contents. The content of the notice shall comply with the requirements of state law and shall contain that information set forth in the administrative manual.

7. Notice of Land Use Decision and Appeal Period. A notice of decision shall be issued upon a final decision on a land use application. The decision-maker shall distribute the notice of decision to the applicant, the applicable department director and any persons requesting notice or submitting comments on the application prior to the decision. Notice of decision shall include:

a. A statement indicating that the application is approved, approved with conditions, denied, or remanded; and

b. A statement of any conditions included as part of a decision for approval or approval with conditions; and

c. A statement of facts upon which the decision, including any conditions, is based and the conclusions of law derived from those facts; and

d. The SEPA threshold determination and mitigation conditions as specified in Chapter 16.04 BIMC, if applicable; and

e. Procedures for appeal under subsection R of this section if applicable.

8. Combining Public Notices on Land Use Applications. If a land use application is subject to environmental review under Chapter 16.04 BIMC (Chapter 43.21C RCW) and requires a SEPA threshold determination, the SEPA public notice and notice of SEPA public comment period, if any, shall be combined with other land use application notices when possible. A combined notice shall include a statement that a single comment letter may be submitted to the SEPA official, addressing impacts as well as other issues subject to review under the decision criteria for the land use application.

9. Notice Required for Legislative Review Procedures. Unless subsection M.10 or 11 of this section requires otherwise, notice of the date, time and place of any scheduled hearing shall be provided to the public by the following means:

a. Publishing notice in the official newspaper of the city at least 10 calendar days prior to the public hearing.

b. Posting notice in the official posting places of the city.

10. Notice Required for Adoption and Amendment of Land Use Regulations.

a. The city shall give notice of the public hearing in a way that is reasonably calculated to provide notice to property owners and other affected and interested individuals, tribes, government agencies, businesses, and organizations. Examples of reasonable notice include:

i. Posting the property for site-specific proposals;

ii. Publishing notice in the official newspaper of the city;

iii. Notifying public or private groups who have notified the city of an interest in a certain proposal or in the type of proposal being considered.

b. Notice of the public hearing shall state when the public may submit written comments on the proposed development regulation; provided, that the public shall be given at least 10 days prior to the scheduled public hearing to submit written comments to the city.

c. Errors in exact compliance with this chapter shall not render the development regulation invalid if the spirit of the procedures established by this chapter is observed.

11. Notice Required for Special Area Plan Process. The interdepartmental staff team described in BIMC 2.16.210.D shall provide notice to the public of the initial public meeting by (a) mailing notice, by regular mail, at least 10 days prior to the date of the meeting, to all interested persons and groups identified by the interdepartmental staff team, and to all persons requesting such notice; and (b) publishing notice in the city's official newspaper at least 10 days prior to the date of the meeting.

2.16.020.Q. Approval Binding.

No person, firm or corporation shall locate or expand a use for which any land use approval is required without first obtaining that land use approval. Once a land use application has been approved, no building or development of any sort shall occur contrary to the approved land use application unless this title includes a procedure for adjustments or ~~modifications~~ alterations and the city has approved those adjustments or ~~modifications~~ alterations.

2.16.020.R. Appeals.

1. Appeal of an Administrative Review Decision.

a. Applicability. All administrative decisions, departmental rulings and interpretations made in accordance with administrative review procedures of BIMC 2.16.030 and administrative decisions made under BIMC 1.26.070 may be appealed to a hearing examiner. Administrative decisions of the public works director and decisions on sign permits may not be appealed to the hearing examiner.

b. SEPA Appeals. Appeals of decisions made in accordance with Chapter 16.04 BIMC, the city's SEPA rules, shall be made according to the procedures in that chapter. Where the appeal concerns a substantive approval, denial, or conditional approval of a development application based on a SEPA determination (a "substantive SEPA appeal"), the appeal hearing shall be pursuant to subsection R.1.i of this section. Where the appeal concerns a threshold determination regarding the applicability of SEPA or the level of SEPA review required (a "procedural SEPA appeal"), the appeal shall also be pursuant to subsection R.1.i of this section, but, if heard on the same date, the procedural SEPA appeal shall be heard first and the record of the proceeding closed before the substantive appeals are heard.

c. Rules. The rules of procedure adopted under BIMC 2.14.030.C.2.b shall address appeal hearings before the hearing examiner. ~~Any~~ Such rules of procedure for appeal hearings ~~adopted by the hearing examiner~~ shall be kept published on the City's website and available from ~~on file with~~ the office of the city clerk ~~and shall be provided to any person filing an appeal~~ upon request.

d. Timing. An appeal of an administrative decision shall be filed with the city clerk within 14 days of the date of the decision. This provision applies when the application (i) is exempt from SEPA or (ii) is subject to SEPA and uses the "optional process." An appeal of an administrative decision shall be filed with the city clerk within 21 days of the date of decision when the project is subject to SEPA and requires a SEPA threshold determination public comment period pursuant to WAC 197-11-340.

e. Written Appeal Required. All appeals shall be filed in writing with the city clerk, shall identify the decision appealed and the date of the decision, and shall contain a summary of the grounds for the appeal.

f. Content of Appeal. Appeal hearings shall be limited to the issues specified in the written appeal.

g. Hearing Date. Following receipt of a notice of appeal and payment of the appropriate fee, a public hearing shall be set by the hearing examiner.

h. Related Documents. All written comments and related documents received prior to the appeal hearing shall be transmitted to the hearing examiner no later than the hearing date. In the case of complex or controversial appeals, the city may require that some or all materials be submitted two or more days in advance of the hearing date.

i. Appeal Hearing. As stated in RCW 43.21C.075, because a major purpose of SEPA is to combine environmental considerations with public decisions, any appeal brought under this section shall be linked to a specific governmental action. The State Environmental Policy Act provides a basis for challenging whether governmental action is in compliance with the substantive and procedural provisions of this chapter. The State Environmental Policy Act is not intended to create a cause of action unrelated to a specific governmental action. The appeal shall be heard in accordance with RCW 43.21C.075. The appeal shall be held at an open record public hearing. Participation in an appeal hearing is limited to the applicant, the applicant’s representative, the appellant, the appellant’s representative, appropriate city staff and consultants, any witnesses called by each and any nonparty who submitted written comments during the public comment period if the hearing examiner determines that the testimony will be relevant to the issue on appeal and nonrepetitive of the testimony of other witnesses.

i. In a SEPA procedural appeal, the procedural determination by the city’s SEPA official shall carry substantial weight.

ii. In an appeal of a substantive decision made by the city, the criteria shall be whether (A) the proceedings were materially affected by failure to comply with adopted procedures, or (B) the decision is inconsistent with the BIMC criteria for that type of approval, or (C) the evidence in the record was not adequate to support the decision.

iii. In an appeal on the substance of a SEPA determination, or substantive conditions attached to an approval through the SEPA review process, the determination by the city’s SEPA official shall carry substantial weight.

j. Continuation of Hearing. A hearing may be continued to a date certain without additional notice.

k. Decision. Upon completion of the appeal hearing, the hearing examiner shall (i) affirm the decision, (ii) reverse the decision, (iii) affirm the decision with conditions, or (iv) remand the decision to the department director for further consideration of identified issues. The decision of the director shall be accorded substantial weight by the hearing examiner. The hearing examiner may include conditions as part of a decision granting or granting with conditions an appeal to ensure conformance with BIMC, the city’s comprehensive plan and other applicable laws or regulations.

l. Timing of Written Decision. The hearing examiner shall issue a written decision on the appeal within 20 working days after completion of the public hearing unless the appellant and the hearing examiner have consented to an extension of time. The written decision shall include (i) the decision of the hearing examiner granting or denying the appeal in whole or in part; (ii) any conditions included as part of the decision on the appeal; (iii) findings of facts upon which the decision, including any conditions, is based and the conclusions of law derived from those facts; and (iv) a statement of the right of a person with standing to appeal the decision of the hearing examiner in accordance with Chapter 36.70C RCW.

m. Distribution. The hearing examiner or designee body shall provide a copy of the written decision to the applicant, the appellant, the applicable department director, and any person requesting the written decision or who submitted substantive comments on the application prior to the decision.

2. Appeal of a Decision of the Hearing Examiner. The decision of the hearing examiner shall be final unless, within 21 days after issuance of a decision, a person with standing appeals the decision in accordance with Chapter 36.70C RCW or its successor.

3. Appeal of a City Council Decision on a Quasi-Judicial Matter. The decision of the city council shall be final unless, within 21 days after issuance of a decision, a person with standing appeals the decision in accordance with Chapter 36.70C RCW or its successor.

4. Appeals of a City Council Decision on a Legislative Matter. Appeal of a city council decision on a development regulation, area-wide rezone and comprehensive plan amendment is governed by state law.

2.16.030 Administrative review – In general.

A. Purpose. The purpose of this section is to establish procedures for administrative decision-making on land use applications. These provisions apply when BIMC does not describe more detailed administrative procedures for a specific type of application, and also supplement those more specific administrative procedures where they exist. If there is an inconsistency between these general administrative provisions and more detailed administrative provisions for a specific type of application elsewhere in the BIMC, the more specific provisions shall govern.

B. Applicability. This section applies generally each time a provision of the BIMC authorizes administrative review of a land use application. Permit specific review requirements are in relevant subsections.~~, except site plan and design review (which is covered under BIMC 2.16.040),~~ ~~including those administrative approvals described in Chapter 16.12 BIMC, with the exception of shoreline substantial development permit applications, shoreline conditional use permit applications, and shoreline variance applications, which must go to the Washington Department of Ecology pursuant to WAC 173-27-130 and RCW 90.58.140(10) for a 21-day appeal period.~~ The specific types of applications subject to administrative review are listed in the table in BIMC 2.16.010. When an application requires both an administrative approval under BIMC Title 17 or Title 18 and also a shoreline jurisdiction approval under Chapter 16.12 BIMC, those approvals may be processed simultaneously.

C. Public Comment. Any person may comment on a proposed application by submitting written comments prior to the end of the notice of application 21-day comment period (except for those applications for which no notice is required under BIMC 2.16.020.M).

D. Decision Procedures.

1. Criteria for Decision. In making the decision, the department director shall consider the applicable decision criteria of this code, all other applicable law, and any necessary documents and approvals. When no other criteria are specified, the director shall apply the following criteria:

a. The application must comply with all applicable requirements of the BIMC as well as state and federal law.

b. The application is consistent with the adopted comprehensive plan, and specifically with the character or intended character of the area in which the property is located, as described in the comprehensive plan.

2. Environmental Review. For a land use application subject to Chapter 43.21C RCW and Chapter 16.04 BIMC, a SEPA threshold determination may be issued simultaneously with the final decision of the land use application.

3. Planning Commission Recommendation. When written public comments are received during the public comment period concerning the effect of the land use application on the comprehensive plan, shoreline master program or matters not addressed by specific provisions of this code, the director may request the planning commission to review an application and make a written recommendation prior to the director making a decision. The planning commission will consider the land use application at a public meeting. The planning commission shall recommend approval, approval with conditions or denial of an application. In making a recommendation, the planning commission shall consider the applicable decision criteria of this code, all other applicable law, and any necessary documents and approvals. If the applicable criteria are not met, the planning commission shall recommend the proposal be modified or denied. A planning

commission recommendation is not a final decision and therefore there is no appeal of the recommendation. The planning commission's written recommendation and other documents upon which its decision is based shall be immediately transmitted to the director.

E. Single Report.

1. The department director shall prepare a single consolidated report setting forth all the recommendations and decisions made on the application as of the date of the report.

2. The report shall state any mitigation required or proposed under the development regulations or as required through SEPA, Chapter 43.21C RCW. The report shall include the SEPA determination if a determination has not previously been issued.

3. If an administrative shoreline master program permit is required for the project pursuant to Chapter 16.12 BIMC, the report shall address the requirements of that chapter.

F. Department Director Decision. The department director may approve, approve with conditions, or deny the application based on the decision criteria, findings of fact, recommendations of the planning commission and design review board as applicable, and any necessary documents and approvals.

G. Corrections or Clarification. The department director may amend the decision at any time to correct clerical errors clearly identifiable from the public record. Such a correction does not affect any time limit provided for in this chapter. The department director may clarify a statement in the written decision at any time as long as the clarification does not materially alter the decision.

H. Effect of Decision. The decision of the department director is the final decision of the city, subject to the appeal provisions in BIMC 2.16.020.R.

I. Revocation of Administrative Approvals. An administrative approval may be revoked by the director upon the finding of any one or more of the following:

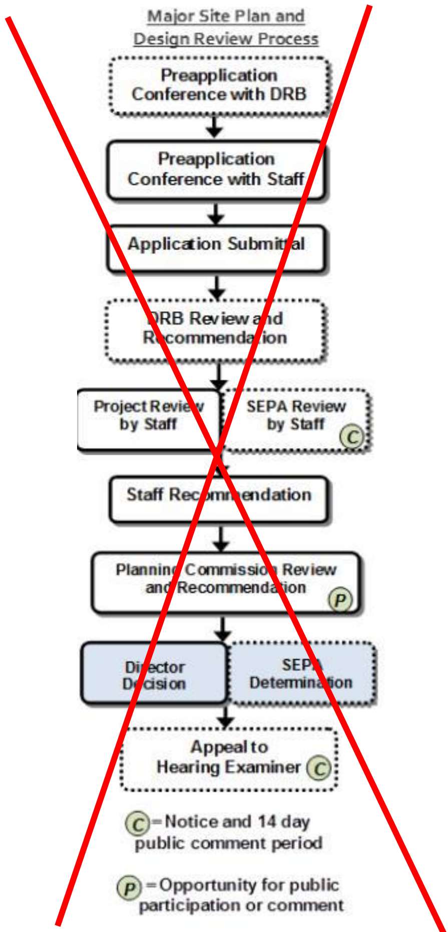
1. That the approval was obtained by deception, fraud or other intentional or misleading representation; or

2. That the use for which approval was granted has been changed; or

3. In the case of minor conditional use permits, that the use has at any time been discontinued for a year or more; or

4. That the permit granted is being exercised contrary to the terms or conditions of such approval or in violation of the code; or

5. That the use for which the approval was granted was so exercised as to be detrimental to the public health or safety.


Major Site Plan and
Design Review Process
Preapplication
Conference with DRB
Preapplication
Conference with Staff
Application Submittal
DRB Review and
Recommendation
Project Review
by Staff
SEPA Review
by Staff
Staff Recommendation
Planning Commission Review
and Recommendation
Director
Decision
SEPA
Determination
Appeal to
Hearing Examiner
C =Notice and 14 day
public comment period
P =Opportunity for public
participation or comment

2.16.060 Minor variance.

A. Purpose. Variances are the mechanism by which the city may grant relief from the provisions of the zoning ordinance or the city of Bainbridge Island engineering and development standards where practical difficulty renders compliance with certain provisions of the code an unnecessary hardship, where the hardship is a result of the physical characteristics of the subject property and where the purpose of the comprehensive plan is fulfilled. **A variance is authorized only for lot coverage, size of setbacks and/or technical engineering standards. Variances are not authorized for changes in density requirements, building or structure height requirements, open space requirements, or expanding a use otherwise prohibited.** **EXISTING CODE EMPHASIZED BY STAFF**

B. Applicability.

1. The minor variance process may be used for minor deviations from zoning standards in BIMC Title 18 as determined by the director. Minor projects should be limited to: (a) projects that are exempt from review under the State Environmental Policy Act (SEPA), or (b) proposals for less than a 25 percent encroachment in required yards, ~~or~~ (c) proposals of less than a 25 percent increase in lot coverage, or (d) proposals to locate a single-family residence on an existing lot. All other variances shall be processed using the procedures set forth in BIMC 2.16.120.

2. This process may also be used for minor variation(s) from the engineering requirements of the adopted city of Bainbridge Island engineering and development standards if the requested variation will further the purposes of the BIMC and is approved by the department director, after recommendation by the city engineer and/or the fire marshal.

3. For projects participating in a housing design demonstration project pursuant to BIMC 2.16.020.S, design guidelines may be varied if the applicant can demonstrate that deviation from the guidelines will facilitate meeting goals of the housing design demonstration program.

4. This procedure is not available to obtain variances from subdivision standards in BIMC Title 17 or to obtain variances from BIMC Title 18 zoning standards cross-referenced in BIMC Title 17 as part of a short subdivision, long subdivision, or large lot subdivision approval or ~~amendment~~ alterations process, except for those engineering standards covered by subsection B.2 of this section.

5. This procedure is not available to allow the siting for an accessory dwelling unit where it would not otherwise be permitted.

6. A variance shall not be granted solely because of the presence of nonconformities in the vicinity of the subject site.

7. The provisions of this section shall supplement those of BIMC 2.16.020 and 2.16.030. In the event of a conflict between the provisions of BIMC 2.16.020 or 2.16.030 and this section, the provisions of this section shall govern.

C. Procedures. Minor variances shall be approved through the general administrative review procedures described in BIMC 2.16.030 except as described below. Application materials for minor variances can be found in the administrative manual.

D. Decision Criteria.

1. A minor variance may be approved or approved with conditions if:

a. The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the property is located; and

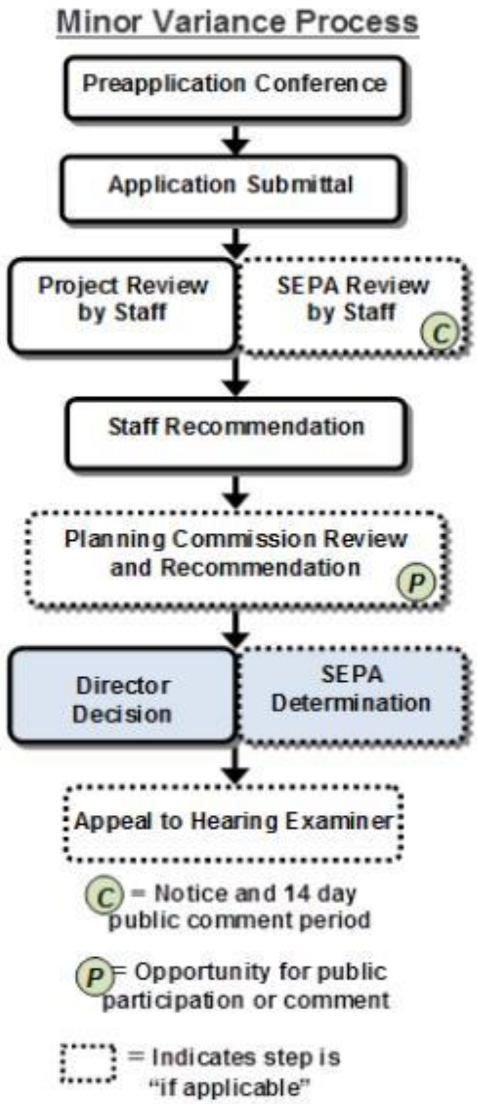
b. The variance is requested because of special circumstances related to the size, shape, topography, trees, groundcover, location or surroundings of the subject property, or factors necessary for the successful installation of a solar energy system such as a particular orientation of a building for the purposes of providing solar access; and

c. The need for a variance has not arisen from previous actions taken or proposed by the applicant; and

d. The variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same vicinity and zone, but that is denied to the property in question because of special circumstances on the property in question, and will not constitute a grant of special privilege inconsistent with the limitations upon uses of other properties in the vicinity in which the property is located; and

e. The variance is consistent with all other provisions of this code, except those provisions that are subject to the variance, and is in accord with the comprehensive plan.

2. A variance may be approved with conditions. If no reasonable conditions can be imposed that ensure the application meets the decision criteria in subsection D.1 of this section, then the application shall be denied.



E. Conversion to Major Variance. If a minor variance application has received written public comments during the notice of application comment period concerning the effect on the land use application of the comprehensive plan, shoreline master program or matters not addressed by specific provisions of the BIMC, the director may determine that the application be processed as a major variance. (Ord. 2011-02 § 2 (Exh. A), 2011)

2.16.070 Short subdivisions.

A. Purpose. This section provides an administrative procedure for approving subdivision plats including four lots or less.

B. Applicability. This procedure applies to all short subdivisions. Short subdivisions involve the division or redivision of land into four lots or less when those plats meet the criteria set forth in BIMC Title 17.

C. General Procedures.

1. Short subdivisions shall be approved through the general administrative review procedures described in BIMC 2.16.030 except as described below. Application materials for short subdivisions can be found in the administrative manual.

2. Short subdivisions shall not be used, either by a person alone or by persons acting together, at one time or over a period of time, as a means to circumvent compliance with the more stringent subdivision requirements that control the subdivision of land into five or more lots. When an application for a short subdivision is filed within five years after the approval of a short subdivision on a contiguous land parcel, a presumption of an attempt to circumvent short subdivision requirements may be invoked by the director as a basis for further investigation to assure compliance with the intent of this provision.

3. The provisions of this section shall supplement those of BIMC 2.16.020 and 2.16.030 when the application is for a short subdivision. In the event of a conflict between the provisions of BIMC 2.16.020 or 2.16.030 and this section, the provisions of this section shall govern.

4. Vesting. A proposed short subdivision shall be considered under the subdivision ordinance, zoning or other land use control ordinances, and the State Environmental Policy Act in effect at the time a fully completed application for preliminary approval of the subdivision has been submitted to the city. The requirements for a fully completed application shall be defined by the administrative manual.

5. Timeline for Review. The city has 90 calendar days from the filing of a complete application in which to approve, disapprove, or return the application to the applicant for modification. The timeline for review can be extended beyond 90 calendar days if the city determines it has incomplete or insufficient application materials and/or if there are significant changes to application materials. If no action can be taken to approve or disapprove the application within the 90 calendar days, the director must notify the applicant of the reasons for the delay and steps necessary to complete the application.

D. Review Procedures – Proposal Stage. Review of short subdivision proposals shall include all of the following except that the division or redivision of land into two lots shall not be required to comply with subsections D.1 and D.2 of this section:

1. Conceptual Proposal Review Meeting. The conceptual proposal review meeting is a means of screening short subdivision proposals in their earliest stages of design before proponents are committed to a particular design. The conceptual proposal meeting is an opportunity to ensure that the proponent understands the objectives of the review process, design guidelines, and comprehensive plan goals and policies. This early touch allows review bodies to dialogue in an informal manner with the applicant, review the design guidelines and comprehensive plan goals

and policies applicable to the site, and explore design concepts and/or options. It is also a means for staff to acquaint the prospective applicant with the procedural steps for subdivision review. The conceptual proposal review meeting will be held at a meeting of the design review board. Submittal requirements are described in the administrative manual, and include a statement of intent, site analysis, and context map. An applicant may request a waiver from the conceptual proposal review meeting if the applicant demonstrates knowledge and understanding of the city's permit processing procedures.

2. Design Guidance Review Meeting. The design guidance review meeting is intended to provide input and guidance to an applicant on consistency with applicable design guidelines and comprehensive plan goals and policies, including recommendations for how the project could be revised to achieve greater consistency. The applicant should also make known the potential need and rationale for any departure from the design guidelines or the city of Bainbridge Island design and construction standards and specifications. The design guidance review meeting will be held at a meeting of the design review board. Submittal requirements are described in the administrative manual and include documentation of the four-step design process, schematic design, and completed subdivision design guidelines checklist. The four-step design process includes:

a. Delineate Natural Space. The applicant shall prioritize natural resources on the site in terms of their highest to least appropriateness for inclusion in the proposed natural area. On the basis of those priorities and practical considerations given to the site's configuration, its context in relation to natural areas on adjoining and neighboring properties, and the applicant's subdivision objectives, natural space shall be delineated in a manner clearly indicating boundaries as well as the types of resources. The amount of natural space required is provided in Chapter 17.12 BIMC.

b. Locate Homesites and Community Space. After delineating natural space, homesite areas and community space shall be identified (a "sketch" diagram is acceptable), using the site analysis and context maps produced for the conceptual proposal review meeting as a base map. The amount of community space required is provided in Chapter 17.12 BIMC.

c. Define Access. After locating the natural space, homesites, and community space, the access network shall be defined. The access network shall provide a safe, convenient, and efficient system for vehicular, pedestrian and bicycle circulation and minimize impacts on proposed natural space.

d. Draw Lot Lines. Upon completion of the preceding three steps, draw lot lines to delineate the boundaries of individual lots.

3. Preapplication Conference. The applicant shall participate in a preapplication conference in accordance with the provisions and requirements in BIMC 2.16.020.I. ~~As part of the preapplication phase, applicants are required to participate in a community meeting through the city's public participation program outlined in Resolution No. 2010-32, except that the community meeting shall be held at a planning commission meeting. The preapplication conference application shall be provided to the design review board and planning commission.~~

E. Review Procedures – Application Stage. Review of short subdivision applications shall include all of the following:

1. Application. An applicant may submit an application for a short subdivision at any time after completion of the required steps in subsection D of this section or approval of a waiver in accordance with BIMC 2.16.020.I.3 or I.4 or subsection D.1 of this section. The applicant shall submit a complete application with all required submittal requirements listed in the administrative manual.

2. Review by Kitsap Public Health District.

a. Upon receipt of the application and determination of completeness, the director shall transmit a copy of the application to the health district.

b. The health district shall provide written recommendation of approval, approval with conditions, or disapproval of the preliminary short subdivision application pursuant to the decision criteria in subsection F of this section.

3. Review by City Engineer.

a. Upon receipt of the application and determination of completeness, the director shall transmit a copy of the application to the city engineer.

b. The city engineer shall provide written recommendation of approval, approval with conditions, or disapproval of the preliminary short subdivision application pursuant to the decision criteria in subsection F of this section.

4. Review and Recommendation by Design Review Board.

a. Review and recommendation by the design review board is optional. The director shall determine whether review is necessary based on the major issues and specific aspects of the project and any written public comments received during the public comment period.

b. The purpose of the design review board review and recommendation meeting is to review a proposed project for compliance with applicable design guidelines and to ensure that the project reflects any revisions recommended by the design review board at the design guidance review meeting. The design review board will also consider any requested departures from the design guidelines.

c. The design review board will forward written findings, their determination of the project's consistency with the design guidelines, the design guideline checklist, and their recommendation, including any conditions, to the staff planner. Any condition attached to a recommendation must be intended to achieve consistency with one or more specific design guidelines. The design review board's written findings, conclusions, and recommendation will be included in the staff report transmitted to the director or planning commission.

d. A design review board recommendation is not a final decision and therefore there is no appeal of the recommendation.

5. Review and Recommendation by Planning Commission.

a. Review and recommendation by the planning commission is optional. The director shall determine whether review is necessary based on the major issues and specific aspects of the project, the design review board recommendation, and any written public comments received during the public comment period.

b. The purpose of the planning commission review and recommendation meeting is to review a proposed project for consistency with applicable design guidelines, BIMC Titles 17 and 18, and the comprehensive plan.

c. The planning commission shall consider the application at a public meeting where public comments will be taken. The planning commission shall recommend approval, approval with conditions or denial of an application. In making a recommendation, the planning commission shall consider the applicable decision criteria, all other applicable law, and the recommendation of the design review board. If the applicable criteria are not met, the planning commission shall recommend the proposal be modified or denied.

d. The design review board's recommendation shall hold substantial weight in the consideration of the application by the planning commission. Any deviation from the recommendation shall be documented in their written findings of facts and conclusions.

e. The planning commission will forward its written findings of facts and conclusions, their determination of the project's consistency with the comprehensive plan, and their recommendation, including any conditions attached by the planning commission and design review board, to the staff planner. The planning commission's written findings, conclusions and recommendation will be included in the staff report transmitted to the director.

f. A planning commission recommendation is not a final decision and therefore there is no appeal of the recommendation.

6. Review and Approval by Director.

a. The director shall review the application materials, information provided by the health district and city engineer, staff report, any public comments received, the recommendations of the design review board and the recommendations of the planning commission.

b. The director will make the final decision based on (i) the decision criteria in subsection F of this section, (ii) the recommendation of the planning commission, (iii) the recommendation of the design review board, and (iv) consideration of any public comments received. The design review board and planning commission's recommendation shall hold substantial weight in the consideration of the application by the director. Any deviation from that recommendation shall be documented in the director's report.

c. The director shall make compliance with the recommendations of the design review board and/or planning commission a condition of approval, unless the director concludes that the recommendations:

i. Reflect inconsistent application of design guidelines or any applicable provisions of this code;

ii. Exceed the authority of the design review board or planning commission;

iii. Conflict with SEPA conditions or other regulatory requirements applicable to the project; or

iv. Conflict with requirements of local, state, or federal law

d. The director shall prepare written findings of facts and conclusions in support of the decision made. If the director disapproves the application he or she shall provide a written explanation of the reasons for the disapproval to the applicant.

F. Decision Criteria for Short Subdivisions. The director's decision shall include written findings of fact addressing all the requirements of the following subsections. The short subdivision may be approved or approved with modification if:

1. The applicable subdivision design guidelines and development standards of BIMC Titles 17 and 18 are satisfied; and

2. The preliminary short subdivision makes appropriate provisions for the public health, safety and general and public use and interest, including those items listed in RCW 58.17.110; and

3. The short subdivision has been prepared consistent with the requirements of the four-step design process; and

4. Any portion of a short subdivision that contains a critical area, as defined in Chapter 16.20 BIMC, conforms to all requirements of that chapter; and

5. Any portion of a short subdivision within shoreline jurisdiction, as defined in Chapter 16.12 BIMC, conforms to all requirements of that chapter; and

6. The city engineer's recommendation contains determinations that the following decision criteria are met and such determinations are supported by substantial evidence within the record:

a. The short subdivision meets the requirements of Chapter 17.12 BIMC related to streets and pedestrian access, and water, stormwater, and septic facilities; and

b. The short subdivision conforms to regulations concerning drainage in Chapters 15.19, 15.20 and 15.21 BIMC; and

c. The short subdivision will not cause an undue burden on the drainage basin or water quality and will not unreasonably interfere with the use and enjoyment of properties downstream; and

d. If the short subdivision will rely on public water or sewer services, there is capacity in the water or sewer system (as applicable) to serve the short subdivision, and the applicable service(s) can be made available at the site; and

7. The proposal complies with all applicable provisions of this code; Chapters 36.70A and 58.17 RCW; and all other applicable provisions of state and federal laws and regulations; and

8. The proposal is consistent with the city's comprehensive plan; and

9. Appropriate provisions for maintenance in perpetuity of natural and/or community space have been made; and

10. The preliminary subdivision design is compatible with the physical characteristics of the proposed subdivision site.

G. *Repealed by Ord. 2018-20*.

H. Civil Plan Review.

1. The applicant shall submit civil engineering plans and designs to the city for review by city staff and acceptance by the city engineer before submitting an application for final short subdivision approval.

2. No construction on or to the site may take place until civil engineering plans have been received and approved by the city.

3. After the preliminary short subdivision and civil engineering plans have been approved the subdivider is authorized to develop the subdivision's facilities and improvements in strict accordance with standards established by this title, related standards in BIMC Titles 17 and 18, and any conditions imposed.

I. Review of Final Short Subdivision Application.

1. Timeline for Review. A final short subdivision shall be approved, disapproved or returned to the applicant within 30 working days from the date of a complete application, unless the applicant provides written consent to an extension of such time period.

2. Submittal of Final Plat.

a. A final plat shall be submitted containing all of the submittal requirements listed in the administrative manual.

b. Improvements shall be constructed and/or construction assurance documents pursuant to subsection N of this section must be filed for any unfulfilled conditions.

c. Documentation that all conditions of approval from the preliminary plat have been met shall be provided.

3. Duties of Surveyor. All final short subdivisions shall be prepared by a land surveyor registered pursuant to Chapter 18.43 RCW, shall be surveyed in accordance with current state regulations, and shall contain the certificate shown in the administrative manual. The lot corners, perimeter, and right-of-way monuments (if applicable) shall be marked in a manner approved by the city surveyor. The material used to mark the corners, perimeter, and right-of way monuments (if applicable) shall be described upon the face of the short subdivision drawing.

4. Review, Recommendation, and Approval.

a. The final plat must be consistent with the preliminary plat approval and all conditions of approval.

b. The city engineer shall review the final short subdivision to determine compliance with the requirements of RCW 58.17.160, the “City of Bainbridge Island Engineering Design and Development Standards Manual” (except as varied by the city engineer during the preliminary short plat review process), and any conditions imposed on the approved preliminary subdivision plat, and forward written recommendations for approval or disapproval to the director.

c. The health district when appropriate shall review the final short subdivision and forward recommendations for approval or disapproval to the department.

d. After receiving the city engineer’s recommendations pursuant to subsection I.4.b of this section, and the health district’s recommendations pursuant to subsection I.4.c of this section as applicable, the director shall approve or disapprove an application for final short subdivision.

e. The short subdivision plat shall be approved if the director determines that:

i. The final short subdivision meets all standards established by state law, this title, and related standards in BIMC Titles 15 through 18.

ii. The final short subdivision is in conformance with all terms and conditions of the preliminary short subdivision.

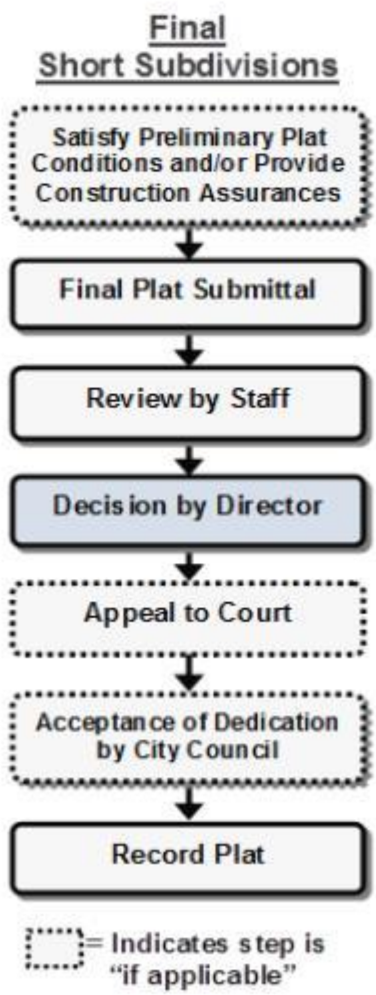
iii. The final short subdivision bears the certificates and statements of approval required by the BIMC.

f. If the application conforms to the criteria in subsection I.4.e of this section, the director shall signify his or her approval by signing the approval line on the face of the short subdivision. If the director disapproves the application, a written explanation shall be provided to the applicant.

g. If an applicant voluntarily sets aside more than 25 percent of the site as designated open space, that fact will be noted on the plat.

5. Amendment of Disapproved Application. When an application is disapproved, an applicant shall have 180 working days following the decision in which to file an amended application to remedy the matters that led to the disapproval. Upon receipt of such an amended application, the application shall be reviewed as set forth in this subsection. If an applicant files no such amended application within the period allowed, the application shall be considered denied.

6. Certification by Treasurer. Upon request of the city or the applicant for a short subdivision, the county treasurer, if no property taxes are owing upon the real property, shall so certify by subscribing the certification line upon the face of the short subdivision.



J. ~~Modification~~ Alteration of Preliminary or Final Short Subdivision before Filing.

1. An alteration to an approved preliminary short subdivision that does not change the general plat layout, increase off-site impacts of the subdivision, or modify a provision or condition that was a matter of dispute by any party during the preliminary approval process may be made by the director after notice and opportunity to comment are provided to the applicant and all parties of record. The director shall review and approve or disapprove the request for ~~modification~~ alteration following the process set forth in BIMC 2.16.030.

2. Other ~~modifications~~ alterations to an approved short subdivision must be reviewed in accordance with the process for a new short subdivision application, including payment of fees, and shall be approved consistent with the procedures and requirements of this section.

3. The following exemptions shall not constitute changes in the short subdivision approval and do not require further review as provided for under subsection J.1 or J.2 of this section:

a. Engineering detail, unless the proposed detail modifies or eliminates features specifically required as an element of the preliminary short subdivision approval. For purposes of this section, “engineering detail” shall mean minor changes to proposed road or lot grading or drainage design that do not significantly affect the location of those facilities, and minor changes to locations of utility pipes, swales, or wires that do not significantly affect their visibility from adjacent roads or properties, and similar minor changes;

b. Minor changes in lot lines or lot dimensions; or

c. Minor alterations regarding homesite location and/or open space usage.

K. Requirements for Filing Plat.

1. No short subdivision shall be presented to or accepted for filing with the county auditor unless the face of the short subdivision contains the approval of the director, and the certification of the treasurer that no tax, penalties, or delinquent assessments are owing on the subject property.

2. The applicant shall record the short subdivision with the county auditor within 90 days of approval, and shall provide a copy of the recorded subdivision to the department.

L. Further Subdivision. Land in a short subdivision may not be further divided through a short subdivision within a period of five years after the recording of the final short subdivision without the approval of a long subdivision pursuant to BIMC 2.16.125 and 2.16.160. Nothing in this section shall prevent the owner from filing an amendment within the five-year period to create up to a total of four lots within the original short subdivision boundaries.

M. Disclaimer as to Streets. Streets within a short subdivision shall not be maintained by the city unless such streets have been improved to current city standards and have been accepted as part of the approved short subdivision. Unless accepted, the responsibility for maintenance shall lie with the owners of the lots. In such case, the face of each short subdivision shall contain the following disclaimer:

Responsibility and expense for maintenance of streets serving lots within this short subdivision (unless such roads have been accepted by the city) shall rest with the lot owners.

N. Assurance of Improvements.

1. In lieu of completion of improvements with conditions of a preliminary short plat approval, the city engineer may accept an assurance device in an amount and in a form determined by the city council, but not to exceed 125 percent of the established costs of completing the infrastructure that secures and provides for the actual construction and installation of the improvements or the performance of the conditions within one year, or such additional time as the city engineer determines is appropriate after final plat approval.

2. The city engineer shall require an assurance device securing the successful performance of improvements for two years after the city’s acceptance of the improvements. The city may require that the applicant provide assurances of improvement for all lots in an approved short subdivision

before the city will approve final occupancy for more than 80 percent of the lots shown on the subdivision.

O. ~~Amendment~~ Alteration to Approved Short Subdivision. A short subdivision that has been approved and recorded may be amended upon application of the owners of all lots, access easements, open space, or other rights that are proposed to be amended. The contents and procedure for an amended application shall be that for an application in the first instance, except that minor alterations regarding home-site location and/or open space usage shall be approved administratively consistent with the procedures and requirements of BIMC 2.16.030. (Ord. 2018-20 § 8 (Exh. C), 2018; Ord. 2017-02 § 5, 2017; Ord. 2011-21 § 3, 2011; Ord. 2011-02 § 2 (Exh. A), 2011)

2.16.080 Large lot subdivisions.

A. Purpose. This section provides an administrative procedure for approving subdivisions in which all of the created lots are generally larger than five acres.

B. Applicability. This procedure applies to all large lot subdivisions. Large lot subdivisions include divisions or redivisions of land so that each created lot contains at least five acres of land (or 1/128th of a section of land, whichever is less).

C. General Procedures.

1. The provisions of this section shall supplement the general administrative review provisions of BIMC 2.16.020 and 2.16.030 when the application is for a large lot subdivision. In the event of a conflict between the provisions of BIMC 2.16.020 or 2.16.030 and this section, the provisions of this section shall govern.

2. Large lot subdivisions shall be reviewed and approved through the procedures described for short subdivisions in BIMC 2.16.070.D through F, with the exception that design review board and planning commission review and recommendation are required, not optional.

3. Vesting. A proposed large lot subdivision shall be considered under the subdivision ordinance, zoning or other land use control ordinances, and the State Environmental Policy Act in effect at the time a fully completed application for preliminary approval of the subdivision has been submitted to the city. The requirements for a fully completed application shall be defined by the administrative manual.

4. Timeline for Review. The city has 90 calendar days from the filing of a complete application in which to approve, disapprove, or return the application to the applicant for modification. The timeline for review can be extended beyond 90 calendar days if the city determines it has incomplete or insufficient application materials and/or if there are significant changes to application materials. If no action can be taken to approve or disapprove the application within the 90 calendar days, the director must notify the applicant of the reasons for the delay and steps necessary to complete the application.

D. *Repealed by Ord. 2018-20*.

E. *Repealed by Ord. 2018-20*.

F. Civil Plan Review.

1. The applicant shall submit civil engineering plans and designs to the city for review by city staff and acceptance by the city engineer before submitting an application for final large lot subdivision approval.

2. No construction on or to the site may take place until civil engineering plans have been received and approved by the city.

3. After the preliminary large lot subdivision and civil engineering plans have been approved the subdivider is authorized to develop the subdivision's facilities and improvements in strict accordance with the standards established by this title, related standards in Titles 17 and 18, and any conditions imposed.

G. Review of Final Large Lot Subdivision Application.

1. Timeline for Review. Final large lot subdivisions shall be approved, approved with conditions, disapproved or returned to the applicant by the director within 30 working days from the date of filing of a complete application, unless the applicant consents to an extension of such time period.

2. Submittal of Final Plat. The submittal requirements shall be the same as those for short subdivisions as described in BIMC 2.16.070.I.2.

3. Duties of Surveyor. The duties of the surveyor shall be the same as those for a short subdivision as described in BIMC 2.16.070.I.3.

4. Review, Recommendation, and Approval.

a. The city engineer shall review the final large lot subdivision to determine the compliance with the requirements of RCW 58.17.160, the "City of Bainbridge Island Engineering Design and Development Standards Manual" (except as varied by the city engineer during the preliminary large lot review process), and any conditions imposed on the approved preliminary subdivision plat, and forward written recommendations for approval, approval with conditions, or disapproval to the director.

b. After receiving the city engineer's recommendation pursuant to subsection G.4.a of this section, the director shall approve, approve with conditions, or disapprove the final large lot subdivision.

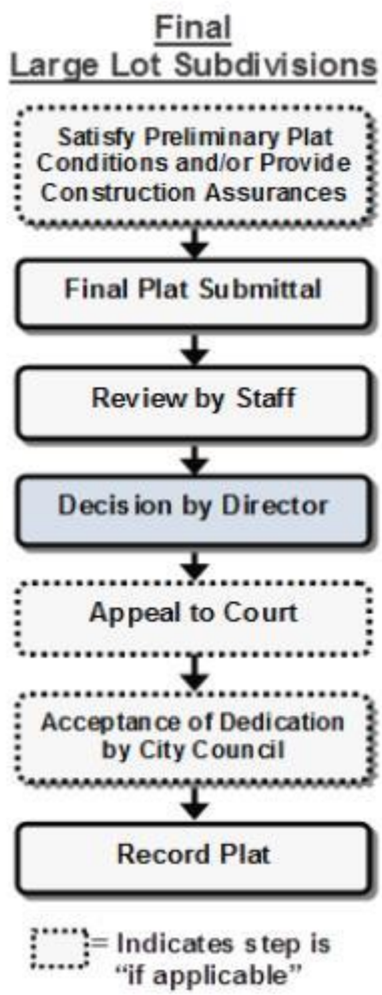
c. The large lot subdivision shall be approved if the director determines that:

i. The final large lot plat meets all standards established by state law, this title and related standards in BIMC Titles 15 through 18; and

ii. The proposed final large lot plat bears the certificates and statements of approval required by the administrative manual; and

iii. The facilities and improvements required to be provided by the subdivider have been completed or assurances in accordance with BIMC 2.16.070.N have been provided.

d. If the application conforms to the criteria in subsection G.4.c of this section, the director shall signify his or her approval by signing the approval line on the face of the large lot subdivision. If the director disapproves the application, he or she shall provide a written explanation to the applicant.



5. Amendment of Disapproved Application. When an application is disapproved, an applicant shall have the same rights to submit an amended application that apply to short subdivisions as

described in BIMC 2.16.070.I.5, except that any amended application filed within the 180-day time frame shall be reviewed as set forth in this subsection G.

H. Improvements.

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

a. Streets shall be cleared and grubbed; and

b. Streets shall be rocked or graveled to provide adequate year-round passage; and

c. Appropriate drainage, including erosion control, facilities consistent with Chapters 15.20 and 15.21 BIMC shall be provided on a plan approved by the city engineer prior to clearing and construction of any plat improvements.

2. All street rights-of-way within the large lot subdivision shall be dedicated to the city of Bainbridge Island unless the only access between the large lot subdivision and a developed, publicly owned road is a private road and there is no easement providing public access on that private road. That dedication shall not reduce the number of parcels allowable in a large lot subdivision if such parcels are based on a section subdivision and/or comprise 1/128th of a section or more.

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

I. Assurance of Improvements. Large lot subdivisions shall be subject to the same requirements for assurance of required improvements that apply to short subdivisions as described in BIMC 2.16.070.N.

J. ~~Modification~~ Alteration of Preliminary or Final Large Lot Subdivisions before Filing.

1. An alteration to an approved preliminary large lot subdivision that does not change the general plat layout, increase off-site impacts of the subdivision, or ~~modify~~ alter a provision or condition that was a matter of dispute by any party during the preliminary approval process may be made by the director after notice and opportunity to comment are provided to the applicant and all parties of record. The director shall review and approve or disapprove the request for ~~modification~~ alteration following the process set forth in BIMC 2.16.030.

2. Other ~~modifications~~ alterations to an approved large lot subdivision must be reviewed in accordance with the process for a new large lot subdivision application, including payment of fees, and shall be approved consistent with the procedures and requirements of this chapter.

3. The following exemptions shall not constitute changes in the preliminary large lot subdivision approval and do not require further review as provided for under subsections J.1 or J.2 of this section:

a. Engineering detail, unless the proposed detail modifies or eliminates features specifically required as an element of the preliminary large lot subdivision approval. For purposes of this section, “engineering detail” shall mean minor changes to proposed road or lot grading or drainage design that do not significantly affect the location of those facilities, and minor changes to locations of utility pipes, swales, or wires that do not significantly affect their visibility from adjacent roads or properties; and similar minor changes;

b. Minor changes in lot lines or lot dimensions; or

c. Minor alterations regarding homesite location and/or open space usage.

K. Disclaimer as to Streets. Streets within a large lot subdivision shall not be constructed or maintained by the city unless such streets have been improved to current standards and have been accepted into the city street system. Unless so improved and accepted, the responsibility for maintenance shall lie with the owners of the lots. In such cases the face of each large lot subdivision plat shall contain the following disclaimer:

> Responsibility and expense for maintenance of roads leading to or serving lots within this Large Lot Subdivision (unless such roads have been accepted into city's road system) shall rest with the lot owners.

L. Further Division. No lot in an approved large lot subdivision may be divided further within five years of recording the approved final large lot subdivision plat without following the subdivision requirements in effect at the time of such application. Short or long subdivision procedures may apply, depending on the number of additional lots proposed to be created.

M. Requirements for Filing Plat. In addition to the requirements of subsections J and K of this section, approved large lot subdivisions shall be subject to the same requirements for filing plats that apply to short subdivisions as described in BIMC 2.16.070.K.

N. Amendment Alteration to Approved Large Lot Subdivision. Proposals for amendment of a large lot subdivision shall follow the provisions of RCW 58.17.215. Alterations of a subdivision are also subject to the provisions of RCW 64.04.175. (Ord. 2018-20 § 9 (Exh. D), 2018; Ord. 2011-02 § 2 (Exh. A), 2011)

2.16.100 Quasi-judicial review by hearing examiner – In general.

A. Purpose. The purpose of this section is to describe those general procedures that apply whenever state law or the BIMC require a public hearing before a hearing examiner and a recommendation or decision by the hearing examiner.

B. Applicability. This section applies each time a provision of this code authorizes a recommendation or a final decision by the hearing examiner. The specific types of applications subject to review by the hearing examiner are listed in the table in BIMC 2.16.010. The provisions of this section are supplemented by more detailed provisions in BIMC 2.16.110, 2.16.120, 2.16.160, 2.16.165, and/or 16.20.080.

C. Procedures.

1. SEPA Environmental Review. For a land use application subject to Chapter 43.21C RCW and Chapter 16.04 BIMC, the SEPA threshold determination shall be issued and any required public comment period shall be completed prior to a public hearing.

2. Planning Commission Review and Recommendation. When written public comments are received during the public comment period concerning the effect of the land use application on the comprehensive plan, the shoreline master program, or matters not addressed by specific provisions of this code, the director or the hearing examiner may request planning commission review and recommendation pursuant to the procedures in BIMC 2.14.020.G prior to the final decision.

3. Single Report.

a. The director shall prepare a single consolidated report setting forth all the recommendations and decisions made on the application as of the date of the report.

b. The report shall state any mitigation required or proposed under the development regulations or as required by SEPA, Chapter 43.21C RCW, and shall include the SEPA determination if a determination has not previously been issued.

c. If a shoreline master program permit is required for the project pursuant to Chapter 16.12 BIMC, the report shall address the requirements of that section.

d. The director's report shall be presented to the hearing examiner at the public hearing.

4. Public Hearing. The hearing examiner shall hold a public hearing prior to issuing a decision. The purpose of the public hearing is to review a proposed project for consistency with the BIMC, appropriate elements of the comprehensive plan and all other applicable law, and to provide an opportunity for the public to comment on the project and its compliance with the municipal code, the comprehensive plan and all other applicable law. The hearing examiner shall maintain a record of the exhibits presented and a recording of the testimony and arguments presented, which shall be kept by the city clerk. Any rules of procedure for hearings adopted by the City Council ~~hearing examiner~~ shall be published on the City's website and available from ~~kept on file with~~ the office of the city clerk upon request. A hearing may be continued to a date certain without additional notice.

5. Participation in the Public Hearing. Any person may participate in the public hearing. The hearing examiner has discretion to limit testimony to relevant, nonrepetitive comments and to set time limits.

6. Hearing Examiner Action.

a. The hearing examiner may approve, approve with conditions, deny, or remand an application.

b. In making a decision, the hearing examiner shall consider the applicable decision criteria of this code, all other applicable laws, recommendations of the planning commission and design review board, testimony presented at the hearing, and any necessary documents and approvals. In the case of decisions involving properties subject to the shoreline jurisdiction of Chapter 16.12 BIMC, the hearing examiner shall also consider consistency with the requirements of the shoreline master program.

c. The hearing examiner shall issue a written decision in accordance with BIMC 2.16.020.M.7, within 10 working days of the public hearing, unless a longer period is agreed upon by the hearing examiner and the applicant or appellant. If the hearing examiner and the applicant or appellant agree on a longer period for issuance of the written decision, the examiner shall provide notice of the extension to the applicant or appellant, the city, and any person who testified at the hearing or submitted written testimony for consideration at the hearing.

d. The hearing examiner shall file the decision with the city clerk's office.

7. Motion for Reconsideration. The rules of procedure adopted under BIMC 2.14.030.C.2.b shall allow a party of record to file, within a reasonable period of time specified by such rules, a motion for reconsideration of a recommendation or decision issued by the hearing examiner. ~~A motion for reconsideration may be filed to correct substantive errors. Such motion shall be filed in writing 10 days from the date the hearing examiner's decision was filed. The motion shall be decided on the record unless, at the hearing examiner's discretion, further public hearing is necessary. If a timely and appropriate request for reconsideration is filed, the appeal period shall begin from the date the decision on the reconsideration is issued.~~

8. Corrections or Clarification. The hearing examiner at any time may amend the decision to correct clerical errors clearly identifiable from the public record. Such correction does not affect any time limit provided for in this chapter. The hearing examiner may clarify a statement in the written decision as long as the clarification does not materially alter the decision.

9. Effect of Decision.

a. On matters that do not involve shoreline conditional uses or shoreline variances, the decision of the hearing examiner is the final decision of the city, subject to the appeal provisions in BIMC 2.16.020.R.2

b. Pursuant to RCW 90.58.140(10) and WAC 173-27-130, final decisions involving shoreline conditional use permits and shoreline variances are made by the Washington State Department of Ecology. For these types of applications, the hearing examiner's decision is a recommendation subject to approval, approval with conditions, or denial by that department.

10. Revocation of Quasi-judicial Approvals. An approval or permit granted by the hearing examiner may be revoked by the hearing examiner following the procedures in this section upon the finding of any one or more of the following:

a. That the approval was obtained by deception, fraud or other intentional or misleading representation; or

b. That the use for which approval was granted has been changed; or

c. In the case of major conditional use permits, that the use has at any time been discontinued for a year or more; or

d. That the permit granted is being exercised contrary to the terms or conditions of such approval or in violation of the BIMC; or

e. That the use for which the approval was granted was so exercised as to be detrimental to the public health or safety. (Ord. 2011-21 § 4, 2011: Ord. 2011-02 § 2 (Exh. A), 2011)

2.16.120 Major variances.

A. Purpose. Variances are the mechanism by which the city may grant relief from the provisions of the zoning ordinance where practical difficulty renders compliance with certain provisions of the code an unnecessary hardship, where the hardship is a result of the physical characteristics of the subject property and where the purpose of the comprehensive plan is fulfilled.

B. Applicability.

1. The major variance process may be used for deviations from zoning standards in BIMC Title 18 that the director determines exceed the threshold for minor variances under BIMC 2.16.060. A variance is authorized only for lot coverage, size of structure or size of setbacks. Variances are not authorized for changes in density requirements, building or structure height requirements, open space requirements, or expanding a use otherwise prohibited.

2. This procedure is not available to obtain variances from subdivision standards in BIMC Title 17 or to obtain variances from BIMC Title 18 zoning standards cross-referenced in BIMC Title 17 as part of a short subdivision, long subdivision, or large lot subdivision approval or ~~amendment~~ alteration process.

3. This procedure is not available to allow the siting for an accessory dwelling unit where it would not otherwise be permitted.

4. A variance shall not be granted solely because of the presence of nonconformities in the vicinity of the subject site.

5. Variances from the city's noise regulations in Chapter 16.16 BIMC are available through the noise variance process in Chapter 16.16 BIMC and are not available through the major variance process in this section.

6. The provisions of this section supplement those of BIMC 2.16.020 and 2.16.100 when the application is for a major variance. In the event of a conflict between the provisions of BIMC 2.16.020 or 2.16.100 and this section, the provisions of this section shall govern.

2.16.125 Preliminary long subdivisions.

A. Purpose. This section provides a procedure for review and approval of preliminary long subdivision applications in compliance with the provisions of RCW Title 58, BIMC Title 17, and other applicable provisions of Washington State law and this municipal code.

B. Applicability. This procedure applies to all applications for preliminary long subdivisions. Long subdivisions involve the division or redivision of land into more than four lots.

C. General Procedures.

1. Long subdivisions shall be approved through the quasi-judicial hearing examiner approval procedures described in BIMC 2.16.100 except as described below.

2. The provisions of this section shall supplement those of BIMC 2.16.020 and 2.16.030 when the application is for a long subdivision. In the event of a conflict between the provisions of BIMC 2.16.020 or 2.16.030 and this section, the provisions of this section shall govern.

3. Vesting. A proposed long subdivision shall be considered under the subdivision ordinance, zoning or other land use control ordinances, and the State Environmental Policy Act in effect at the time a fully completed application for preliminary approval of the subdivision has been submitted to the city. The requirements for a fully completed application shall be defined by the administrative manual.

4. Timeline for Review. The city has 90 calendar days from the filing of a complete application in which to approve, disapprove, or return the application to the applicant for modification. The timeline for review can be extended beyond 90 calendar days if the city determines it has incomplete or insufficient application materials and/or if there are significant changes to application materials. If no action can be taken to approve or disapprove the application within the 90 calendar days, the director must notify the applicant of the reasons for the delay and steps necessary to complete the application.

D. Review Procedures – Proposal Stage. Review of long subdivision proposals shall include all of the following:

1. Conceptual Proposal Review Meeting. The conceptual proposal review meeting is a means of screening long subdivision proposals in their earliest stages of design before proponents are committed to a particular design. The conceptual proposal meeting is an opportunity to ensure that the proponent understands the objectives of the review process, design guidelines, and comprehensive plan goals and policies. This early touch allows review bodies to dialogue in an informal manner with the applicant, review the design guidelines and comprehensive plan goals and policies applicable to the site, and explore design concepts and/or options. It is also a means for staff to acquaint the prospective applicant with the procedural steps for subdivision review. The conceptual proposal review meeting will be held at a meeting of the design review board. Submittal requirements are described in the administrative manual, and include a statement of intent, site analysis, and context map. An applicant may request a waiver from the conceptual proposal review meeting if the applicant demonstrates knowledge and understanding of the city's permit processing procedures.

2. Design Guidance Review Meeting. The design guidance review meeting is intended to provide input and guidance to an applicant on consistency with applicable design guidelines and

comprehensive plan goals and policies, including recommendations for how the project could be revised to achieve greater consistency. The applicant should also make known the potential need and rationale for any departure from the design guidelines or the city of Bainbridge Island design and construction standards and specifications. The design guidance review meeting will be held at a meeting of the design review board. Submittal requirements are described in the administrative manual and include documentation of the four-step design process, schematic design, and completed subdivision design guidelines checklist. The four-step design process includes:

a. Delineate Natural Space. The applicant shall prioritize natural resources on the site in terms of their highest to least appropriateness for inclusion in the proposed natural area. On the basis of those priorities and practical considerations given to the site's configuration, its context in relation to natural areas on adjoining and neighboring properties, and the applicant's subdivision objectives, natural space shall be delineated in a manner clearly indicating boundaries as well as the types of resources. The amount of natural space required is provided in Chapter 17.12 BIMC.

b. Locate Homesites and Community Space. After delineating natural space, homesite areas and community space shall be identified (a "sketch" diagram is acceptable), using the site analysis and context maps produced for the conceptual proposal review meeting as a base map. The amount of community space required is provided in Chapter 17.12 BIMC.

c. Define Access. After locating the natural space, homesites, and community space, the access network shall be defined. The access network shall provide a safe, convenient, and efficient system for vehicular, pedestrian and bicycle circulation and minimize impacts on proposed natural space.

d. Draw Lot Lines. Upon completion of the preceding three steps, draw lot lines to delineate the boundaries of individual lots.

3. Preapplication Conference. The applicant shall participate in a preapplication conference in accordance with the provisions and requirements in BIMC 2.16.020.I. As part of the preapplication phase, applicants are required to participate in a community meeting through the city's public participation program outlined in Resolution No. 2010-32, except that the community meeting shall be held at a planning commission meeting. The preapplication conference application shall be provided to the design review board and planning commission.

E. Review Procedures – Application Stage. Review of long subdivision applications shall include all of the following:

1. Application. An applicant may submit an application for a long subdivision at any time after completion of the required steps in subsection D of this section or approval of a waiver in accordance with BIMC 2.16.020.I.3 or I.4 or subsection D.1 of this section. The applicant shall submit a complete application with all required submittal requirements listed in the administrative manual.

2. Review by Kitsap Public Health District.

a. Upon receipt of the application and determination of completeness, the director shall transmit a copy of the application to the health district.

b. The health district shall provide written recommendation of approval, approval with conditions, or disapproval of the preliminary long subdivision application pursuant to the decision criteria in subsection F of this section.

3. Review by City Engineer.

a. Upon receipt of the application and determination of completeness, the director shall transmit a copy of the application to the city engineer.

b. The city engineer shall provide written recommendation of approval, approval with conditions, or disapproval of the preliminary long subdivision application pursuant to the decision criteria in subsection F of this section.

4. Review and Recommendation by Design Review Board.

a. The purpose of the design review board review and recommendation meeting is to review a proposed project for compliance with applicable design guidelines and to ensure that the project reflects any revisions recommended by the design review board at the design guidance review meeting. The design review board will also consider any requested departures from the design guidelines.

b. The design review board will forward written findings, their determination of the project's consistency with the design guidelines, the design guideline checklist, and their recommendation, including any conditions, to the staff planner. Any condition attached to a recommendation must be intended to achieve consistency with one or more specific design guidelines. The design review board's written findings, conclusions, and recommendation will be included in the staff report transmitted to the director or planning commission.

c. A design review board recommendation is not a final decision and therefore there is no appeal of the recommendation.

5. Review and Recommendation by Planning Commission.

a. The purpose of the planning commission review and recommendation meeting is to review a proposed project for consistency with applicable design guidelines, BIMC Titles 17 and 18, and the comprehensive plan.

b. The planning commission shall consider the application at a public meeting where public comments will be taken. The planning commission shall recommend approval, approval with conditions or denial of an application. In making a recommendation, the planning commission shall consider the applicable decision criteria, all other applicable law, and the recommendation of the design review board. If the applicable criteria are not met, the planning commission shall recommend that the proposal be modified or denied.

c. The design review board's recommendation shall hold substantial weight in the consideration of the application by the planning commission. Any deviation from the recommendation shall be documented in their written findings of facts and conclusions.

d. The planning commission will forward its written findings of facts and conclusions, their determination of the project's consistency with the comprehensive plan, and their recommendation, including any conditions attached by the planning commission and design review board, to the staff planner. The planning commission's written findings, conclusions, and recommendation will be included in the staff report transmitted to the director.

e. A planning commission recommendation is not a final decision and therefore there is no appeal of the recommendation.

6. Review by Director.

a. The director shall review the application materials, information provided by the health district and city engineer, staff report, and the recommendations of the planning commission and shall prepare a report to the hearing examiner recommending approval, approval with conditions, or disapproval of the application.

b. The planning commission's recommendation shall hold substantial weight in the consideration of the application by the director. Any deviation from that recommendation shall be documented in the director's report.

7. Review and Public Hearing with Hearing Examiner.

a. The hearing examiner shall consider the application materials and the director's recommendation at a public hearing following the procedures of BIMC 2.16.100.C and applicable provisions of BIMC 2.16.020.

b. The hearing examiner shall make compliance with the recommendations of the planning commission a condition of approval, unless the hearing examiner concludes that the recommendations:

i. Reflect inconsistent application of design guidelines or any applicable provisions of this code;

ii. Exceed the authority of the design review board or planning commission;

iii. Conflict with SEPA conditions or other regulatory requirements applicable to the project; or

iv. Conflict with requirements of local, state, or federal law.

F. Decision Criteria for Preliminary Long Subdivisions. The hearing examiner's decision shall include written findings of fact that the application meets all the requirements of the following subsections. The preliminary long subdivision may be approved or approved with modification if:

1. The applicable subdivision design guidelines and development standards of BIMC Titles 17 and 18 are satisfied; and

2. The preliminary long subdivision makes appropriate provisions for the public health, safety and general and public use and interest, including those items listed in RCW 58.17.110; and

3. The preliminary long subdivision has been prepared consistent with the requirements of the four-step design process; and

4. Any portion of a long subdivision that contains a critical area, as defined in Chapter 16.20 BIMC, conforms to all requirements of that chapter; and

5. Any portion of a long subdivision within shoreline jurisdiction, as defined in Chapter 16.12 BIMC, conforms to all requirements of that chapter; and

6. The city engineer’s recommendation contains determinations that the following decision criteria are met and such determinations are supported by substantial evidence within the record:

a. The long subdivision meets the requirements of Chapter 17.12 BIMC related to streets and pedestrian access, and water, stormwater, and septic facilities; and

b. The long subdivision conforms to regulations concerning drainage in Chapters 15.19, 15.20 and 15.21 BIMC; and

c. The long subdivision will not cause an undue burden on the drainage basin or water quality and will not unreasonably interfere with the use and enjoyment of properties downstream; and

d. If the long subdivision will rely on public water or sewer services, there is capacity in the water or sewer system (as applicable) to serve the long subdivision, and the applicable service(s) can be made available at the site; and

7. The proposal complies with all applicable provisions of this code; Chapters 36.70A and 58.17 RCW; and all other applicable provisions of state and federal laws and regulations; and

8. The proposal is consistent with the city’s comprehensive plan; and

9. Appropriate provisions for maintenance in perpetuity of natural and/or community space have been made; and

10. The preliminary subdivision design is compatible with the physical characteristics of the proposed subdivision site.

G. *Repealed by Ord. 2018-20*.

H. *Repealed by Ord. 2018-20*.

I. Civil Plan Review.

1. The applicant shall submit civil engineering plans and designs to the city for review by city staff and acceptance by the city engineers before submitting an application for final long subdivision approval.

2. No construction on or to the site may take place until civil engineering plans have been received and approved by the city.

3. After the preliminary long subdivision and civil engineering plans have been approved, the subdivider is authorized to develop the subdivision’s facilities and improvements in strict accordance with the standards established by this title, related standards in BIMC Titles 17 and 18, and any conditions imposed.

J. Phased Development of Long Subdivision.

1. Portions of an approved preliminary long subdivision may be processed separately for recording in phases; provided, that (a) the phases were identified in the preliminary long subdivision; and (b) recording of phases is consistent with the conditions of preliminary approval and will meet all the requirements for final approval if subsequent phases are not recorded.

2. Prior to the approval of a phase of a final subdivision, the city engineer or the director may require assurance devices submitted for construction of improvements in subsequent phases if such improvements are necessary for the phases being approved to meet requirements of the subdivision and other applicable ordinances.

K. ~~Modification~~ Alteration of Preliminary Long Subdivision.

1. An alteration of an approved preliminary long subdivision that does not change the general plat layout, increase off-site impacts of the subdivision, or ~~modify~~ alter a provision or condition that was a matter of dispute by any party during the preliminary approval process may be made by the director after notice and opportunity to comment are provided to the applicant and all parties of record. The director shall review and approve or disapprove the request for ~~modification~~ alteration following the process set forth in BIMC 2.16.030.

2. Other ~~modifications~~ alterations to an approved long subdivision must be reviewed in accordance with the process for a new subdivision application and shall be approved consistent with the procedures and requirements of this chapter.

3. The following exemptions shall not constitute changes in the preliminary long subdivision approval and do not require further review as provided for under subsection K.1 or K.2 of this section:

a. Engineering detail, unless the proposed detail ~~modifies~~ alters or eliminates features specifically required as an element of the preliminary long subdivision approval. For purposes of this section, "engineering detail" shall mean minor changes to proposed road or lot grading or drainage design that do not significantly affect the location of those facilities, and minor changes to locations of utility pipes, swales, or wires that do not significantly affect their visibility from adjacent roads or properties, and similar minor changes;

b. Minor changes in lot lines or lot dimensions; or

c. Minor alterations regarding homesite location and/or open space usage. (Ord. 2018-20 § 11 (Exh. F), 2018; Ord. 2017-02 § 7, 2017; Ord. 2011-21 § 5, 2011)

2.16.160 Final long subdivisions.

A. Purpose. This section provides a procedure for city council approval of final long subdivision applications in compliance with the provisions of RCW Title 58, BIMC Title 17, and other applicable provisions of Washington State law.

B. Applicability. This procedure applies to all applications for final long subdivisions, as the term "long subdivisions" is defined in Chapter 17.28 BIMC, and that definition shall prevail over the following summary. Long subdivisions generally involve the division or redivision of land into more than four lots, where some of the lots are smaller than five acres in size.

C. Procedure.

1. Final long subdivisions shall be approved through the quasi-judicial city council approval procedures described in BIMC 2.16.130 except as described below.

2. The provisions of this section shall supplement those of BIMC 2.16.020 and 2.16.030 when the application is for a final long subdivision. In the event of a conflict between the provisions of BIMC 2.16.020 or 2.16.030 and this section, the provisions of this section shall govern.

D. Vesting. A proposed final long subdivision shall be reviewed under all applicable city ordinances and the State Environmental Policy Act in effect at the time of complete application, unless a different result is required by provisions of Chapter 58.17 RCW. A later request for additional information shall not change the date on which the application is considered vested.

E. Timeline for Review of Final Plat. A final long subdivision shall be approved, disapproved or returned to the applicant within 30 working days from the date of a complete application, unless the applicant provides written consent to an extension of such time period.

F. Submittal of Final Plat. A final plat shall be submitted containing all of the submittal requirements listed in the administrative manual.

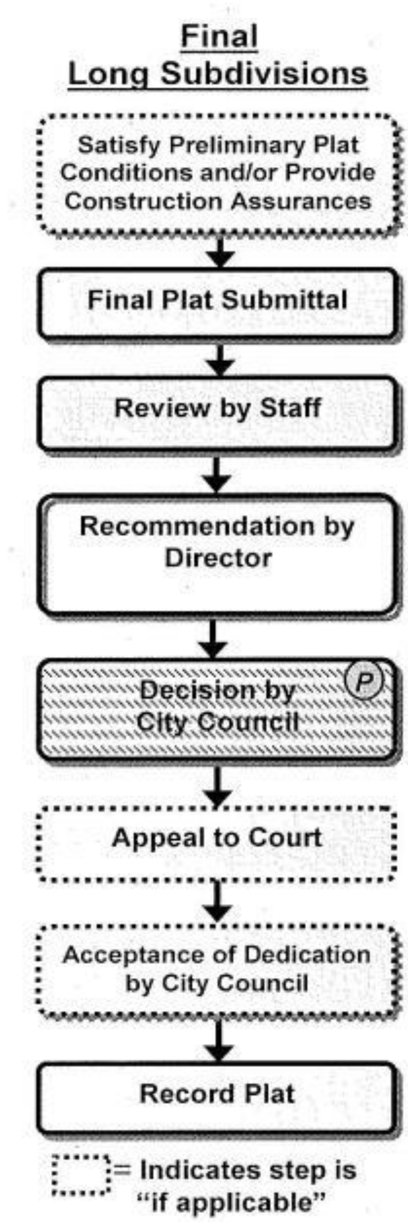
G. Review of Final Long Subdivision.

1. The city engineer shall review the final subdivision to determine compliance with the requirements of RCW 58.17.160 and forward recommendations for approval or disapproval to the department.

2. The health district, when appropriate, shall review the final subdivision and forward recommendations for approval or disapproval to the department.

3. The director shall forward his or her recommendation for approval or disapproval to the city council, evaluating compliance with any conditions imposed on the preliminary subdivision and other applicable ordinances.

4. In accordance with RCW 58.17.140, final subdivisions shall be approved, disapproved or returned to the applicant within 30 days from the date of filing of a complete application, unless the applicant consents to an extension of the time period. The director and the city engineer shall have authority to return the application for correction or modification with a request for additional information before city council review, and city council shall have authority to return the application for correction or modification with a request for additional information during its review.



H. City Council Review and Approval of Final Long Subdivision.

1. The city council shall approve the final long subdivision if it determines:

a. That the conditions imposed through the preliminary subdivision have been met; and

b. Bonds or other assurance devices, if any, by their essential terms assure completion of all plat improvements; and

c. The requirements of state law, the BIMC, the comprehensive plan, and any other applicable ordinances in effect at the time of preliminary plat approval have been satisfied by the subdivider.

2. The city council can approve the final subdivision with minor modifications recommended by the department and the applicant.

3. If the city council approves the final subdivision, the council chair shall sign the face of the final plat to indicate the council's approval; provided, that upon approval of the final plat the city council may direct and authorize the mayor or another council member to sign the face of the final plat to indicate the council's approval.

4. If an applicant voluntarily sets aside more than 25 percent of the site as designated open space, that fact will be noted on the plat.

5. The original mylar of the final subdivision shall be recorded with the county auditor, and one copy with the auditor's recording number shall be filed with the city.

I. ~~Modification~~ Alteration of Preliminary Long Subdivision Before Filing.

1. An alteration of an approved preliminary long subdivision that does not change the general plat layout, increase off-site impacts of the subdivision, or ~~modify~~ alter a provision or condition that was a matter of dispute by any party during the preliminary approval process may be made by the director after notice and opportunity to comment are provided to the applicant and all parties of record. The director shall review and approve or disapprove the request for ~~modification~~ alteration following the process set forth in BIMC 2.16.030.

2. Other ~~modifications~~ alterations to an approved long subdivision must be reviewed in accordance with the process for a new subdivision application and shall be approved consistent with the procedures and requirements of this chapter.

3. The following exemptions shall not constitute changes in the preliminary long subdivision approval and do not require further review as provided for under subsection I.1 or I.2 of this section:

a. Engineering detail, unless the proposed detail ~~modifies~~ alters or eliminates features specifically required as an element of the preliminary long subdivision approval. For purposes of this section, "engineering detail" shall mean minor changes to proposed road or lot grading or drainage design that do not significantly affect the location of those facilities, and minor changes to locations of utility pipes, swales, or wires that do not significantly affect their visibility from adjacent roads or properties, and similar minor changes;

b. Minor changes in lot lines or lot dimensions; or

c. Minor alterations regarding homesite location and/or open space usage.

J. Requirement for Filing Plat. Approved long subdivisions shall be subject to the same requirements for filing plats that apply to short subdivisions as described in BIMC 2.16.070.K.

K. Amendment of Disapproved Application. When an application for approval of a final long subdivision is disapproved, an applicant shall have 180 working days following the decision in which to file an amended application to remedy the matters that led to the disapproval. Upon receipt of such an amended application, the application shall be reviewed as set forth in this section. If an applicant files no such amended application within the period allowed, the application shall be considered denied.

L. Assurance of Improvements. Approved final long subdivisions shall be subject to the same provisions regarding assurance of improvements that are applicable to short subdivisions as described in BIMC 2.16.070.N.

M. ~~Amendment~~ Alteration to Approved Long Subdivision.

1. Proposals for alteration of a subdivision shall follow the provisions of RCW 58.17.215. Alterations of a subdivision are also subject to the provisions of RCW 64.04.175, except as described in subsection S.2 of this section.

2. The contents and procedures for minor alterations of open space and/or open space usage in an approved final long subdivision shall be administratively reviewed consistent with the procedures and requirements of BIMC 2.16.030.

N. Expiration of Final Long Subdivision. Any lot in a final long subdivision plat filed for record shall be a valid land use for a period of five years from the date of filing the final subdivision, notwithstanding any change in zoning laws. Any lot in a final plat shall be governed by the terms of approval of the final long subdivision at the time of vested application, unless a change in conditions creates a serious threat to the public health or safety. (Ord. 2011-21 § 6, 2011: Ord. 2011-02 § 2 (Exh. A), 2011)

2.16.165 Shoreline master program administration.

E. Statement of Exemption from Shoreline Substantial Development Permit.

1. Purpose and Applicability. Certain development activities identified in WAC 173-27-040 are exempt from the requirement to secure a shoreline substantial development permit; however, a shoreline variance or shoreline conditional use permit may still be required. State law requires that exemptions be construed narrowly. Exemption from substantial development permit procedures does not constitute exemption from compliance with the policies and use regulations of the SMA (Chapter 90.58 RCW), the provisions of the master program, or applicable city, state or federal permit requirements. Applicants shall have the burden to demonstrate that the proposal complies with the requirements for the exemptions sought as described under WAC 173-27-040 or its successor. If any part of a proposed development is not eligible for exemption, then a substantial development permit is required for the entire proposed development project, pursuant to WAC 173-27-040(d) or its successor.

2. Procedure.

a. In the case of an emergency, the administrator may waive this requirement and authorize the use or activity orally or in writing. If authorized orally, the applicant shall submit a required application as soon as possible.

b. The administrator shall decide requests for a statement of exemption based on WAC 173-27-040 or its successor and the provisions of the Shoreline Management Act and the master program.

c. Before determining that a proposal is exempt, the administrator may conduct a site inspection to ensure that the proposal meets the exemption criteria.

d. Exempt developments and activities shall comply with the Shoreline Management Act and the master program. The administrator shall condition statements of exemption to ensure the exempt development or activity complies with the Shoreline Management Act and the master program.

e. In the case of development subject to the policies and regulations of the master program, but exempt from the substantial development permit process, shoreline management requirements may be made conditions of the building permits and/or other permits and approvals. For example, the approval of a building permit for a single-family residence can be conditioned with provisions from the master program.

f. Whenever a development falls within the exemptions stated in WAC 173-27-040 or its successor, ~~but is still subject to those permits listed in WAC 173-27-040 (as amended)~~, a letter exempting the development from the substantial development permit requirements of Chapter 90.58 RCW or its successor shall be given to the applicant and Department of Ecology.

3. Decision Criteria.

a. Exemptions shall be narrowly construed. When making the determination, the administrator shall grant a statement of exemption only when the development proposed is consistent with the following:

i. The applicable policies, guidelines, and regulations of the Shoreline Management Act of 1971; Chapter 90.58 RCW, as amended; and Chapters 173-26 and 173-27 WAC or their successors;

ii. The goals, policies, objectives and regulations of the city of Bainbridge Island shoreline master program;

iii. The city of Bainbridge Island comprehensive plan and municipal code; all other applicable law; and any related documents and approvals.

4. Action of Administrator. The administrator may grant, deny, or conditionally approve the shoreline exemption request. The approval or conditional approval will become conditions of approval for any related development permit, and no development permit will be issued unless it is consistent with the statement of exemption. A copy of the city's statement of exemption shall be filed with the Department of Ecology.

5. Application Time Frame. The approval for a shoreline exemption shall be the same as the expiration date of the development permit. All conditions of the approval for a shoreline exemption shall be included in the conditions of approval granted for the development permit.

6. Appeal. Any person aggrieved by the administrator's determination on a shoreline exemption request may be appealed, except as stated below, using the applicable appeal provision of subsection I of this section. If a proposed development activity also requires approval through other permit procedures, any appeal of a shoreline exemption requires will be heard as part of that other process.

F. Shoreline Substantial Development Permit.

1. Purpose and Applicability. Substantial development is any development of which the total cost or fair market value exceeds ~~$6,416~~ $7,047 or any development which materially interferes with the normal public use of the waters or shorelines of the state, except those exempted developments set forth in subsection E of this section, consistent with WAC 173-27-040 or its successor.

2. Procedure. Shoreline substantial development permits shall be approved through the general administrative review procedures described in BIMC 2.16.030 except as described below. Application materials for shoreline substantial development permits can be found in the Administrative Manual.

a. Public Comment. The city shall not make a decision on the permit until after the end of the comment period.

i. A 30-day public comment period shall be given for shoreline permits.

ii. The public comment period shall be 20 days for substantial development permits for a limited utility extension or for erosion control measures to protect a single-family residence and its appurtenant structures. (See shoreline master program definition of "limited utility extension," Chapter 16.12 BIMC.)

iii. SEPA review shall be conducted as provided by Chapter 16.04 BIMC, Environmental Policy, or its successor. The required SEPA notices should be included with the shoreline notices when possible. The SEPA documents should be circulated with permit documents where possible.

3. Decision and Criteria. After the 30-day comment period has ended, the administrator shall issue a decision on the application.

a. The administrator may approve, approve with modifications, or deny any substantial development permit.

b. Decision Criteria.

i. In making the decision, the administrator shall grant a substantial development permit only when the development proposed is consistent with the following:

(A) The applicable policies, guidelines, and regulations of the Shoreline Management Act of 1971; Chapter 90.58 RCW, as amended; and Chapters 173-26 and 173-27 WAC or their successors;

(B) The goals, policies, objectives and regulations of the city of Bainbridge Island shoreline master program;

(C) The city of Bainbridge Island comprehensive plan and municipal code; all other applicable law; and any related documents and approvals.

ii. The administrator shall also consider whether the cumulative impact of additional past and future requests that reasonably may be made in accordance with the comprehensive plan, or similar planning document, for like actions in the area will result in substantial adverse effects on the shoreline environment and shoreline resources.

c. The applicant(s) shall have the burden of proving that a proposed development is consistent with the approval criteria and master program policies and regulations (WAC 90.58.140(7) or its successor).

d. The administrator may require additional information if necessary.

e. The administrator shall issue a written decision which contains the following:

i. A statement indicating the application is approved, approved with modifications, or denied;

ii. A statement of any conditions included as part of an approval or approval with modifications;

iii. A statement of facts upon which the decision, including any conditions, is based, and the conclusions derived from those facts; and

iv. A statement of the right of any person to appeal the decision of the administrator pursuant to subsection I of this section.

f. The administrator may refer the application to the planning commission for review and recommendations prior to deciding the application. The application shall also be referred to the planning commission for a recommendation at the request of the applicant. The planning commission makes its recommendation following its review of the proposal, the environmental checklist, and the tentative threshold determination.

g. The permit, whether approved or denied, shall be in the form required by WAC 173-27-120 or its successor.

4. Distribution/Notification of Administrative Decision.

a. The administrator shall mail the applicant the original of the completed permit form and the findings and conclusions.

b. All persons who submitted comments on the application during the comment period (see subsection F.2 of this section) and anyone else requesting notification in writing shall be notified in a timely manner of the decision and shall be mailed a copy of the decision. The decision shall be filed with the Washington State Department of Ecology and the Washington State Office of the Attorney General.

5. Application Time Frame.

a. Substantial Progress.

i. Substantial progress towards completion of a permitted activity shall be undertaken within two years after approval of the permit (WAC 173-27-090 or its successor). See definition of "substantial progress" in BIMC 16.12.080.

ii. The administrator may, with prior notice to parties of record and to Ecology, grant one extension of the two-year time period for substantial progress for up to one year based on reasonable factors which would justify the extension, including the inability to expeditiously obtain other governmental permits which are required prior to the commencement of construction (WAC 173-27-090 or its successor). The request for the extension must be filed with the administrator before the end of the time limit.

b. Five Year Permit Authorization.

i. The authorization granted by an approved permit to construct any structure or conduct any use or activity shall terminate five years after the date the permit is approved by the city, except that the permit may be authorized for a lesser period of fixed duration.

ii. Where an approved permit authorizes construction, the use and maintenance of the structure or facility may continue after the five-year period, provided the structure was completed during the five-year time limit or any approved extension.

iii. Where an approved permit authorizes a use or activity which does not require a structure, such as mining or maintenance dredging, the use or activity shall cease at the end of the five-year limit or any extension as granted in subsection F.4.b.iv of this section.

iv. The administrator may, with prior notice to parties of record and to Ecology, grant one time extension of up to one year based on reasonable factors which would justify the extension. The request for the extension must be filed with the administrator before the end of the time limit.

c. The application time limits shall not include the time during which an activity was not actually pursued due to the pendency of reasonably related administrative appeals or litigation.

d. When a permit is conditioned, the conditions shall be satisfied prior to occupancy or use of a structure, or prior to commencement of a nonstructural activity, provided an alternative compliance limit may be specified in the permit.

e. Revisions to permits may be authorized after the original permit has expired under subsection F.5.b of this section, provided this procedure shall not be used to extend the original permit time requirements (WAC 173-27-060 or its successor).

6. Adjustments to Approved Shoreline Substantial Development Permits.

a. Minor adjustments to an approved shoreline substantial development permit may be made after review by the administrator. The applicant must submit detailed plans and text describing the proposed changes. If the administrator determines that the revisions proposed are within the scope and intent of the original permit, consistent with WAC 173-27-100 or its successor, the administrator may approve the revision as a minor adjustment.

b. A minor adjustment entails a revision that is within the scope and intent of the original permit, which means all of the following:

i. No additional over-water construction is involved, except that pier, dock, or float construction may be increased by 500 square feet or 10 percent, whichever is less;

ii. Ground area coverage and height is not increased more than 10 percent;

iii. Additional structures located landward and not within required buffer or setback areas do not exceed a total of 250 square feet;

iv. The revision does not authorize development to exceed height, setback, lot coverage, or any other requirement of the city of Bainbridge Island shoreline master program;

v. Additional landscaping is consistent with conditions, if any, attached to the original permit and with the applicable master program provisions;

vi. The use authorized pursuant to the original permit is not changed; and

vii. No adverse, environmental impact will be caused by the project revision (WAC 173-27-064(2)(a) through (g) as amended).

c. If the sum of the proposed revision and any previously approved revisions do not meet the criteria above, the revision shall be reviewed through a major adjustment process. This shall be processed in the same manner as a new shoreline substantial development permit application. If the adjustment involves a conditional use or shoreline variance which was conditioned by the Department of Ecology, the adjustment also must be reviewed and approved by Ecology (WAC 173-27-064 or its successor).

d. A city or Ecology decision on a minor or major adjustment to the permit may be appealed within 21 days of such decision, in accordance with RCW 90.58.180 or its successor, and WAC 173-27-064 or its successor.

e. Construction allowed by the revised permit that is not authorized under the original permit is undertaken at the applicant's risk until the expiration of the appeals deadline.

7. Appeal. The decision of the administrator may be appealed to the hearing examiner following the procedures of subsection I of this section.

H. Shoreline Conditional Use Permits. Where a development includes several uses or activities and one or more uses or activities require a shoreline conditional use permit, all uses and activities shall be processed and decided following the shoreline conditional use procedures.

1. Purpose. The purpose of a shoreline conditional use permit is to allow greater flexibility in applying the use regulations of the master program in a manner consistent with the policies of RCW 90.58.020 or its successor; provided, that shoreline conditional use permits should also be granted in a circumstance where denial of the permit would result in a thwarting of state policy enumerated in RCW 90.58.020 or its successor. In authorizing a conditional use, special conditions may be attached to the permit by the city or the State Department of Ecology to prevent undesirable effects of the proposed use. Uses which are specifically prohibited by the master program may not be authorized with approval of a shoreline conditional use permit.

2. Applicability.

a. Minor Conditional Use. As determined by the director, this procedure shall apply to (i) all minor conditional uses identified in Chapter 16.12 BIMC; (ii) where the director determines that the anticipated impacts of those conditional uses will be minor or minimal; or (iii) uses that are clearly consistent and compatible with other uses in the same zone or vicinity.

b. Major Conditional Use. As determined by the administrator, a major conditional use permit shall be secured from the city prior to establishing or expanding a use according to situations that include, but are not limited to: (i) the proposed use or expansion covers 50 percent or greater of the total lot area; (ii) the proposed use is accessed by a local or private road; (iii) the proposed use or expansion generates more than 36 total trips per day; (iv) the proposed use or expansion contains four or more units in a multifamily dwelling; or (v) requests for additional nonresidential building height pursuant to Chapter 16.12 BIMC.

3. Procedure.

a. Application. An application for a shoreline conditional use permit shall be submitted on a form provided by the city. The application should be accompanied by maps, a completed environmental checklist, applicable fees, and any other information specified in the master program or requested by the administrator.

b. Minor Shoreline Conditional Use.

i. The administrator shall review a minor shoreline ~~variance~~ conditional use application following procedures in subsection F.2 of this section.

c. Minor Shoreline Conditional Use. Applications for shoreline ~~variances~~ conditional uses that are more intensive than the minor shoreline ~~variance~~ conditional use as determined by the administrator shall be decided by the hearing examiner following the procedures in BIMC 2.16.100, or its successor, supplemented by the following provisions:

i. The decision of the hearing examiner shall be the final city decision, and may be appealed in accordance with subsection I of this section.

d. Notice of Application and Comment Period. In addition to the notice of application content established in BIMC 2.16.020.M, notice of application for shoreline conditional use permits must also contain the information required under WAC 173-27-110.

e. Notice of Hearing. When a public hearing is required, the procedures of BIMC 2.16.020.M.6 shall apply.

f. The administrator shall mail the final city decision to the applicant, the State Department of Ecology, and the State Attorney General. The permit must be received by Ecology within eight days of the date of the decision. Within eight days of the date of the decision, the administrator shall also mail the decision to any person who requested notice of the decision.

g. The State Department of Ecology shall approve, approve with conditions, or deny all shoreline conditional use permits approved by the city. Ecology's decision must be made within 30 days of the date the permit and other information required by WAC 173-14-090 or its successor are received by Ecology and the Washington State Attorney General. Ecology will send a letter to the applicant and the city informing them of the decision. Upon receipt of the Ecology decision, the administrator shall notify those interested persons who requested notification.

4. Decision Criteria – Conditional Use Permit.

a. Uses classified as conditional uses may be authorized; provided, that pursuant to WAC 173-27-140 and 173-27-160 or their successors, the applicant can demonstrate all of the following:

i. The proposed use will be consistent with the policies of RCW 90.58.020 or its successor and the policies of the master program;

ii. The proposed use will not interfere with the normal public use of the public shorelines;

iii. That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program;

iv. The proposed use will cause no unreasonably adverse effects to the shoreline environment designation in which it is located;

v. The public interest suffers no substantial detrimental effect (WAC 173- 14-140(1) or its successor); and

vi. The proposed use is consistent with the provisions of the zoning ordinance (BIMC Title 18).

b. Other uses which are not listed in the master program as permitted or conditional uses and are also not prohibited may be authorized as conditional uses, provided the applicant can demonstrate, in addition to the criteria set forth in subsection H.4.a of this section, that (i) extraordinary circumstances preclude reasonable economic use of the property in a manner consistent with the policies of RCW 90.58.020, or its successor, and that (ii) the proposed use would not produce significant adverse effects on the shoreline environment.

c. In the granting of all shoreline conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area.

5. Time Frame. Construction and activities authorized by a shoreline conditional use permit are subject to the time limitations in subsection F.5 of this section (WAC 173-27-090 or its successor).

6. Adjustments to Approved Shoreline Conditional Use Permit.

a. A permit revision is required whenever an applicant proposes substantive changes to the design, terms or conditions of a project from that approved as a shoreline conditional use permit. When a revision of a shoreline conditional use permit is sought, the applicant shall submit detailed plans and text describing the proposed changes in the permit and demonstrating compliance with the following minimum standards pursuant to Chapter 173-27 WAC.

b. If the proposed changes are determined by the administrator to be within the scope and intent of the original permit, and are consistent with the SMA (Chapter 90.58 RCW), the shoreline guidelines (Chapter 173-26 WAC), and the shoreline master program, the revisions may be approved as a minor adjustment.

c. A minor adjustment entails a revision that is within the scope and intent of the original permit, which means all of the following:

i. No additional over-water construction is involved except that a pier, dock or floating structure may be increased by 10 percent or 500 square feet, whichever is less, over that approved under the original approval;

ii. Ground area coverage and/or height may be increased a maximum of 10 percent over that approved under the original approval; provided, that the revised approval does not authorize development to exceed the height, impervious surface, setback or any other requirements of this program except as authorized under a variance granted for the original development;

iii. Additional or revised landscaping is consistent with any conditions attached to the original approval and with this program;

iv. The use authorized pursuant to the original approval is not changed; and

v. The revision will not cause adverse environmental impacts.

d. Revisions to shoreline permits and statements of exemption may be authorized after the original authorization has expired. Revisions made after the expiration of the original approval shall be limited to changes that are consistent with this program and that would not require a permit under this program. If the proposed change is a substantial development as defined by this program, then a new permit is required. The provisions of this subsection shall not be used to extend the time requirements or to authorize substantial development beyond the time limits or scope of the original approval.

e. A new permit shall be required if the proposed revision and any previously approved revisions in combination would constitute development beyond the scope and intent of the original approval.

f. Upon approval of a revision, the decision maker shall file a copy of the revised site plan and a detailed description of the authorized changes to the original permit with the Department of Ecology together with a final ruling and findings supporting the decision based on the requirements of this section. In addition, the decision maker shall notify parties of record of the action.

g. If the proposed revision is to a development for which a shoreline conditional use or variance was issued, the decision maker shall submit the revision to the Department of Ecology for approval, approval with conditions, or denial, and shall indicate that the revision is being submitted under the requirements of this subsection. Under the requirements of WAC 173-27-110(6), the Department shall render and transmit to the decision maker and the applicant/proponent its final decision within 15 days of the date of the Department's receipt of the submittal from the decision maker. The decision maker shall notify parties on record of the Department's final decision.

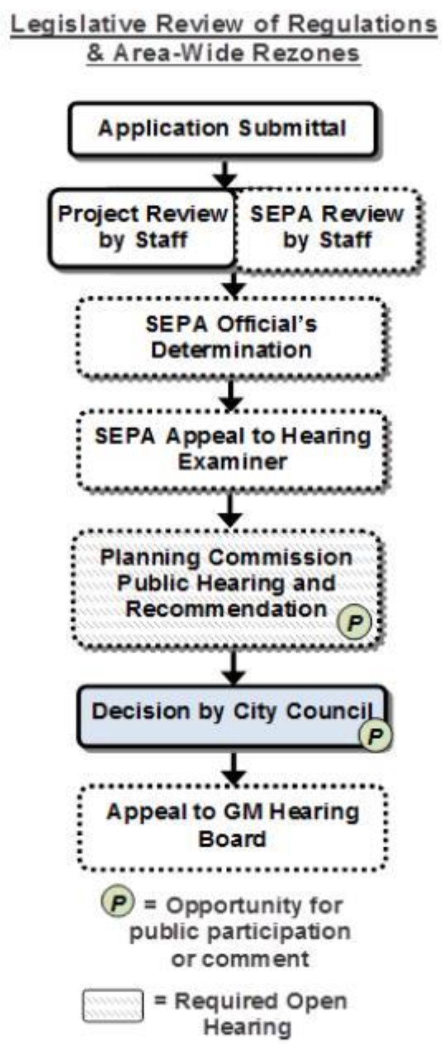
7. Appeal of Decision on Conditional Use Permit. The decision of the hearing examiner may be appealed to the following the procedures of subsection I of this section.

2.16.180 Legislative review of land use regulations and area-wide rezones.

A. Purpose. The purpose of this section is to describe the procedures used when the city council makes legislative (not quasi-judicial, site-specific) decisions related to certain sections of the BIMC.

B. Applicability. This section applies to adoption of or amendments to the BIMC related to land use procedures and regulations, including area-wide rezones initiated by the city and area-wide rezones accompanying privately initiated amendments to the comprehensive plan. The City may propose amendments to the BIMC related to land use procedures and regulations as part of the City's work program.

C. Who Can Apply. Any person, entity, or the city may propose an amendment to the BIMC. The city may propose a rezoning on an area-wide basis, and private entities may request the city to consider an area-wide rezoning. If the proposed area-wide rezone is not consistent with the adopted comprehensive plan the applicant shall also submit an application for a comprehensive plan amendment with the rezone application. However, any owner or authorized agent, or group of owners of contiguous property acting jointly, must represent at least 75 percent of the assessed valuation of the subject properties.



D. Planning Commission Review and Recommendation.

1. Planning commission review and recommendation is required for amendments to this chapter, and BIMC Titles 16, 17, and 18, area-wide rezones initiated by the city, or area-wide rezones associated with a privately initiated amendment to the comprehensive plan.

2. The planning commission shall hold a public hearing for all amendments to the official zoning map and municipal code of the city prior to issuing a recommendation to the city council.

3. Any person may participate in the public hearing. The planning commission has discretion to limit testimony to relevant, nonrepetitive comments and to set time limits.

4. Any person may submit written comments, photographs or other exhibits on the proposed amendment to the planning commission prior to or at the public hearing.

5. The planning commission shall maintain a record of the exhibits presented and a tape recording of the testimony and arguments presented, which shall be kept by the city clerk.

E. Planning Commission Action and Written Recommendation.

1. In making a recommendation, the planning commission shall consider applicable decision criteria of this chapter, all applicable law, the comprehensive plan, public comment, and any necessary documents and approvals.

2. The planning commission shall issue a written recommendation that contains (a) a statement recommending that the proposed amendment be approved, approved as amended, or denied, and (b) a statement of facts upon which the recommendation is based and the conclusions derived from those facts.

3. The planning commission’s written recommendation and other documents upon which its decision is based shall be immediately transmitted to the city council and department director.

F. City Council Review.

1. The city council shall have the option to hold a public hearing on the proposed amendment. Any person may participate in the public hearing, if held. The city council has discretion to limit testimony to relevant, nonrepetitive comments and to set time limits.

2. Any person may submit written comments, photographs, or other exhibits on the proposed amendment to the city council prior to or at the public hearing.

3. The city council shall maintain a record of the exhibits presented and a tape recording of the testimony and arguments presented, which shall be kept by the city clerk.

G. City Council Action.

1. The city council shall either adopt an ordinance amending the BIMC, reject the proposal, or remand the proposed amendment to the applicable department, the city council committee, or the planning commission for further consideration.

2. The city council shall consider the following in deciding upon a proposed regulation:

a. Testimony presented, or the minutes of any city council public hearing, on the proposed amendment; and

b. Any written material submitted as part of the public hearing process; and

c. The recommendation of the planning commission and applicable department director; and

d. Any applicable decision criteria; and

e. Any relevant RCW or WAC.

H. Transmittal to State. The department shall notify the appropriate Washington State Department of Commerce of its intent to adopt a development regulation at least 60 days prior to final passage or request expedited review and shall also transmit a copy of all adopted amendments within 10 days after passage by the city council. (Ord. 2018-20 § 12, 2018; Ord. 2011-02 § 2 (Exh. A), 2011)

CITY OF BAINBRIDGE ISLAND

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

MEMORANDUM

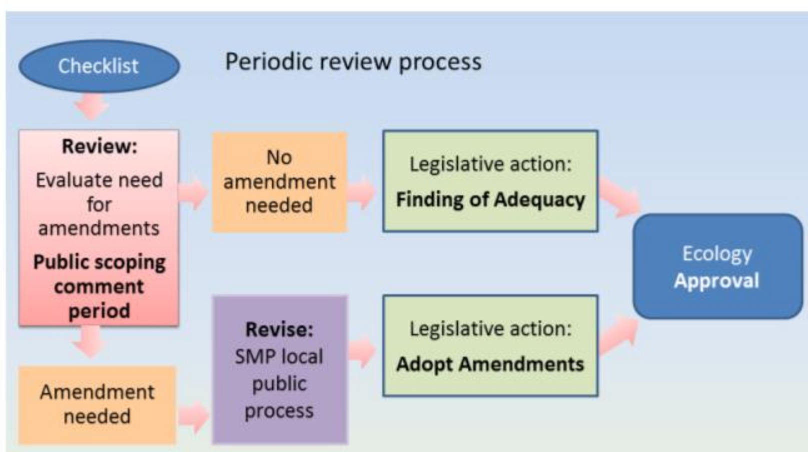
Date:	May 23, 2019
To:	Planning Commission
From:	Christy Carr, AICP Senior Planner
Subject:	**Shoreline Master Program Periodic Review** **Background and Phase 1 Overview**

I. BACKGROUND

The Shoreline Management Act (SMA) requires each city and county to review, and, if necessary, revise their Shoreline Master Program (SMP) at least once every eight years ("periodic review"). The legislature set a staggered schedule that alternates with similar reviews under the Growth Management Act (GMA). The City of Bainbridge Island's periodic review deadline is June 30, 2020.

The periodic review addresses changes in state law and rules since the comprehensive update, changes for consistency with revised comprehensive plans and regulations, and any changes deemed necessary to reflect changed circumstances, new information or improved data. Periodic reviews are focused on new laws or rules that were not in effect when the comprehensive update was adopted, or new information a local government finds warrants local amendments.

Local legislative action is required to complete the review, even when a local government determines no changes are needed. The required period review process is outlined in the Department of Ecology document, *Summary of the Periodic Review Rule* (WAC 173-26-090). This document (attached) is an annotated version of Ecology's rule (WAC 173-26-090) on conducting periodic reviews of SMPs under the SMA and includes this diagrammatic overview of the review process:



II. Public Participation Program and Work Plan

The City Council approved the SMP Public Participation Program and Work Plan on February 26, 2019 (attached). This document outlines the scope, approach, anticipated timeline, work plan, and opportunities and methods for public participation. The work plan addresses a broad set of topics identified by staff, stakeholders, and user groups (shoreline property owners, technical consultants, etc.) related to general issues and specific language to be clarified and/or revisited. It includes a list of guiding themes under which most, if not all, of the anticipated revisions can fit and a detailed list of specific language or sections of the SMP that need to be revised.

In order for the work plan and review process to be more accessible – that is, broken down into identifiable, manageable pieces – staff is proposing the Planning Commission use a phased approach, both in terms of review documents and review topics.

Each phase will include one topic, or a group of related topics. In addition, issues that span all topics will be addressed in every phase. Each phase will include review of a series of draft documents: discussion draft (DD), proposed draft (PD), and recommended draft (REC). The recommended drafts from each phase will be consolidated into a public hearing draft (PH). The public hearing draft will be updated based on public comment, then forwarded to the Department of Ecology for its initial review as a final draft (FD).

III. Phase 1 – Vegetation Management

As we consider revisions to vegetation management standards, it is important to understand their intent. As background, the Department of Ecology's SMP Handbook provides the following context on vegetation management (Ecology uses the term "vegetation conservation"):

> *The shoreline vegetation conservation section defines vegetation conservation as* ***"activities to protect and restore vegetation along or near marine and freshwater shorelines that contribute to the ecological functions of shoreline areas"*** *[WAC 173-26-221(5)]. These activities include "the prevention or restriction of plant clearing and earth grading, vegetation restoration, and the control of invasive weeds and nonnative species." Vegetation conservation can protect ecological functions, plant and animal species and their habitats, as well as protect human safety and property, increase the stability of river banks and coastal bluffs, reduce the need for shoreline stabilization, improve visual and aesthetic qualities of the shoreline and enhance shoreline uses.*
>
> *Local governments should identify the ecological processes and functions that are important to the local shoreline, both upland and aquatic, and* ***conserve vegetation needed to maintain those functions.*** *The Guidelines require master programs to include policies and regulations that address vegetation conservation and restoration.* ***Measures may include clearing and grading regulations, setbacks and buffers, critical area regulations, conditional use requirements, mitigation requirements, incentives and nonregulatory programs.***

The City's work plan includes two guiding themes related to vegetation management:

- Existing landscaping ("established yard"): Staff, shoreline property owners, and vegetation maintenance providers continue to struggle with what can or cannot be done in terms of existing landscaping. There are endless variations on what shoreline property owners may consider their "yard" and what constitutes "normal or routine maintenance" or "ongoing maintenance." Clarity is needed as to if/when/which vegetation management provisions apply to existing landscaping.

- Other: A number of vegetation management regulations need to be simplified and clarified, and with that, some policy direction is needed. Examples include: removal of significant trees, "1/3-2/3" provision where a structure is allowed to encroach into up to 1/3 of Zone 2 of the shoreline buffer with the remaining 2/3 of Zone 2 (and all of Zone 1) planted with native vegetation.

The majority of vegetation management policies and standards are located in Section 4.1.3. There are also several vegetation management standards located in Section 4.1.2 that should be relocated to Section 4.1.3. An annotated version of Sections 4.1.2 and 4.1.3 is attached with comments highlighting specific sections or language that need to be revised. **This is the discussion draft.** The discussion draft is intended to provide an opportunity for the Planning Commission to discuss the topic broadly and provide policy-level input. The proposed draft, including changes in strikethrough/underline text, will be presented at a future meeting.

IV. May 23 Planning Commission Meeting

Prior to the May 23, 2019 Planning Commission meeting, it will be helpful if Planning Commission members familiarize yourselves with the SMP Periodic Review process and the City's SMP public participation program and work plan and review the discussion draft. Discussion at the meeting will focus on ensuring that Planning Commission members have a solid understanding of the periodic review process and the City's approach moving forward. We will also discuss the Phase 1 (vegetation management) discussion draft.

Summary of the Periodic Review Rule (WAC 173-26-090)

Introduction

This document is an annotated version of Ecology's rule (WAC 173-26-090) on conducting periodic reviews of Shoreline Master Programs (SMPs) under the Shoreline Management Act (SMA). The rule was based on Department of Commerce rules that guide local governments in meeting the analogous Growth Management Act (GMA) "periodic review" requirement.

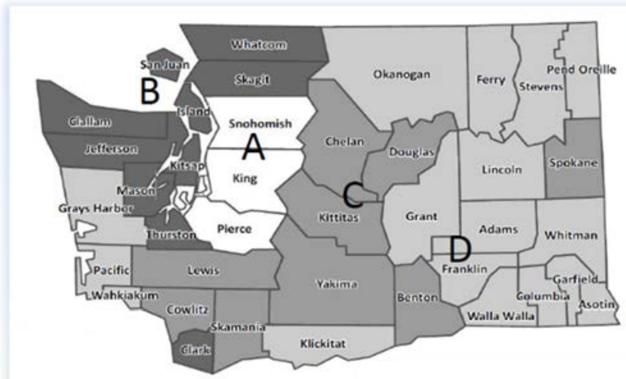
The following is a brief summary of each section of the rule.

Section 1: Locally initiated review

This brief section is from a long-standing rule that encourages local governments to review their SMPs to reflect changing local circumstances, new information or improved data. Ecology retained this section to clarify that local governments may prepare SMP amendments outside the statutorily mandated review period. The rule encourages local governments to consult guidance materials available from Ecology that may inform their reviews.

Section 2: Periodic review requirements

The second section summarizes and explains statutory requirements. The SMA requires each city and county to review, and, if necessary, revise their SMP at least once every eight years. The legislature set a staggered schedule that alternates with similar reviews under the Growth Management Act (GMA).[1]



	A	B	C	D
GMA	2015	2016*	2017*	2018*
SMA	**2019**	**2020**	**2021**	**2022**
GMA	2023	2024*	2025*	2026*
SMA	**2027**	**2028**	**2029**	**2030**

*Figure 1. Periodic review schedules under the SMA and GMA. (NOTE *For GMA reviews, the law gives an extra 2 years for smaller, slower-growing jurisdictions in groups B, C, and D.)*

Figure 1 illustrates how GMA and SMA review deadlines alternate over time. For example, Column A indicates that King, Pierce and Snohomish counties and the cities within them have GMA review deadlines in 2015 and eight years later in 2023, interspersed with SMA reviews in 2019 and 2027.

The rule clarifies that local legislative action is required to complete the review, even when a local government determines no changes are needed. It also clarifies how the scope of the periodic review differs from the comprehensive updates that were conducted starting in 2005.

[1] RCW 90.58.080(4)

Section 3: Procedures

The third section of the rule outlines local and state procedures for conducting periodic reviews. The rule follows the GMA periodic review process, with unique steps to reflect Ecology's formal approval role *(see Figure 2).*

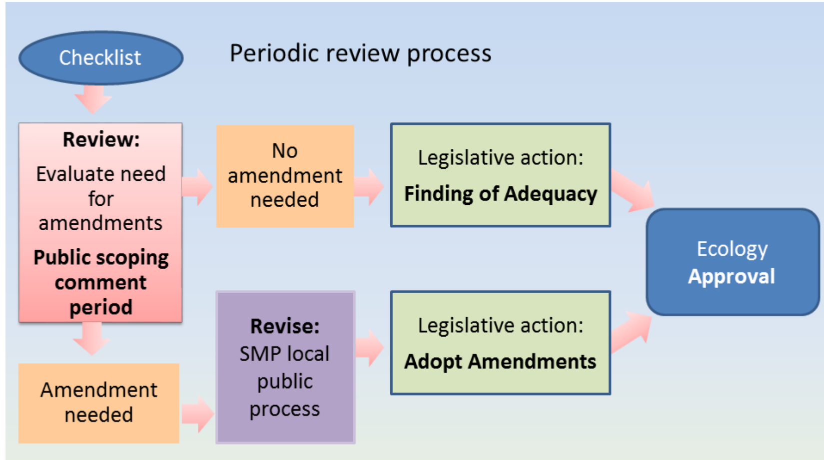


Figure 2. Schematic outline of SMP periodic review process. Ecology final approval triggers an appeal period.

The rule requires Ecology to maintain a checklist that includes potential review elements. The checklist is used at the beginning to help determine what to review, and at the end to identify where each applicable issue is addressed in the SMP.

The rule requires a public participation program that provides for early and continuous involvement of interested parties throughout the review process.

For jurisdictions that find no amendments are needed, the scoping could lead directly to final legislative action determining that no amendments are needed ("Finding of Adequacy"). Under the SMA, amendments to SMPs are final only after approval by Ecology. Even when it is determined locally that no amendments are necessary under the periodic review, local governments will submit their Findings of Adequacy to Ecology for review of the local determination and to ensure a definitive conclusion to the periodic review process. If in agreement, Ecology would issue a formal approval. This would provide certainty to all parties that Ecology has concurred with the local determination.

Ecology's approval triggers the appeal period. Any appeals would be of Ecology's action as well as the local government action.

Below is the complete text of Ecology's rule outlining the periodic review requirements and process. The annotation in colored boxes provides context and explanation for each section and is not part of the formally adopted rule.

WAC 173-26-090 - Locally initiated review—Periodic review—Public involvement and approval procedures.

(1) Locally initiated master program reviews

Each local government should review its shoreline master program and make amendments deemed necessary to reflect changing local circumstances, new information or improved data.

Local governments are encouraged to consult department guidance for applicable new information on emerging topics such as sea level rise.

> The first sentence of **§1** has been in place for decades. Ecology retained this direction to emphasize that local governments may amend their SMPs at any time to address changing circumstances, new information or improved data. Ecology's 2017 amendments suggests local governments consult Ecology guidance for information on emerging issues such as sea level rise. Addressing sea level rise is an example of the kind of work that might be most effectively tackled as part of a broader comprehensive plan initiative, rather than during a focused SMA periodic review. Note that §**(3)(b)(iii)** calls on local governments to consider these kinds of amendments during the mandatory periodic review. The periodic review can be considered a minimum time period to convene a public process to consider as a community whether your SMP remains relevant with changing conditions. However, these kinds of amendments can be conducted at any time.

(2) Periodic review requirements.

(a) Following the comprehensive updates required by RCW 90.58.080(2), each local government shall conduct a review of their master program at least once every eight years on a schedule established in the act. Following the review, local governments shall, if necessary, revise their master programs. This review and revision is referred to in this section as the periodic review.

> **§ 2 (a)** starts with direct quotes from the SMA at RCW 90.58.080(4), with an additional clarification that the rule uses the term "periodic review" for the mandatory eight-year review. The term "comprehensive update" refers to the one-time updates required under RCW 90.58.080(2) with deadlines from 2005 – 2014.

(2)(b) Deadlines for periodic review.

Local governments must take action to review, and if necessary, revise their master programs according to the schedule established in RCW 90.58.080(4)(b). Deadlines for completion of periodic review are as follows:

Table WAC 173-26-090.1 Deadlines for Completion of Periodic Review

Reviews must be completed on or before June 30 of:	Affected counties and the cities and towns within:
2019/2027*	King, Pierce, Snohomish
2020/2028*	Clallam, Clark, Island, Jefferson, Kitsap, Mason, San Juan, Skagit, Thurston, Whatcom
2021/2029*	Benton, Chelan, Cowlitz, Douglas, Kittitas, Lewis, Skamania, Spokane, Yakima
2022/2030*	Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, Whitman

** And every eight years thereafter.*

§ 2(b) quotes the statutory directive to review and revise if needed and presents the deadlines in a table.

The statutory requirement is to conduct a periodic review *at least* once every 8 years by June 30 of the year listed. There is no absolute direction in law or rule for how early you can adopt, but as a general guide Ecology recommends conducting periodic review within two years of the deadline. For SMA reviews in particular it will actually be beneficial if local periodic review adoptions are "spread out" around the deadline to distribute the review workload, and ensure Ecology can provide adequate help to individual jurisdictions.

Note that if a local governments simply ignores their deadlines they are potentially vulnerable to a "failure to act" claim before the Growth Management Hearings Boards (for fully planning jurisdictions), or before the Shorelines Hearings Board (for partially planning jurisdictions). Ecology also has authority to adopt SMP amendments by rule under RCW 90.58.070.

(2)(c) Taking legislative action.

(i) The periodic review must be accomplished through legislative action. Legislative action means the adoption of a resolution, motion, or ordinance following notice and a public hearing including, at a minimum, findings that a review and evaluation has occurred and identifying the revisions made, or that a revision was not needed and the reasons therefore. Legislative findings that no revisions are needed are referred to in this section as "findings of adequacy."

(ii) Legislative action includes two components. It includes a review of the shoreline master program and it includes the adoption of either findings of adequacy or any amendments necessary to bring the program into compliance with the requirements of the act.

(iii) Legislative actions concluding the periodic review must be followed by department approval.

§ 2(c) clarifies that statutory review must be concluded with legislative action. In other words, a local government cannot simply conduct a staff-level review, conclude no local action is needed, and be done with the review obligation. Just like under GMA reviews, the review is a formal public process concluding with elected officials taking formal action after a public hearing.

§ 2(c)(i) creates a new term – locally adopted findings that revisions to the SMP are not needed are called "Findings of Adequacy." **§ 2(c)(ii)** clarifies that legislative action includes a formal public review and formal action, whether the review results in amendments, or simple findings of adequacy where the review reveals no changes to the SMP are needed. **§ 2(c) (iii)** clarifies Ecology approval is needed to conclude local reviews. This provides a definitive end to the local process. Note that an appeal of local periodic review amendments or local findings of adequacy would also be appeals of Ecology's approval.

(2)(d) The required minimum scope of review.

(i) The purpose and scope of the periodic review as established by the act is:

(A) To assure that the master program complies with applicable law and guidelines in effect at the time of the review; and

(B) To assure consistency of the master program with the local government's comprehensive plan and development regulations adopted under chapter 36.70A RCW, if applicable, and other local requirements.

(ii) The review process provides the method for bringing shoreline master programs into compliance with the requirements of the act that have been added or changed since the last review and for responding to changes in guidelines adopted by the department, together with a review for consistency with amended comprehensive plans and regulations. Local governments should also incorporate amendments to reflect changed circumstances, new information, or improved data. The review ensures that shoreline master programs do not fall out of compliance over time through inaction.

(iii) The periodic review is distinct from the comprehensive updates required by RCW 90.58.080(2). The presumption in the comprehensive update process was that all master programs needed to be revised to comply with the full suite of ecology guidelines. By contrast, the periodic review addresses changes in requirements of the act and guidelines requirements since the comprehensive update or the last periodic review, and changes for consistency with revised comprehensive plans and regulations, together with any changes deemed necessary to reflect changed circumstances, new information or improved data. There is no minimum requirement to comprehensively revise shoreline inventory and characterization reports or restoration plans.

§ 2(d)(i) and (ii) define the required scope of review consistent with the purpose set in statute.

§ 2(d)(iii) is intended to distinguish the periodic reviews from the one-time comprehensive SMP update. Comprehensive updates involved a complete review of the SMP based on Ecology's 2003 SMA rules, and included extensive inventory work to determine shoreline jurisdiction and analyze existing conditions. Periodic reviews are focused on new laws or rules that were not effect when the comprehensive update was adopted, or new information a local government finds warrants local amendments.

(3) Procedures for conducting periodic reviews.

(3)(a) Public participation program.

(i) In conducting the periodic review, the department and local governments, pursuant to RCW 90.58.130, shall make all reasonable efforts to inform, fully involve and encourage participation of all interested persons and private entities, tribes, and agencies of the federal, state or local government having interests and responsibilities relating to shorelines of the state and the local master program. Local governments may follow the public participation procedures under either the standard local process outlined in WAC 173-26-100, or the optional joint review process outlined in WAC 173-26-104.

§ 3(a)(i) clarifies that the periodic review is a public process. Even though conducting the review may lead to the conclusion no actual revisions are necessary, the direction in statute for public involvement applies.

(ii) Counties and cities shall establish and broadly disseminate to the public a public participation program identifying procedures whereby review of the shoreline master program will be considered by the local governing body consistent with RCW 36.70A.140. Such procedures shall provide for early and continuous public participation through broad dissemination of informative materials, proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, and consideration of and response to public comments.

The public participation program should include a schedule for the periodic review and identify when legislative action on the review and update component are proposed to occur. The public participation program should also inform the public of when to comment on the scope of the review and proposed changes to the master program. Counties and cities may adjust the public participation program to best meet the intent of the participation requirement.

§ 3(a)(ii) require a public participation program for all jurisdictions, not just those fully planning under GMA. The new additions under (A) and (B) are modified from GMA rules [WAC 365-196-610(2)(a)(i) and (ii)]. The recommendation for a schedule and public scoping addresses Growth Management Hearings Board decisions – highlighting the importance of definitive notice when taking action on periodic reviews.

(3)(b) Review and analysis to determine need for revisions.

(i) Review amendments to the act and shoreline master program guidelines.

Local governments must review amendments to chapter 90.58 RCW and department guidelines that have occurred since the master program was last amended, and determine if local amendments are needed to maintain compliance. The department will maintain a checklist of legislative and rule amendments to assist local governments with this review. The department will provide technical assistance to ensure local governments address applicable changes to the act and master program guidelines.

(ii) Review relevant comprehensive plans and regulations.

Local governments must review changes to the comprehensive plan and development regulations to determine if the shoreline master program policies and regulations remain consistent with them.

WAC 173-26-191(1)(e) and 173-26-211(3) provide guidance on determining internal consistency. It is the responsibility of the local government to assure consistency between the master program and other elements of the comprehensive plan and development regulations. Local governments should document the consistency analysis to support proposed changes.

(iii) Additional review and analysis.

Local governments should consider during their periodic review whether to incorporate any amendments needed to reflect changed circumstances, new information or improved data as described under subsection (1) of this section. Local governments should consider whether the significance of the changed circumstances, new information or improved data warrants amendments.

§ 3(b) is based on the Commerce GMA periodic update rule [WAC 365-196-610(2)(b)].

§ 3(b)(i) borrows from the Commerce rule in requiring Ecology to maintain a checklist of statutory and rule amendments.

§ 3(b)(ii) references Ecology's existing rules on how to review SMPs for consistency with GMA plans and regulations. (Those rules clarify that local governments are responsible for determining whether their SMP is consistent with other local plans and regulations, and not Ecology).

§ 3(b)(iii) acknowledges local governments may combine locally initiated amendments together with the periodic review.

(3)(c) Take legislative action.

(i) At the end of the review process, counties and cities must take legislative action declaring the review process complete.

(ii) The notice of hearing for legislative actions that are intended to address the periodic review process must state that the actions to be considered are part of the periodic review process under RCW 90.58.080(4).

(iii) The findings for any legislative action on the periodic review process must state that the action is intended to satisfy the requirements of RCW 90.58.080(4).

(iv) A local government that determines after review that amendments are not needed shall adopt a resolution, motion, or ordinance declaring findings of adequacy. Findings of adequacy are a local written determination that no revisions to a shoreline master program are needed to comply with the requirements of RCW 90.58.080(4).

§ 3(c)(i) – (iii) is based on the GMA periodic update rule [WAC 365-196-610(2)(c)]. These rules are based on Growth Management Hearings Board decisions that found procedural errors in some local GMA periodic review adoptions. It is important to definitively conclude the periodic review in legislative findings.

§ 3(c)(iv) clarifies that when no changes are needed a local government will adopt formal "Findings of Adequacy."

(3)(d) Submittal to the department.

(i) A local government that determines amendments are needed shall submit the amendments to the department consistent with WAC 173-26-110.

(ii) A local government that determines amendments are not needed shall submit the following in lieu of the requirements of WAC 173-26-110:

(A) A resolution or ordinance declaring findings of adequacy.

(B) Evidence of compliance with applicable public notice and consultation requirements.

(C) Copies of all public, agency and tribal comments received during any applicable public comment periods, or where no comments have been received, a statement to that effect.

(D) A completed checklist demonstrating review elements have been considered, and are either inapplicable or have already been addressed through previous locally initiated amendments prior to the scheduled periodic review.

§ 3(d)(i) clarifies that when there are amendments, local governments will follow the normal amendment process.

§ 3(d)(ii) provides submittal requirements when there are no amendments – these are the required elements for complete submittal to accompany "findings of adequacy."

(e) State process for approving periodic reviews.

(i) The department must issue a formal approval of any amendment or findings of adequacy. Department approval is necessary to affirmatively conclude the periodic review process, to confirm that state review of local action has occurred, and to establish a definitive appeal window consistent with RCW 90.58.190.

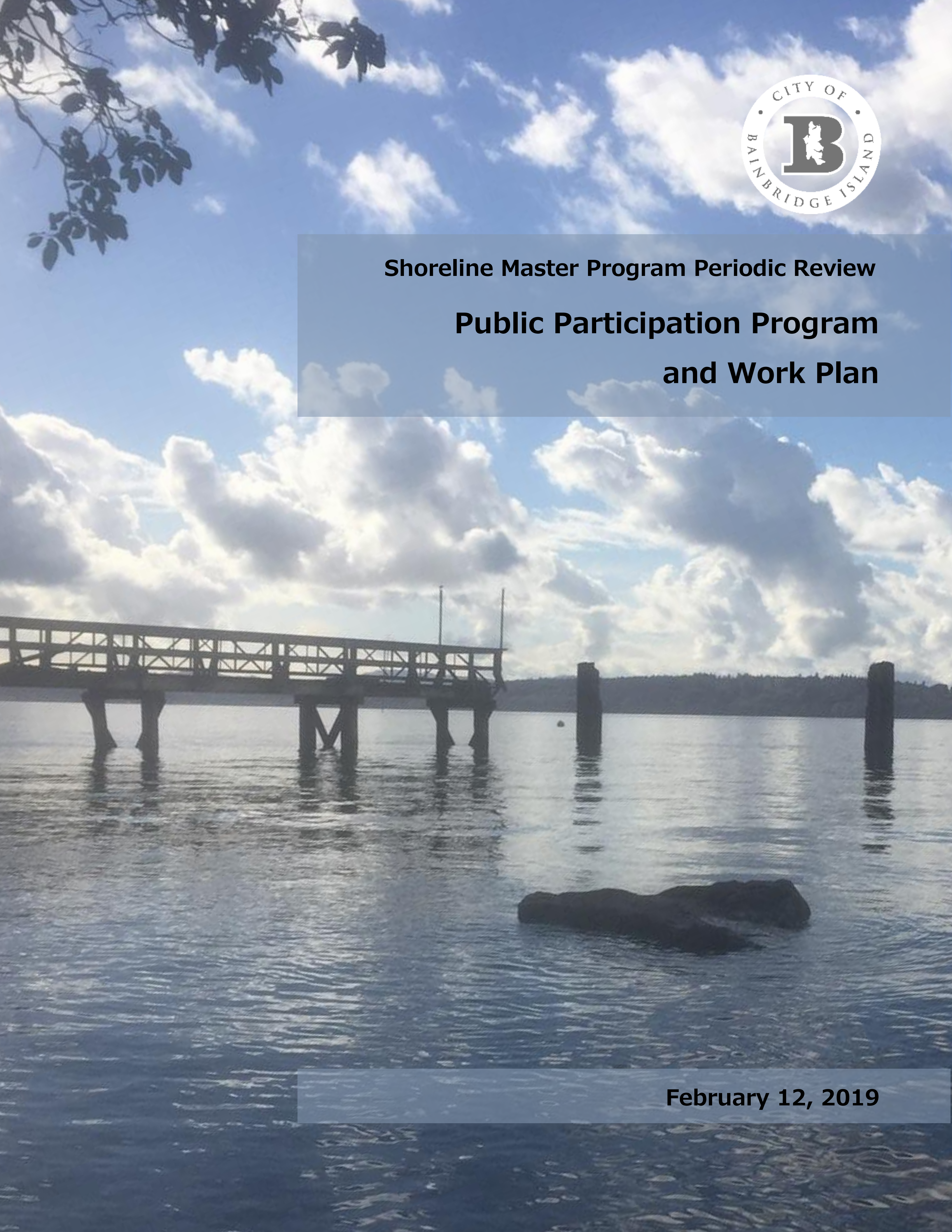
(ii) Where the local government final action includes master program amendments, local governments and the department shall follow applicable adoption procedures described in WAC 173-26-120.

(iii) Where the local government final action is to adopt findings of adequacy, the department shall follow applicable adoption procedures described in WAC 173-26-120. The department shall review the findings of adequacy solely for consistency with RCW 90.58.080(4) and this section.

§ 3(e)(i) clarifies that Ecology must approve any amendment as well as the "findings of adequacy." Any appeals would be of Ecology's approval rather than the local government determination.

§ 3(e)(ii) clarifies that the normal adoption process applies if there are amendments.

§ 3(e)(iii) provides submittal requirements where there are no amendments. Ecology will follow the normal adoption process but substitute review of the local "findings of adequacy" with evaluation of actual amendments.



City of Bainbridge Island

Shoreline Master Program Periodic Review

Public Participation Program and Work Plan

February 12, 2019

Shoreline Master Program Periodic Review

Public Participation Program and Work Plan

Table of Contents

Contact Information for SMP Periodic Review

- To submit **written comments**:

  pcd@bainbridgewa.gov or
  280 Madison Avenue N
  Bainbridge Island, Washington 98110

- To submit questions or comments over the **phone**:

  Christy Carr, Senior Planner, 206.780.3719

- To sign-up for **Notify Me**:

  http://www.bainbridgewa.gov/list.aspx

- To sign-up for the **City Manager's Report**:

  http://www.bainbridgewa.gov/500/City-Managers-Report

- To discuss **alternative outreach ideas**:

  Kristen Drew, Communications Coordinator
  kdrew@bainbridgewa.gov or 206.780.3741

Introduction

The City of Bainbridge Island (City) is conducting the periodic review of its Shoreline Master Program (SMP). The Shoreline Management Act (SMA) requires each city and county to review, and, if necessary, revise their SMP at least once every eight years. The City's periodic review is due to be complete on or before June 30, 2020.

The City is using the optional joint state/local review process in partnership with the Department of Ecology (see, e.g., WAC 173-26-104). This joint review process means that the state and city public comment period, which includes at least one public hearing, will run concurrently. The review process also includes initial review and final approval by the Department of Ecology. The SMA requires that local governments provide a full opportunity for involvement in both the development and implementation of their SMPs (see, e.g., WAC 173-26-201(3)(b)). In other words, the periodic review requires a public participation program that provides for early and continuous involvement of interested parties throughout the review process. This Public Participation Program outlines the scope and timing of the amendment process and describes opportunities for public participation throughout.

Goals

Overall goals of this Public Participation Program are to:

- Provide objective information to assist the public in understanding issues and solutions related to the SMP itself and the periodic review process.
- Provide opportunities to the public to contribute ideas and provide feedback through all phases of the periodic review process.
- Make the periodic review process accessible and engaging to interested participants by using a variety of media, plain language, and easy-to-understand materials.

Scope of Periodic Review

The required minimum scope of review as established by the SMA is:

(A) To assure that the master program complies with applicable law and guidelines in effect at the time of the review; and
(B) To assure consistency of the master program with the local government's comprehensive plan and development regulations adopted under chapter 36.70A RCW, if applicable, and other local requirements.

The periodic review process provides the method for bringing shoreline master programs into compliance with the requirements of the SMA that have been added or changed since the last review and for responding to changes in guidelines adopted by the state, together with a review for consistency with amended comprehensive plans and regulations. The periodic review also provides an opportunity to incorporate amendments to reflect changed circumstances, new information, or improved data.

The City's periodic review will meet minimum requirements with a focus on amendments to (a) improve implementation effectiveness and (b) better reflect new information and improved data related to specific topics such as climate change adaptation and aquaculture. The scope of the periodic review is outlined in the proposed work plan included in this document.

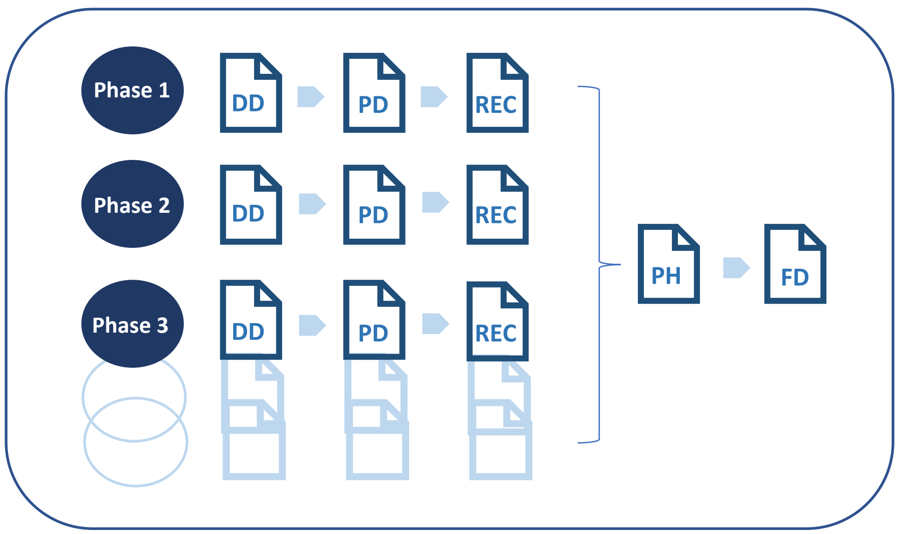
Phased Approach

The City recognizes that some parts of the SMP are important and interesting to some people, while other parts are important and interesting to others. The City also understands that people may be interested in participating in a particular phase (e.g., early discussions vs. final draft), rather than the entire process. In order for the work plan and review process to be more accessible – that is, broken down into identifiable, manageable pieces – the City is proposing the Planning Commission use a phased approach, both in terms of review documents and review topics.

Phased Approach – Review Documents

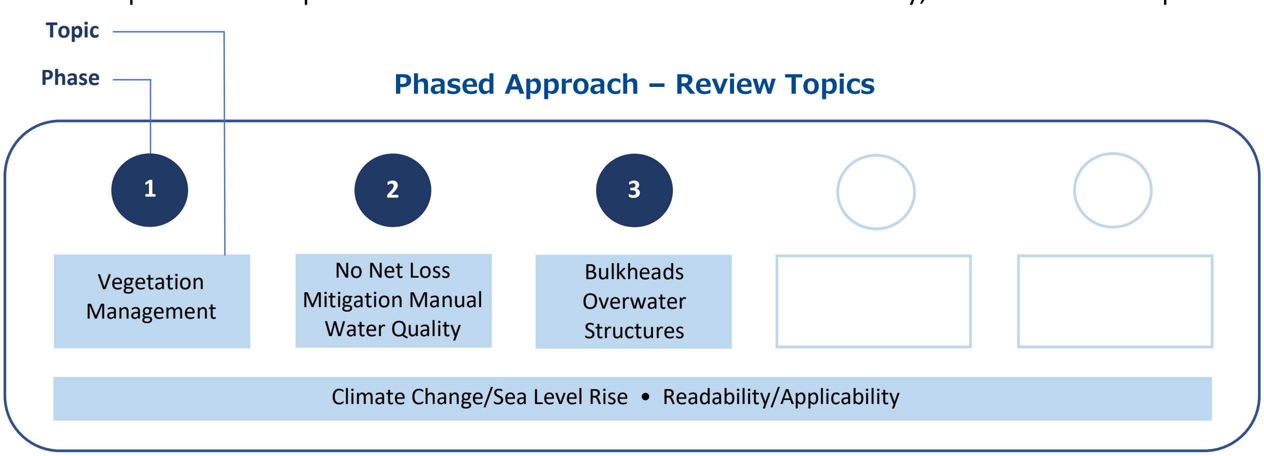
Each phase will include one topic, or a group of related topics, and will be reviewed in a series of draft documents: discussion draft **(DD)**, proposed draft **(PD)**, and recommended draft **(REC)**. The recommended drafts from each phase will be consolidated into a public hearing draft **(PH)**. The public hearing draft will be updated based on public comment, then forwarded to the Department of Ecology for its initial review as a final draft **(FD)**.

Phased Approach – Review Documents



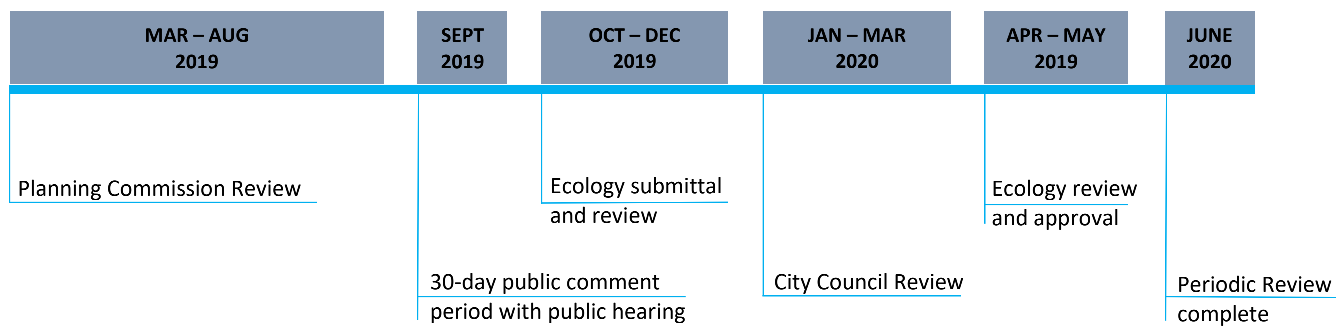
Phased Approach – Review Topics

Each phase of the periodic review will include one topic, or a group of related topics. In addition, issues that span all topics will be addressed in every phase. The anticipated sequence of review topics is shown below. Topics for future phases will be decided once the review is underway, based on the work plan.



Anticipated Timeline

The City anticipates the periodic review will follow the general timeline below. Each phase, as discussed above, will have a distinct review period. Specific meeting and public hearing dates will be made available in accordance with state and local requirements and best practices.



Opportunities for Public Participation

The City is committed to providing multiple opportunities for the public to engage in the SMP periodic review process. Most meetings will be hosted by the Planning Commission or the City Council. In-person public participation opportunities include:

Planning Commission Meetings

The Commission will discuss and consider amendments to the SMP at regularly scheduled meetings and hold at least one public hearing. As described earlier, the Planning Commission will use a phased approach for review. The public hearing will be a joint public hearing with the Department of Ecology during the required 30-day public comment period. The Commissioners will consider public input to craft draft revisions to the SMP. After completing their review, the Planning Commission's recommended draft amendments will be submitted to the Department of Ecology for the state's initial determination of consistency with the SMA.

Planning Commission meetings are held on the second and fourth Thursday of the month from 7:00 to 9:00 pm at City Hall in the Council Chamber. Special meetings may be held at an earlier time or on a different day, as needed. Public comment is accepted at all Planning Commission meetings. Meeting materials are provided in the agenda packet, which is usually published on the City's website on the Friday prior to the meeting: https://www.bainbridgewa.gov/AgendaCenter .

Joint Local/State Public Comment Period and Public Hearing

The periodic review process requires a 30-day public comment period during which at least one public hearing must be held. Pursuant to the joint review process, the City will hold at least one joint public hearing with the Department of Ecology. The public hearing will be held at a Planning Commission meeting and be advertised, including via the City's website and in the local newspaper 10 days prior to the hearing. The public comment period provides opportunity for written comment and in-person testimony at the public hearing.

City Council Meetings

Staff will present the Department of Ecology's initial determination to the Department of Ecology. The City Council will discuss and consider amendments to the SMP at regularly scheduled City Council meetings and may choose to hold a public hearing. [Note: Only one public hearing is required. The required public hearing will be held by the Planning Commission.] At the end of its review process, the City Council must take legislative action declaring the review process complete. It is anticipated that the City Council will adopt an ordinance approving the amendments proposed during the periodic review and authorizing staff to forward the periodic review to the Department of Ecology for state approval.

City Council meetings are held the first through fourth Tuesdays of each month, beginning at 6:00 pm at City Hall in the Council Chamber. Special meetings may be held at an earlier time or on a different day. Public comment is accepted at all City Council Business Meetings, which are held on the second and fourth Tuesdays of each month. Meeting materials are published in the agenda packet, which is published on the City's website on the Friday prior to the meeting: https://www.bainbridgewa.gov/1101/City-Council-Agendas .

How to Get and Stay Involved

The City will use several modes of communication to inform the public and encourage participation, including:

- **Sign up on** Notify Me**:** Members of the public can sign up to receive email or text notifications about public meetings and other aspects of the SMP amendment.
- **Comment:** Members of the public can comment in-person to the Planning Commission, City Council or Staff, or by written comment submitted to the City by letter or email. All comments will be documented, retained, and available for public review.
- **Website:** The City maintains a project page on its website with updates, important dates, background materials, and draft documents.
- **Invite:** Members of the public can request City staff to give a presentation and take Q&A on the SMP periodic review to community groups or any public forum.

Outreach Methods and Tools

The overall objective of this Public Participation Program is to describe how the City will engage the public during the course of the periodic review process. Public participation methods and tools may vary by phase of the periodic review process. This Public Participation Program may continue to be reviewed and refined throughout the review process, if needed. The City will utilize a variety of modes of communication to engage the public. Public outreach will consist of in-person outreach efforts, traditional media and advertising, and outreach efforts utilizing technology and social media. Public meetings will be noticed as far in advance as possible.

In-Person Outreach Methods

- In-person presentations at group meetings, e.g., Bainbridge Island Watershed Council, realtor groups

Traditional Media and Advertising

- Press releases to local papers, blogs and newsletters

- Utilize community organization email lists, newsletters, and social media
- U.S. postal mail flyer to shoreline property owners
- Announcements in the *Bainbridge Island Review*
- Emails to current City email listservs, volunteer lists, and citizen advisory groups

Technology and Social media

- City website – Background information, existing SMP, useful weblinks to planning resources, and materials prepared for public meetings will be available to the public on the City's SMP project page and as hard copies at City Hall
- Notify Me – There is a listserv for the public to sign up for Shoreline Master Program updates
- Updates related to the SMP periodic review process will be posted on Facebook
- Posting SMP periodic review meetings to the calendar on the City website
- City Manager's Report – updates and announcements of meeting dates included as needed in the weekly report

Potential Groups for Outreach

City staff will initiate contact and communicate about the SMP periodic review process with the following potential groups for outreach. Staff anticipates developing an email listserv to maintain communication with these groups.

City Citizen Advisory Groups Climate Change Advisory Committee Environmental Technical Advisory Committee Marine Access Committee Planning Commission Utility Advisory Committee	Other Public Agencies Bainbridge Island Fire District Bainbridge Island Metro Park and Recreation District Bainbridge Island School District Kitsap Public Utility District Kitsap Public Health District Puget Sound Regional Council Washington State Ferries
Community Groups Association of Bainbridge Communities Bainbridge Island Japanese American Exclusion Memorial Organization Bainbridge Island Land Trust Bainbridge Island Watershed Council Chamber of Commerce Housing Resources Board Rotary Club of Bainbridge Island Sustainable Bainbridge	Other Organizations Bloedel Reserve Cooke Aquaculture Kitsap Building Association Kitsap County Association of Realtors SEPA review agencies Yacht clubs and marinas Tribal governments

Work Plan

The work plan includes items that have been identified by staff, project applicants, and others as the most in need of review and revision. The work plan is presented in two formats: (a) a list of guiding themes under which most, if not all, of the anticipated revisions can fit, and (b) a detailed list of specific language or sections of the SMP that need to be revised. The detailed work plan assigns each proposed topic to consider to one or more of these guiding themes.

1. Vegetation management – Existing landscaping ("established yard"): Staff, shoreline property owners, and vegetation maintenance providers continue to struggle with what can or cannot be done in terms of existing landscaping. There are endless variations on what shoreline property owners may consider their "yard" and what constitutes "normal or routine maintenance" or "ongoing maintenance." Clarity is needed as to if/when/which vegetation management provisions apply to existing landscaping.

2. Vegetation management – other: A number of vegetation management regulations need to be simplified and clarified, and with that, some policy direction is needed. Examples include: removal of significant trees, "1/3-2/3" provision where a structure is allowed to encroach into up to 1/3 of Zone 2 of the shoreline buffer with the remaining 2/3 of Zone 2 (and all of Zone 1) planted with native vegetation.

3. Consistency with no net loss standard: The current conditions of the shorelines, including existing development, are the starting point or baseline for determining no net loss. Regulations and provisions need to be reviewed for consistency with the no net loss standard. For example, do any vegetation management regulations result in "restoration" vs. "mitigation" for identified impacts? Examples of means to achieve the no net loss standard would also be helpful for project applicants and qualified professionals completing site specific impact analysis reports to clarify the concept of no net loss.

4. Integration of other codes/policies (stormwater, climate change): The City's stormwater regulations have been updated since the SMP update (Chapter 15.20 BIMC). These should be integrated. A direct discharge criteria should be considered and consistency with the Single-Family Mitigation Manual can be improved. The Planning Commission may consider incorporating sea level rise and climate change adaptation.

5. Specific regulations or performance standards: While staff does not recommend any changes to current thresholds or performance standards, the Planning Commission may review and consider revisions to specific regulations. Any revisions would likely trigger the need to review and update background documents (e.g., Cumulative Impacts Analysis). Examples include:

a. Limits/requirements on bulkhead repair/replacement (SMP Section 6.2)
b. Prohibition of docks (SMP Section 6.3)
c. Buffer widths (SMP Section 4.1.3; Table 4-3)
d. Limit on liveaboards (SMP Section 5.3)
e. New construction limit lines for Manzanita and Fletcher Bays (Special Area Maps)

6. Mitigation manual: The mitigation manual needs to be updated to reflect current standards of other agencies (e.g., U.S. Army Corps of Engineers), provide alternatives for impervious surface impacts, and improve consistency/integration with the text of the SMP.

7. Applicability: The applicability of the SMP in general needs to be clarified. The use of terms such as "development, use or activity," "human activity," "whether it requires a permit or not," among others, is confusing. Complexity and redundancy could be reduced by eliminating the applicability subsection in every section of the SMP.

8. Readability: Shorten document, improve clarity, simplify and reduce complexity; correct errors and omissions

SMP Section	Topic	Summary of Topics to Consider	Guiding Theme(s)
4.1.5	Critical Areas	• Consistency audit with SMP amendment	4,8
4.2.1	Existing Development (Nonconforming)	• Consistency audit with SMP amendment	3,7,8
4.0	Table 4-1 Table 4-2 Table 4-3	Table 4-1 (Use and Modification Table) • Clarify footnotes (revisit #22 re: mixed use physical separation) • Correct inconsistencies between table and text (e.g., subdivisions) • Revisit requirement for shoreline conditional use permit for all retaining walls • Clarify primary vs. accessory utilities • Clarify allowance of overwater structures when used as public trails Table 4-2 (Dimensional Standards) • Address missing footnotes (#5 and 7) • Clarify utilities setbacks Table 4-3 (Buffers) • Revise for improved readability and ease of administration • Clarify when "expands to include existing native vegetation applies" • Clarify that all shallow lots (<200 feet deep) are assigned narrower buffer • Clarify how buffer is measured for high bluff properties (i.e., what is between Zone 1 at OHWM and top of bluff) • Clarify criteria for Category A and B lots • Add figure reference and reference to Section 4.1.3 • Clarify what geomorphic classes are or where information about them is located • **No change in required buffer widths is anticipated**	8
4.1.2	Environmental Impacts	• Clarify that mitigation follows a sequence/"when mitigation is required" language – if an impact cannot be avoided, mitigation is required • Simplify and clarify applicability section, clarify "development, use, activity" • Move vegetation management regulations to Section 4.1.3 (e.g., 4.1.2.5, Revegetation Standards) • Clarify and emphasize that either use of the Single-Family Mitigation Manual or submittal of a site-specific impact analysis is required; clarify when manual can be used • Delete references that don't exist • Revisit "in perpetuity" requirement when mitigation is required (SMP 4.1.2.7) • Clarify mitigation and monitoring requirements (SMP 4.1.2.8), consider threshold (e.g., not required for > $1000) for performance, mitigation/monitoring	3,6,7,8

[Type here]

SMP Section	Topic	Summary of Topics to Consider	Guiding Theme(s)
		• Clarify that new impervious surface area requires mitigation (only mentioned in Single-Family Mitigation Manual); better tie to manual • Consider new language that requires prioritizing where mitigation planting is located – has to go where it will have most ecological benefit	
4.1.3	Vegetation Management	• Relocate and revise, if needed, vegetation management-related regulations from SMP 4.1.2.5 o SMP 4.1.2.5.1 – Revegetation Standards – improve clarity o SMP 4.1.2.5.3 – Clarify what "altered or reduced" means; when applicable? o SMP 4.1.2.5.4 – Revise for clarity; remove requirement for offsite mitigation to be in Zone 1 • Clarify applicability section, non-retroactive nature of regulations • Clarify which requirements apply to new development vs. existing development • SMP 4.1.3.4 – Exceptions – clarify what is allowed without City review or approval, replace this section with tree and vegetation regulations (including exemption for yard and garden activities) from critical areas ordinance, remove requirement to leave downed hazard tree on site (if left, considered sufficient mitigation) • SMP 4.1.3.5 – Create new section that just explains establishment of shoreline buffers (2 options); revisit HMP requirement and review process; remove references to documents that don't exist or consider programmatic approach to vegetation maintenance by City or other land managers (SOP manual, also referenced in SMP 4.1.3.7) • Provide mechanism for some level of significant tree removal (e.g., develop significant tree removal criteria) • Revisit requirements for vegetation removal/replacement outside shoreline buffer (native and non-native, significant trees) • SMP 4.1.3.6 – Clarify "1/3 2/3" provision; applicable to new development only? • SMP 4.1.3.7 – Clarify applicability, provide consistency with other vegetation maintenance provisions, define "modified area," delete minor pruning section, refer to critical areas tree and vegetation regulations, revisit requirement for clearing permit, clarify connection to SMP 4.1.4, Land Modification, as referenced, clarify utilities • SMP 4.1.3.7.2 – Consolidate with new section relating to just shoreline buffers, clarify what "dimensions altered" means, clarify requirement for when Zone 1 must be restored • SMP 4.1.3.7.3 – Clarify what "minimum necessary for public use" means, improve connection to Single-Family Mitigation Manual, clarify whether stairs need to be grated and type of mitigation required if not grated • SMP 4.1.3.8.1 and 3 – Revise entire sections for clarity; **no changes to size thresholds anticipated** • SMP 4.1.3.8.4 – View maintenance – clarify and simplify; reference critical areas tree and vegetation requirements?, delete requirement for Bluff Management Plan	1,2,3,5, 6,7,8

SMP Section	Topic	Summary of Topics to Consider	Guiding Theme(s)
		• SMP 4.1.3.11 – Shoreline Structure Setback View Requirements – Clarify applicability, relocate option to build in Zone 2 language, correct figure references, simplify language, clarify what constitutes "most waterward point"	
4.1.4	Land Modification	• Eliminate requirement for clearing permit for "all clearing" to allow for nominal landscaping activities (e.g., 25 cubic yards/200 square foot thresholds) • Clarify language, better integrate with other sections	7,8
4.1.6	Water Quality and Stormwater Management	• Integrate new (2016) stormwater regulations (BIMC 15.20) • Add direct discharge criteria (i.e., when is one allowed? Considered necessary?) • Update wood treatment regulations per agency guidelines • Improve consistency with Single-Family Mitigation Manual	4,8
Appendix D	Single-Family Mitigation Manual	• Better integrate into code language – when it can be used and how it relates to vegetation management requirements • Provide alternatives to rain garden for new impervious surface area; clarify where rain garden must be located when required (inside or outside shoreline buffer) • Update per current agency guidance/requirements (e.g. Corps of Engineers, WDFW)	2,3,4, 6,7,8
5.3	Boating Facilities	• Revisit liveaboard threshold (currently 10 percent) • Revisit management and operations (implementation)	6,8
6.3	Overwater Structures	• Improve consistency with Single-Family Mitigation Manual and other agency mitigation requirements • Clarify grammar in prohibitions section • Clarify length thresholds (how to determine) • Clarify buoy density	5,6,7,8
8.0	Definitions	• Add missing definitions (e.g., significant tree, alteration, redevelopment) • Clarify definitions	8
Appendix A	Shoreline Designation Map	• Correct inconsistencies between paper and GIS maps (one identified) • Correct error (one identified) • **No changes to shoreline designations anticipated other than corrections**	8
Appendix E	Special Area Maps	• Include corrected maps • Consider construction limit lines for Manzanita Bay and Fletcher Bay	5,8
All	Global edits	• Clerical and implementation efficiency edits anticipated in every section	8
--	Climate Change/Sea Level Rise	• Incorporate climate adaptation/sea level rise into goals, policies and regulations.	4
5.2	Aquaculture	• Pending outcome of current limited amendment.	5,8

4.1.2 Environmental Impacts

4.1.2.1 Applicability

All shoreline development and activity shall be located, designed, constructed, and managed in a manner that avoids, minimizes and/or mitigates adverse impacts to the shoreline environment. The preferred mitigation sequence (avoid, minimize, rectify, reduce, or compensate for the environmental impact) shall follow that listed in WAC 173-26-201(2)(e). See definition of "Mitigation" listed in this Master Program, in Section 8.0, Definitions.

In approving shoreline development, the City shall ensure that shoreline development, use, and/or activities will result in no net loss of ecological functions and ecosystem-wide processes necessary to sustain shoreline resources, including loss that may result from the cumulative impacts of similar developments over time consistent with constitutional and statutory limitations on the regulation of private property. To this end, the City may require modifications to the site plan and/or adjustments to proposed project dimensions, intensity of use, and screening, as deemed appropriate. If impacts cannot be avoided through design modifications, the City shall require compensatory mitigation commensurate with the project's adverse impacts.

4.1.2.2 Goal

Minimize impacts of shoreline development, uses and activities on the environment during all phases of development (e.g. design, construction, and management).

4.1.2.3 Policies

1. Ensure all shoreline uses, activities and developments are designed and located in a manner that prevents or mitigates adverse impacts to shoreline ecological functions and ecosystem-wide processes, including the use of the mitigation sequence (avoid, minimize, rectify, reduce, compensate); and make available flexible alternatives to accommodate preferred shoreline uses.
2. Ensure, through appropriate monitoring and enforcement measures that all required conditions are met, and improvements are installed and properly maintained.
3. Promote shoreline uses and activities within critical areas which do not cause significant adverse impacts to ecological functions and ecosystem-wide processes, such as public access on publicly owned lands.
4. In assessing the potential for new uses, activities and developments to cause adverse impacts, take into account all of the following:

    a. Effects on ecological functions and ecosystem-wide processes, including temporal loss of functions; and

    b. Effects that occur on-site and effects that may occur off-site; and

    c. Direct and indirect effects and long-term effects of the project; and

    d. Effects of the project and the incremental or cumulative effects resulting from the project added to other past, present, and reasonably foreseeable future actions; and

e. Compensatory mitigation actions that offset adverse impacts of the development action and/or use.

5. To provide for comprehensive management strategies for shoreline areas, integrate planning and regulatory measures, such as those within the comprehensive plan, regional watershed plans, or state and federal regulations.

4.1.2.4 Regulations-Impact Analysis and No Net Loss Standard

1. All shoreline development, use and activities, including preferred uses, and uses that are exempt from a shoreline substantial permit, shall be located, designed, constructed, and maintained in a manner that protects ecological functions and ecosystem-wide processes. All proposed shoreline development, uses and activities shall:

    a. Utilize the required mitigation sequence of Section 4.1.2.6, Regulations – Mitigation; and

    b. Utilize effective erosion and scour control methods during project construction and operation; and

    c. Minimize adverse impacts to critical salt water habitat, fish and wildlife conservation areas, and/or other ecological functions and ecosystem-wide processes, such as those provided by shoreline vegetation; and

    d. Minimize interference with beneficial natural shoreline processes, such as water circulation, sand and gravel transport movement, erosion, and accretion; and

    e. Avoid hazards to public health and safety; and

    f. Minimize the need for shoreline stabilization measures and flood protection in the future; and may require a geotechnical analysis to ensure that the proposed activity meets this regulation (See Section 6.2, Shoreline Stabilization); and

    g. Result in no net loss of ecological functions and processes necessary to sustain shoreline resources, including loss that may result from the cumulative impacts of similar developments over time.

2. In reviewing and approving shoreline development, use or activity, regardless of whether a permit is required the following shall apply:

    a. The Administrator shall condition the shoreline development, use, and/or activities such that it will:

        i. Meet provisions in subsection 1 above; and

        ii. Employ measures to mitigate adverse impacts on shoreline functions and, processes, if necessary; and

        iii. Modify the site plan and/or adjust the project dimensions, intensity of use, or screening as deemed appropriate to address impacts. If impacts cannot be avoided through design modification, the Administrator shall require compensatory mitigation, pursuant to regulations in Sections 4.1.2.5, Regulations – Revegetation Standards, and 4.1.2.6, Regulations – Mitigation; and

b. If a proposed shoreline development, use or activity is determined by the Administrator to result in significant short-term, long-term, or cumulative adverse environmental impacts lacking appropriate compensatory mitigation, it shall be sufficient reason for the Administrator to deny a permit.

3. To assure that development activities contribute to meeting the no net loss provisions pursuant to subsection 1 and 2 above, an applicant is required to submit a site-specific analysis of potential impacts and a mitigation plan that includes compensatory mitigation measures when determined necessary as a result of the analysis. The site-specific analysis shall be prepared in accordance with Section 4.1.2.9, Submittal Requirements – Site-Specific Impact Analysis and Mitigation Plan.

4. To mitigate anticipated impacts and meet the no net loss standards in subsection 1 and 2 above, an applicant for a single family residential development or accessory structures may choose to use the Standard Residential Mitigation Manual in Appendix D in lieu of a site-specific impact analysis and mitigation plan. If an applicant uses the Single Family Residential Mitigation Manual, compensatory mitigation requirements provided in the manual shall be included in the project submittal.

4.1.2.5 Regulations – Revegetation Standards

1. Vegetation replanting is required for all development, uses or activities within the 200-foot shoreline jurisdiction that either alters existing native vegetation or any vegetation in the required Shoreline Buffer or Vegetation Management Areas, whether a permit is required or not. This includes invasive species removal. Minimum requirements for planting plans can be found in the City's Administrative Vegetation Management Manual. The following information shall be submitted for approval prior to vegetation disturbance as part of a project proposal or clearing permit pursuant to BIMC 15.18, Land Clearing:

    a. Residential, Industrial and Commercial Development.

        i. Vegetation disturbance of 200 square feet or less requires submittal of an annotated list of proposed plants and their spacing specifications and location.

        ii. Vegetation disturbance greater than 200 square feet requires that the planting plan shall be completed by a qualified professional or the applicant may use the single-family residential mitigation manual.

    b. Public Park and City Maintained Areas.

        i. Vegetation disturbance of 2,500 square feet or less requires submittal of an annotated list of proposed plants and their spacing specifications and location.

        ii. Vegetation disturbance greater than 2,500 square feet requires that the planting plan shall be completed by a qualified professional.

2. For vegetation mitigation in the Shoreline Buffer or Site-specific Vegetation Management Areas, all new plantings shall meet the provisions in Section 4.1.3.5(5), except for the Point Monroe District which shall meet special provisions in subsection 6,

3. If the Shoreline Buffer is altered or reduced pursuant to provisions of Section 4.1.3, Vegetation Management or Section 4.2.1, Nonconforming Uses, Non-Conforming Lots, and Existing Development, the following shall occur in Zone 1:

    a. Retain existing native vegetation; and

Commented [CC1]: Move revegetation standards to Section 4.1.3.

Commented [CC2]: Clarify what this means – ALL vegetation within buffer, only native vegetation within jurisdiction (outside buffer)

Commented [CC3]: Delete or create manual

Commented [CC4]: Update BIMC reference or delete – 16.18 does not apply to shoreline.

Commented [CC5]: Clarify how this fits with other standards.

Commented [CC6]: Clarify WHICH provisions of Section 4.1.3. All? Or specific ones only?

b. Plant the entire area of Zone 1. Obtain 65% vegetation canopy coverage within 10 years.

4. When vegetation mitigation is required for new upland development, uses, or activities the mitigation plan shall include new plantings that are protective of views from the primary structure of the subject property and in proportion to the identified impact. Mitigation shall be located in the following sequence, except for the Point Monroe District which shall meet special provisions in subsection 6,

   a. Within Zone 1, plant vegetation to obtain a minimum of 65% native vegetation canopy coverage;

   b. In Zone 2, plant to increase canopy coverage, in a manner that promotes contiguous native vegetation or in areas nearest the shoreline;

   c. In the Shoreline Buffer, plant in a manner that promotes a contiguous native vegetated corridor that connects to the shoreline;

   d. Outside of the Shoreline Buffer, plant in a manner that promotes a contiguous native vegetated corridor to the shoreline;

   e. Outside of the Shoreline Buffer; or

   f. At an off-site location approved by the Administrator, within Zone 1, plant to meet the standard of subsection a.

5. When mitigation is required for shoreline stabilization projects due to site disturbance, the required planting plan shall also include the following, unless an alternative planting plan is approved by the Administrator:

   a. Replant 75% of the shoreline area located along the upland edge of the shoreline stabilization structure to a minimum depth of ten (10) feet, unless demonstrated to be infeasible to the Administrator;

      i. The depth may be reduced to five (5) feet to allow for landscape design variation, provided that the total square footage of the area planted equals the required 75% of the shoreline;

   b. Planting plans shall meet provisions in Section 4.1.3.5(5), and shade bearing plants shall be provided at suitable fish spawning sites; and

   c. Include plantings equivalent to one tree per ever 20 linear feet of shoreline and one shrub per ever five linear feet, which may be planted with due consideration of views from the primary structure of the subject property.

6. Special Mitigation Provisions for Point Monroe District. When vegetation mitigation is required for new development, uses, or activities in the Point Monroe District, the mitigation plan shall include new vegetation communities appropriate for dune, sand spit, barrier beach, barrier estuary, or barrier lagoon, including salt marsh that shall be installed within the spit-specific vegetation management area (SVMA) as defined in Section 4.1.3.5(9), thirty (30) foot setback between the OHWM and the primary structure, or where area is available on the site.

Commented [CC7]: Need guidance for how to achieve this percent coverage.

Commented [CC8]: These are different topics – should be in different sections.

Commented [CC9]: Does this mean an off-site location must be in Zone 1?

Commented [CC10]: What is "shoreline area"?

Commented [CC11]: Clarify and address consistency with other standards.

4.1.2.6 Regulations – Mitigation

1. Mitigation Sequence: Mitigation shall include the following actions in order of priority (a-e), and (f) is required for all mitigation activities:
    a. Avoiding the impact altogether by not taking a certain action or parts of an action;
    b. Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;
    c. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
    d. Reducing or eliminating the impact over time by preservation and maintenance operations;
    e. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and
    f. Monitoring the impact and the compensation projects and taking appropriate corrective measures.
2. When compensatory mitigation is necessary to offset impacts, mitigation measures in the immediate vicinity of the impact shall be the preferred mitigation option. Property owners may be required to perform the balance of compensatory mitigation off-site if the property cannot support required mitigation or when off-site mitigation can be demonstrated to the satisfaction of the Administrator to be more beneficial to shoreline ecological functions and processes. For example, off-site mitigation may be the better choice if large, cohesive areas are available off-site while only small fragmented areas are available on-site for mitigation.
3. Mitigation actions shall not have a significant adverse impact on other preferred shoreline uses promoted by the policies of the Shoreline Management Act.
4. When compensatory mitigation measures are required, all of the following shall apply:
    a. The quality and quantity of the replaced, enhanced, or substituted resources shall be the same or better than the affected resources; and
    b. The mitigation site and associated vegetative planting shall be nurtured and maintained such that healthy native plant communities can grow and mature over time; and
    c. Unless the Single-family Residential Mitigation Manual is being used for single-family residential development and accessory structures pursuant to Section 4.1.2.4(4), the mitigation shall be informed by pertinent scientific and technical studies, including but not limited to the Shoreline Inventory and Characterization Report, the Shoreline Restoration Plan and other background studies prepared in support of this Program; and

   d. The mitigation activity shall be monitored and maintained to ensure that it achieves its intended functions and values, pursuant to Section 4.1.2.7, Surety Regulations.

5. To encourage shoreline property owners to remove bulkheads and perform other beneficial shoreline restoration actions in advance of shoreline development or redevelopment, the City may give mitigation credit to any beneficial restoration action that occurred within 10 years of the proposed development/redevelopment activity provided that:
   a. The applicant/property owner declares the intent of the restoration or enhancement project as mitigation credit at the time of the restoration permit application; and
   b. The City can confirm via site inspection, photographs, or other evidence that the restoration actions have improved shoreline conditions.
6. Where feasible, replacement compensatory mitigation should be required prior to impact and, if applicable, prior to final inspection and approval of building occupancy; and to ensure no net loss, the mitigation shall replace the functions as quickly as possible following the impact.

4.1.2.7 Regulations – Surety

1. The applicant/property owner shall provide assurance to the satisfaction of the Administrator, that the restoration area (including off-site mitigation) will be maintained in perpetuity. The assurance can be in the form of notice on title, conservation easement, or similar mechanism as approved by the City Attorney.
2. Except for projects undertaken by public entities, performance and/or maintenance bonds or other security shall be required by the City to assure that work is completed, monitored, and maintained. The bond/surety shall be refunded to the depositor upon completion of the mitigation activity and any required monitoring.

4.1.2.8 Regulations – Monitoring and Maintenance

1. When mitigation is required, a periodic monitoring program shall be included as a component of the required mitigation plan. To ensure the success of the required mitigation, monitoring shall occur for a minimum duration of five years from the date of the completed development. The monitoring plan may also require that periodic maintenance measures be included as recommended by a qualified professional. The duration of monitoring may be extended if the project performance standards set forth in the approved mitigation plan fail to be accomplished, or, due to project complexity, the approved mitigation plan requires a longer period of monitoring.
2. Monitoring programs may be forwarded for review and comment to state and/or federal resource agencies and affected tribes with jurisdiction.
3. Monitoring programs shall meet the requirements established in Monitoring Requirements, Appendix B, B-6(C)(2)(e).

4. All new and replacement shoreline stabilization projects shall complete and submit a minimum five-year monitoring and maintenance program that addresses the shoreline stabilization mitigation measures, and shall at a minimum include:

    a. An annual site visit by a qualified professional for each of the five (5) years to assess the effectiveness of the mitigation; and

    b. A progress report submitted to the Administrator annually, which includes any monitoring or maintenance recommendations of the qualified professional.

4.1.3 Vegetation Management

4.1.3.1 Applicability

Vegetation management is required for protection and conservation within the shoreline jurisdiction. Dimensional and other development standards, including buffers, are established based on site-specific development and conditions or as specified for that particular shoreline designation. The purpose of vegetation management is to protect and enhance the Island's natural character, water quality, native plant communities, and wildlife habitat within the shoreline jurisdiction. Vegetation management activities will be reviewed under the no net loss provisions of Section 4.1.2, Environmental Impacts, and may also be reviewed under Section 4.0, General (Island-wide) Policies and Regulations; Section 4.1.4, Land Modification; Section 4.1.5, Critical Areas; Section 4.1.6, Water Quality and Stormwater Management; Appendix B; and BIMC Chapter 15.18, Land Clearing, when applicable. Other portions of this Program may also apply.

Vegetation management includes conservation activities to protect and restore vegetation along or near marine and freshwater shorelines that contribute to the ecological functions and processes of shoreline areas. Vegetation management provisions include vegetation restoration, the prevention or restriction of plant clearing and earth grading, and the control of invasive weeds and nonnative vegetation species.

The Vegetation Management provisions apply to all shoreline development, and regulated uses and activities, including those that do not require a shoreline permit. Similar to other master program provisions, vegetation standards do not apply retroactively to existing uses and structures unless changes or alterations are proposed. Standards for vegetation management are established using current scientific and technical information pursuant to WAC 173-26-221(5)(b) and173-26-201(2)(a), and are based on the use category, shoreline characterization and the designation. Standards are provided in Section 4.0, and Tables 4-2 and 4-3.

4.1.3.2 Goal

Protect and restore shoreline vegetation to maintain and enhance ecological functions and processes, shoreline views and vistas, human safety, and personal property.

4.1.3.3 Policies

1. Maintain existing shoreline vegetation to protect ecological functions and/or processes from adverse impacts of uses, activities and developments within the shoreline jurisdiction.

Commented [CC12]: Clarify and shorten. Clarify non-retroactive nature of regulations and that they don't apply to existing yards.

2. Emphasize the use of native vegetation species to maintain the ecological functions and/or processes and mitigate the direct, indirect, and/or cumulative impacts of shoreline development, uses and activities.
3. Provide flexible dimensional standards for buffers and setbacks that are based on performance standards designed to protect ecological functions and ecosystem-wide processes, including considering alternatives to planting native vegetation species if it can be demonstrated that the equivalent ecological functions can be provided.
4. Use monitoring programs to ensure the protection of shoreline ecological functions and ecosystem-wide processes, particularly when non-native vegetation species are used as an alternative to native vegetation.
5. Encourage the restoration or enhancement of shoreline vegetation through incentive programs.
6. Establish buffers immediately upland of OHWM for each shoreline designation, recognizing the pattern of development, shoreline ecological functions and ecosystem-wide processes, and using current science and technical information, as described in WAC 173-26-201(2)(a). In establishing buffers, consideration should be given to the land use patterns to minimize the number of existing structures that would not conform to buffer dimensional standards.
7. At the time of a proposal, allow site-specific dimensional standards for vegetation management areas for shoreline development, use or activity. Dimensional standards must protect shoreline ecological functions and ecosystem-wide processes.
8. Implement a public education program emphasizing the importance of shoreline vegetation management.
9. Allow selective vegetation clearing for views for new development and to maintain views from existing residences when slope stability and ecological functions and ecosystem-wide processes are not compromised. Trimming and pruning are generally preferred over removal of native shoreline vegetation.
10. Develop specific regulations for Point Monroe, based on vegetation and management practices appropriate for dune communities, sand spits, barrier beaches, barrier estuaries or barrier lagoons.

4.1.3.4 Regulations – Exceptions

Commented [CC13]: Clarify. Make consistent with critical area exemptions to the extent possible.

1. Vegetation management standards shall not apply retroactively to existing lawfully established conforming and nonconforming uses and developments, including maintenance of existing residential landscaping, such as lawns and gardens. Property owners are strongly encouraged to voluntarily improve shoreline vegetation conditions over the long term.
2. Existing buffers and setbacks that have been established through previously approved subdivisions and indicated on the face of an approved plat shall be recognized and adhered to.
3. The following shall be exempt from the provisions of Section 4.1.3.

a. Maintenance trimming of vegetation that has a main stem or supporting structure which is less than three (3) inches in diameter; except that tree topping or other vegetation removal is not exempt.

b. Buffer enhancement through the removal of noxious or invasive weeds, provided the following are met:

   i. The vegetation removal is based on consultation with the Kitsap County Noxious Weed Board or the species being removed are on the Washington State Noxious Weed List (WAC 16-750, or its successor); and

   ii. The vegetation removal is conducted in a manner consistent with best management practices (BMP); and

   iii. Replanting occurs in the disturbed area in accordance with Section 4.1.2.5, Revegetation Standards.

c. Removal of hazard trees, as defined in Appendix B, where a report by an arborist or other qualified professional demonstrates to the satisfaction of the Administrator that trimming is not sufficient to address the hazard provided:

   i. Mitigation is provided in accordance with Section 4.1.2, Environmental Impacts, including:

      A. Requiring that the downed tree be retained on the site to provide or enhance wildlife or marine habitat; and/or

      B. When possible, require that the hazard tree be topped for safety and remain as a wildlife snag; or

   ii. When a hazard tree is located in a geologically hazardous area, the applicant shall submit a Bluff Management Plan pursuant to Section 4.1.5, Critical Areas. The hazard tree may be removed prior to the approval of the plan if it is necessary to protect life and property.

d. Commercial forest practices and the removal of trees pursuant to a Forest Practices Permit (Class II, III and IV-S only) issued by the Washington State Department of Natural Resources under the Washington State Forest Practices Act (RCW 76.09), except where such activities are associated with a conversion to other uses or other forest practice activities over which local governments have authority. For the purposes of this Program, preparatory work associated with the conversion of land to non-forestry uses and/or developments shall not be considered a forest practice and shall be reviewed in accordance with the provisions for the proposed non-forestry use, the general provisions of this Program, including Appendix B, and shall be limited to the minimum necessary to accommodate an approved use.

4.1.3.5 Regulations - General

1. Development within the shoreline jurisdiction shall be located and designed to protect existing native vegetation from disturbance to the fullest extent possible, to mitigate impacts to existing vegetation, and to meet the standard of no net loss of ecological functions and processes, Section 4.1.2, Environmental Impacts.

2. Vegetation clearing~~,~~ or grading, may not be undertaken within the shoreline jurisdiction without prior review and approval by the Administrator, unless otherwise exempt under Section 4.1.3.4, Regulations – Exceptions, or as provided in subsection 7 below, with an

Commented [CC14]: Consider deleting.

Commented [CC15]: Clarify definition. What is included?

approved Standard Operation Procedure (SOP) manual. Clearing and grading may be subject to Section 4.1.4, Land Modification.

3. Two alternative methods may be used to meet the goals and policies of the Vegetation Management Section, as provided below, except the Point Monroe District shall meet the special provisions provided in subsection 9:

   a. Site-Specific Vegetation Management Areas

      i. As an alternative to the Shoreline Buffer dimensions provided in subsection b, below, an applicant may propose specific dimensional standards that meet the Vegetation Management goals and policies as determined through a Habitat Management Plan prescribed in Appendix B, Section B-4, provided that the plan demonstrates the following:

         A. The proposed development is for a residential use.

         B The site-specific proposal assures there is no net loss of the property's specific shoreline ecological functions and associated ecosystem-wide processes pursuant to Section 4.1.2, Impact Analysis and No Net Loss; and

         C. The site-specific proposal uses the scientific and technical information* compiled to support the Shoreline Buffer standards of Section 4.1.3.5(3)(b), and/or other appropriate technical information which, as determined by a qualified professional, demonstrates how the proposal protects ecological functions and processes and how it meets the goals and policies of this Section.

      ii. The Habitat Management Plan shall be reviewed by the Administrator in accordance with provisions in Appendix B. The Administrator may approve, approve with conditions, or deny the request. The Administrator shall have the Habitat Management Plan reviewed by an independent third party, the cost of which will be borne by the applicant.

      iii. If the Site-specific Vegetation Management Area is approved, prior to permit issuance, the applicant shall record with the County Auditor a notice on title, or other similar document subject to the approval of the Administrator.

*Footnote: Scientific and technical information supporting the Shoreline Buffer standards is provided in the following documents available at the City of Bainbridge Island's Department of Planning and Community Development: *Documentation of Marine Shoreline Buffer Recommendation Discussions*, Memorandum, 2011, Herrera Environmental; *Addendum to Summary of Science*, 2011, Herrera Environmental; *Bainbridge Island Current and Historic Coastal Geomorphic/Feeder Bluff Mapping*, 2010, Coastal Geologic Services, Inc.; *Best Available Science*, 2003, Battelle; *Bainbridge Island Nearshore Habitat Characterization and Assessment*, 2004 Battelle.

Commented [CC16]: Delete or create manual. Consider programmatic approach to maintenance for City or other large property managers.

Commented [CC17]: Need separate section just on shoreline buffers/SSVAs.

Commented [CC18]: Consider deleting; require on site-specific analysis only.

Commented [CC19]: Remove ETAC review.

b. As an alternative to a Site-specific Vegetation Management Area, a Shoreline Buffer shall be maintained immediately landward of the OHWM and managed according to provisions of this section. The Shoreline Buffer shall meet the location and design standards of Section 4.1.3.6, Regulations – Shoreline Buffer – Location and Design Standard. The Shoreline Buffer shall be composed of two zones:

   i. Zone 1, an inner protective buffer area located immediately abutting the OHWM; and

   ii. Zone 2, the remaining portion of the Shoreline Buffer located immediately abutting Zone 1.

4. The Shoreline Buffer or Site-specific Vegetation Management Area shall be maintained in a predominantly natural, undisturbed and vegetated condition. Unless specifically allowed by this program, the following standards shall apply:

   a. All existing native groundcover, shrubs and significant trees located within the Shoreline Buffer or Site-specific Vegetation Management Area shall be retained;

   b. All activities shall be performed in compliance with the applicable standards contained in the Vegetation Management Section, unless the applicant demonstrates that alternate measures or procedures are equal or superior in accomplishing the purpose and intent of the Vegetation Management Section, including no net loss of ecological functions and ecosystem-wide processes.

   c. The use of pesticides are prohibited unless specifically allowed in Section 4.1.6, Water Quality and Stormwater Management.

5. New vegetation planted in the Shoreline Buffer or Site-specific Vegetation Management Area, unless otherwise provided for in zone-specific requirements Section 4.1.3.6 (6), shall be:

   a. Native species using a native plant-community approach of multi-storied, diverse plant species that are native to the Central Puget Lowland marine riparian zone.

   b. Other plant species may be approved that are similar to the associated native species in diversity, type, density, wildlife habitat value, water quality characteristics, and slope stabilizing qualities, excluding noxious/invasive species provided that, as submitted by a qualified professional, it is demonstrated to the satisfaction of the Administrator that the selected ornamental plants can serve the same ecological function as native plant species.

6. Significant trees located outside the Shoreline Buffer or Site-specific Vegetation Management Area but within the shoreline jurisdiction, shall be retained unless allowed to be removed under the exceptions or other provisions of this program provided:

   a. The Administrator may require alterations of a site plan in order to retain significant trees outside the Shoreline Buffer or Vegetation Management Area. This may include minor adjustments to the location of building footprints, the location of driveways and access ways, or the location of walkways, easements or utilities.

Commented [CC20]: Check allowances.

Commented [CC21]: Clarify.

7. Vegetation clearing and maintenance activities, except those which are part of new construction, are allowed consistent with an approved SOP manual for vegetation maintenance and management of public parks, public trails, public rights-of-way or easements, publicly-owned property, and/or other areas normally maintained by the City. A shoreline substantial development permit may be required for the SOP manual. The SOP manual shall include the following prescriptive elements:

   a. Procedures for maintaining vegetation on shoreline properties, shoreline trails or shoreline rights-of-way and easements, including procedures for noxious weed removal;

   b. Procedures for maintaining vegetation in Critical Areas, Shoreline Buffers, or Site-specific Vegetation Management Areas, or other sensitive land areas, including areas with cultural resources;

   c. Procedures for mitigation and vegetation replanting including appropriate species list; and

   d. Procedures for review and approval of allowed activities occurring under the scope of the SOP, including procedures for documenting activities.

Commented [CC22]: Delete or create manual.

8. Minor vegetation removal outside the shoreline buffer or site-specific vegetation management area on a developed property not associated with new construction may be allowed, as provided in this program with an approved clearing permit provided:

   a. The Administrator may grant approval of minor vegetation clearing if it meets the provisions of this Program and the following:

      i. The minor vegetation clearing allowed within a three (3) year period will include an area no greater than 200 square feet in area and/or no more than 3 non-significant trees per 20,000 square feet up to a maximum of six (6) trees; and
      ii. Native vegetation will not be removed from the Shoreline Buffer or Vegetation Management Area; and
      iii All applicable standards of an approved Vegetation Management Plan are met; and
      iv. The replanting is performed pursuant to Section 4.1.2.5, Revegetation Standards; and
      v. A Bluff Management Plan is provided pursuant to Section 4.1.5, Critical Areas for any vegetation alteration in a geologically hazardous area.

   b. Proposed clearing must meet the provisions of Sections 4.1.2, Environmental Impacts and 4.1.4, Land Modification.

Commented [CC23]: Clarify.

9. **Special Provisions for Point Monroe District**. Shoreline Buffers or Site-specific Vegetation management Areas are not required for properties located in the Point Monroe District;-the following specific vegetation provisions shall apply:
   a. All properties in the Point Monroe District shall retain existing native vegetation and shall be subject to a Point Monroe vegetation management area (PVMA).
   b. The PVMA shall include areas that are:
      i. Within thirty (30) feet of the OHWM and within the required side yard and the salt marsh fringe; and

ii. Outside any designated development area as approved pursuant to Section 5.9.6(2).

c. The PVMA shall be managed and maintained in vegetation communities appropriate to dune, sand spit, barrier beach, barrier estuary, or barrier lagoon, including salt marsh.

d. Developed properties shall retain existing native vegetation (including dune grass and salt marsh plant communities) in those areas that are not developed with legally established impervious surfaces.

e. Any new development or alterations and expansion of existing development shall assess impacts to existing vegetation and meet the no net loss standard pursuant to Section 4.1.2, Environmental Impacts.

4.1.3.6 Regulations – Shoreline Buffer – Location and Design Standard

1. The total depth of the Shoreline Buffer is based on the shoreline designation and the physical and most predominant geomorphic characteristics of the property. The depth of the Shoreline Buffer will be determined by the Administrator according to criteria below.

   a. Property-specific physical and geomorphic characteristics of the particular lot will determine the maximum width (Category A) or minimum width (Category B) of the Shoreline Buffer, as follows:

      i. Shoreline Buffer Category A: The property contains or abuts a spit/barrier/backshore, or marsh, or lagoon; or

      The property contains or abuts a low bank and the existing native tree and shrub vegetation cover is at least 65% of the area of Shoreline Buffer Zone 1.

      ii. Shoreline Buffer Category B: The property is shallow (200 feet in depth or less, as measured landward), or located on a high bluff, or does not meet any of the characteristics of Category A.

   b. Shoreline Buffer standard depth in Table 4-3

   c. As determined by the Administrator, buffers do not extend beyond an existing public paved street or an area which is determined by the Administrator to be functionally isolated from the shoreline or critical area. In these limited instances the no net loss of shoreline ecological function and processes still apply to properties within the shoreline jurisdiction.

2. The total area of the Shoreline Buffer shall be the equivalent of the length of the property along the shoreline, multiplied by the required buffer depth as prescribed for the specific shoreline designation in which the property is located. See Figure 4-1.

3. The Shoreline Buffer consists of two zones. The depth of each of the two zones within the Shoreline Buffer is determined as follows:

   a. Zone 1 shall extend from the ordinary high water mark (OHWM) a minimum of 30 feet, or to the limit of existing native vegetation whichever is greater. The native vegetation limit is determined through a site-specific analysis of existing

Commented [CC24]: Make corrections; clarify high bluff buffer conditions, and in no case shall Zone 1 be greater than the depth of the Shoreline Buffer.

b. Zone 2 shall be established immediately landward of the Zone 1 and extend no further than the depth of the Shoreline Buffer.

4. The following zone specific planting regulations apply to the Shoreline Buffer:

   a. New lawns are not permitted in Zone 1.

   b. In Zone 2, one-third (1/3) of the area may be planted in a combination of grass lawns and approved structures provided:

      i. Significant native trees are not removed to establish such use, or

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

   c. The remaining two-thirds (2/3) of Zone 2 shall be maintained in a native vegetative state.

   d. Planted areas in which fertilizers might be applied-shall be located as far landward of Zone 1, as feasible.

Commented [CC25]: Clarify.

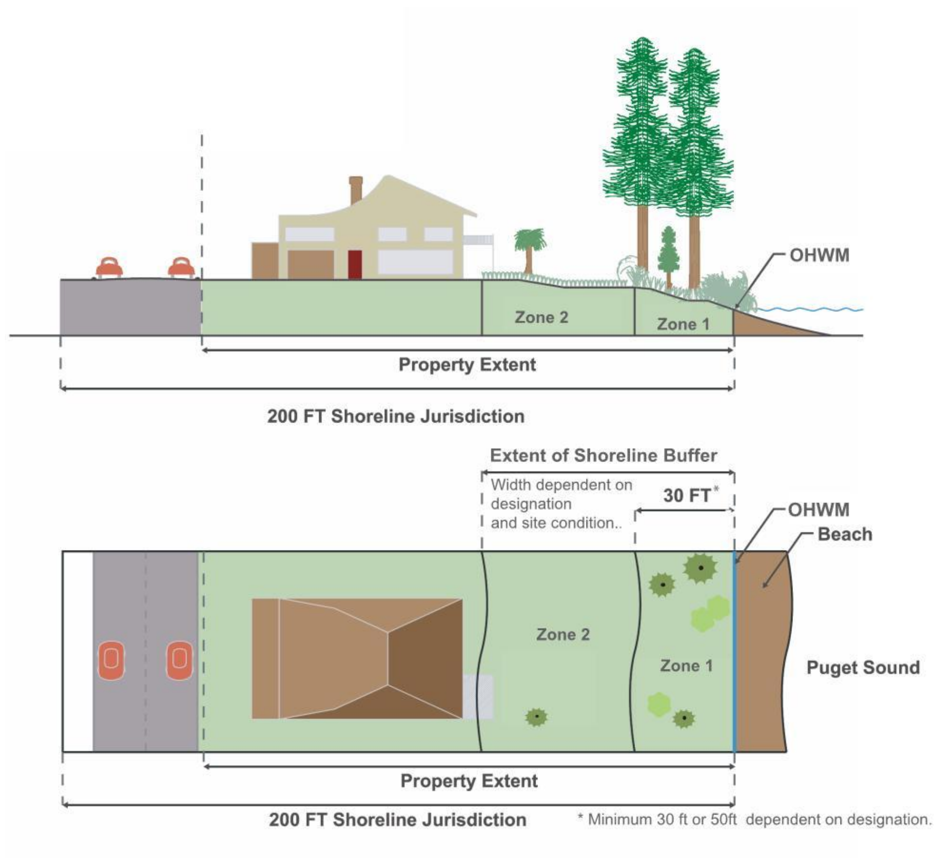


Figure 4-1 Dual Shoreline Buffer

4.1.3.7 Regulations – General Vegetation Alterations in Shoreline Buffers or Site-specific Vegetation Management Areas

1. The following activities are allowed within the Shoreline Buffer and Site-specific Vegetation Management Area with an approved clearing permit. Such activities shall meet the standards of Section 4.1.4, Land Modification.

    a. Existing landscape areas may be retained within the Shoreline Buffer or Site-specific Vegetation Management Area. However, any changes from the existing landscape to a different landscaping use or activity will require that the modified area comply with the provisions of 4.1.3, Vegetation Management, and the intent of providing native vegetation to maintain ecological functions and processes.

Commented [CC26]: Update review process.

Commented [CC27]: Clarify.

b. Minor Pruning. Tree pruning, including thinning of lateral branches to enhance views, or trimming, shaping, thinning or pruning necessary for plant health and growth and which does not harm the plant, is allowed consistent with the following standards:

   i. All pruning shall meet the American National Standard Institute (ANSI) tree pruning standards;

   ii. In no circumstance shall removal of more than one-fourth (1/4) of the original crown be permitted within a three year period;

   iii. Pruning shall not include topping, stripping of branches or creation of an imbalanced canopy; and

   iv. Pruning shall retain branches that overhang the water.

c. Vegetation Removal Related to Construction. Tree or vegetation removal within the Shoreline Buffer or Site-Specific Vegetation Management Area that is associated with new construction may be allowed, but must retain significant trees and shall meet the requirements of Section 4.1.2, Environmental Impacts, including replanting provisions.

d. Vegetation Removal Related to Public Facility Maintenance. Tree or vegetation removal within the Shoreline Buffer or Site-specific Vegetation Management Area that is associated with maintenance of existing public facilities (including: roads, paths, bicycle ways, trails, bridges, sewer infrastructure facilities, storm drainage facilities, fire hydrants, water meters, pumping stations, street furniture, potable water facilities, and other similar public infrastructure), may be approved by the Administrator if no significant trees are removed, the requirements of Section 4.1.2, Environmental Impacts are met, and the maintenance is measures meet the goals and policies of Section 4.1.3, Vegetation Management, or as approved in a SOP manual as provided in Section 4.1.3.5(7). The following activities are exempt from this requirement:

   i. Removal of vegetative obstructions required for sight distance and visual clearance at street intersections provided in the Public Works Design and Construction Standards and Specifications.

e. Underground Utilities. Utilities that run approximately perpendicular to the buffer (for example, a stormwater tightline to the water to protect a slope or a sewer line to a marina), may be allowed within the Shoreline Buffer or Site-specific Vegetation Management Area, provided that disturbance is minimized and the disturbed area is revegetated after construction; and

f. Other Approved Development in the Shoreline Buffer or Site-specific Vegetation Management Area.

   i. Potable water wells; and

   ii. Approved shoreline stabilization;

2. Shoreline Buffer Reductions.

Commented [CC28]: Clarify.

Commented [CC29]: Mechanism for removing significant trees? Landmark?

Commented [CC30]: Consistency with other standards.

Commented [CC31]: Delete or create.

Commented [CC32]: Clarify

a. When the prescriptive buffer depth is reduced or dimensions altered through provisions of this Program, the applicant shall record a notice on title, or other similar document with the County Auditor prior to permit issuance, subject to the approval of the Administrator.

b. If the required depth of a Shoreline Buffer for a single-family residential property is reduced in accordance with the Shoreline Structure Setback provisions of Section 4.1.3.11 or other reductions allowed through this Program, Zone 1 must be restored in accordance with provisions of Section 4.1.2.5.

3. Stairways to the shoreline shall not exceed 300 square feet for private use, the minimum necessary for public use and are not included in the total square footage allocations prescribed in subsections 4.1.3.8(3) of this Program.

a Larger stairway~~s~~ serving a single-family residence may only be allowed through approval of a Shoreline Variance.

i. As an alternative to a stairway larger than 300 square feet and to reduce environmental impacts, a tram may be allowed without a variance.

b. Stairway design shall meet the following minimum criteria:

i. International Codes for:

A. Hand Railings;

B. Stairway width; and

C. Tread Depth.

ii. Landings are required, unless demonstrated not to be necessary, and shall be determined by:

A. Existing site topography;

B. Personal safety; and

C. Slope stability.

4.1.3.8 Vegetation Alterations Standards – Residential Development

Minor clearing, grading or construction may be allowed within the Shoreline Buffer or Site-specific Vegetation Management Plan for a residential development with approval of the Administrator pursuant to Section 4.1.3.7(1)(a), and only for the following activities as prescribed below and pursuant to Section 4.1.4, Land Modification:

1. Maintenance of existing residential landscaping is allowed subject to Sections 4.1.3.5(8) and 4.1.3.7. 2. One (1) hand installed pervious trail to the shoreline not more than four (4) feet in width, which may include hand installed steps, and shall be designed to minimize environmental impacts. No significant trees shall be removed. The trail may be wider when required for handicapped or public access. For single-family residential development vegetation trimming is limited to two (2) feet on either side of the trail.

3. Non-habitable structures appurtenant to a single-family use, such as a boat house, deck/patio and/or stairway may be allowed consistent with the following standards, except

Commented [CC33]: Clarify when the Zone 1 replanting is required.

Commented [CC34]: What is included in public use?

Commented [CC35]: What about zoning side yard setbacks?

Commented [CC36]: Consider deleting – requires building permit. Check.

Commented [CC37]: Clarify.

Commented [CC38]: Rewrite.

Commented [CC39]: What does this include?

Commented [CC40]: What does this mean?

Commented [CC41]: What does this mean?

Commented [CC42]: How to verify?

Commented [CC43]: Joint use?

that all structures are prohibited in Zone 1 when upland of a Priority Aquatic – Category A designation.

a. For Site-specific Vegetation Management Areas, the total square footage of all buildings or structures must not exceed 300 square feet in area.

b. For Shoreline Buffer areas, the total square footage of all buildings or structures must not exceed 400 square feet or 10% of the Shoreline Buffer area, whichever is less.

c. For Shoreline Buffer areas, only 10% of the total allowed square footage or 300 square feet, whichever is less, can be located in Zone 1, except when upland of Priority Aquatic B, the total allowable square footage is 5% of Zone 1 or 150 square feet, whichever is less.

d. All structures must be designed to not significantly impact views from adjoining property primary buildings.

e. All structures must meet the following standards:

i. Only water-related structures are allowed within 30 feet of the OHWM or in Zone 1, including a boathouse, permeable deck, boat storage, or staircase.

ii. Shall not exceed 12 feet in height above existing grade.

iii. Decks and/or patios shall be permeable and shall not exceed 30 inches in height above existing grade.

4. View Maintenance – Single-family Residential Only.

Shoreline residential use and development shall use all feasible techniques to maximize retention of existing native shoreline vegetation within the Shoreline Buffer and the Site-specific Vegetation Management Area.

a. Limited removal of existing trees or vegetation located on the same property as a single-family residence may be allowed for maintenance of a pre-existing view from the primary structure, or to establish a view for a new primary structure provided the following are met:

i. The applicant demonstrates to the satisfaction of the Administrator that the vegetation removal is the minimum necessary to re-establish or establish a view of the water similar to that enjoyed by other residences in the area and that pruning methods are not sufficient to provide an adequate view of the water similar to that enjoyed by other residences in the area; and

ii. Existing significant native trees are not removed within the Shoreline Jurisdiction, unless exempt; and

iii. In no instance, including accounting for other approved alterations as provided in Section 4.1.3, shall vegetation removal exceed twenty (20) percent of the required Shoreline Buffer area or Site-specific Vegetation Management Area or reduce the vegetation canopy coverage to less than 65% in the Shoreline Buffer or Vegetation Management Area.

Commented [CC44]: Clarify/simplify.

Commented [CC45]: How to demonstrate?

Commented [CC46]: Need definition consistent with BIMC 15.20.

Commented [CC47]: Clarify.

A. Vegetation removal occurring adjacent to the shoreline shall also be limited to fifteen (15) linear feet of the water frontage; and

iv. The applicant shall obtain an approved Bluff Management Plan pursuant to Section 4.1.5, Critical Areas for any vegetation alteration in a geologically hazardous area. The cost and preparation of the plan is the responsibility of the applicant; and

v. All vegetation removal complies with other applicable requirements of this Program (such as clearing and grading, forest practices, and protection standards for fish and wildlife habitat), including the no net loss and/or revegetation standards in Section 4.1.2.

b. The Administrator my deny a request or condition approval for vegetation alteration proposals for view maintenance if it is determined that the action will result in an adverse effect to any of the following:

i. Slope stability;

ii. Habitat value;

iii. Health of surrounding vegetation;

iv. Risk of wind damage to surrounding vegetation;

v. Nearby surface or ground water; or

vi. Water quality of a nearby water body.

4.1.3.9 Vegetation Alteration Standards – Commercial and Industrial Development in Shoreline Buffers

Minor clearing, grading, or construction may be approved within the Shoreline Buffer for a commercial or industrial development with approval of the Administrator pursuant to Section 4.1.3.7(1)(a) and only for the following activities as prescribed below and pursuant to Section 4.1.4, Land Modification:

1. Primary appurtenant structures to a commercial use that either support public access or are necessary to support a water-dependent use shall be allowed within the buffer when the applicant has demonstrated a need for the shoreline location, except that all structures are prohibited in Zone 1 when upland of a Priority Aquatic designation.
2. When appurtenant structures are allowed they must be the minimum necessary to meet the needs of the water-dependent use or public access requirements of Section 4.2.4, Public Access.

4.1.3.10 Vegetation Alteration Standards – Public Park Development in Shoreline Buffers

Commented [CC48]: Clarify. Consult with BIMPRD.

Minor clearing, grading, or construction may be allowed within the Shoreline Buffer for a public park development with approval of the Administrator consistent with the following or pursuant to Section 4.1.3.7:

1. Vegetation clearing and maintenance is allowed in accordance with an approved SOP manual that meets Section 5.1.3.5(7) and the standards of this Program.
2. Maintenance of existing public trails, provided the vegetation trimming is limited to four (2) feet on either side of the trail and no significant trees are removed.
3. Alterations that are included in a Park Development or Concept Plan. Minor clearing, grading, or construction for which the size and extent of proposed disturbed areas located within the Shoreline Buffer have been determined as part of a park development plan or concept park plan, with due consideration of the intended park use; and provided all proposed disturbance areas meet the no net loss standards pursuant to in accordance with Section 4.1.2. Environmental Impacts; and provided appropriate permits are obtained, including those pursuant to Section 4.1.4, Land Modification;
4. Alterations that are not part of a Park Development or Concept Plan. The following minor clearing, grading, or construction activities may be allowed without an approved park development plan or conceptual park plan:
    a. Maintenance of existing public trails is allowed, provided maintenance is limited to the existing size of the trail, any vegetation trimming is limited to four (4) feet on either side of the trail, and no significant trees are removed.
    b. New public pathways or trails to the shoreline provided it is demonstrated that the size and extent of the public pathways has been determined with due consideration of the intended park use.
    c. Structures.
        i. Primary appurtenant structures to a public park and recreational use that either support public access or are necessary to support a water-dependent recreation use shall be allowed within the Shoreline Buffer when a need for the shoreline location is demonstrated, except that all structures are prohibited in Zone1 when upland of a Priority Aquatic designation. When appurtenant structures are allowed, they must be the minimum necessary to meet the needs of the water-dependent use or public access requirements of Section 4.2.4, Public Access.
        ii. The total square footage of all buildings or structures must not exceed 6,000 square feet or 10% of the Shoreline Buffer area, whichever is less.
            A. Only 10% of the total allowed square footage or 1,000 square feet, whichever is less, can be located in Zone 1.
        iii. All structures must be designated to not significantly impact views from adjoining property primary buildings.
        iv. All structures must meet the following standards:
            A. Only water-related recreational furniture, amenities and structures are allowed in Zone 1, including but not limited to, picnic tables, benches, interpretive kiosks, viewing platforms, boardwalks, pervious trails or staircases, recreational furniture, signs, pervious

trails, and staircases are not included in the maximum square footage allocations prescribed in subsection 4.c.ii, above;

B. Accessory recreation buildings, including restrooms, picnic pavilions and service roads that serve such structures may be allowed in Zone 2 and buildings shall not exceed 12 feet in height above existing grade;

C. Stairways may exceed 300 square feet, provided that it is demonstrated that a greater area is necessary to meet public access and public use demands Stairways shall conform to the standards of the Building Code as adopted in BIMC Chapter 15.04.; and

D. Boat ramps and other boating facilities may be allowed pursuant to Section 5.4, Boating Facilities.

4.1.3.11 Regulations – Shoreline Structure Setback View Requirement

Commented [CC49]: Clarify applicability, relocate option to build in Zone 2 option, correct figure references, simplify language, clarify "most waterward point," consider using "irregular shoreline" instead of cove or headland, check that all scenarios addressed, clarify when setback can be based on site conditions, improve figures?

1. To protect existing predominate shoreline views and accommodate shoreline views for a new single-family primary residential structure or addition to a primary residential structure, the Administrator may allow Zone 2 of the Shoreline Buffer to be altered when there is an existing primary residential structure located within 100 feet of the property line of the subject property and topographical or other relevant information indicates that the view of the shoreline from the subject property or the adjacent residence would be impacted by existing or proposed development. The shoreline structure setback line may also require that new structures be set farther away from the shoreline to preserve existing views enjoyed by an adjoining single-family primary structure that was established earlier. These provisions apply to single-family residences only, except in the Point Monroe District.

   a. Setbacks for the purpose of this subsection are based on the location of primary residential structure(s) existing at the time a new primary residential building permit is submitted. A primary residential structure constructed in compliance with the required shoreline setback is not made nonconforming by the later construction of a primary residential structure in a different location on an adjoining lot.

   b. The shoreline structure setback provisions apply only to primary single-family residential structures located within the 200-foot shoreline jurisdiction, where an existing primary single-family residential structure is located within 100 feet of the subject property line. All measurements are to the closest primary residential structure on either side of the subject property as measured parallel to the shoreline.

   c. In determining the shoreline structure setback line, the Administrator may also consider topography or other physical property constraints in addition to the provisions of subsection 4 and 5, below. Applicants may submit detailed information regarding how property constraints impact the predominate shoreline views from either the subject property's proposed primary residential structure or adjoining properties' primary residential structure(s).

2. The Shoreline Buffer on the subject property may be reduced below the depth requirements identified in Table 4-3 to allow a new primary residential structure to be located within Zone 2 provided the conditions in Section 4.1.3.7(2) are met.-Mitigation of proposed residential development shall be required pursuant to Section 4.1.2, Environmental Impacts.

3. In no case shall the subject property be permitted to locate a new primary residential structure within the site's specified Zone 1 of the Shoreline Buffer, unless a Shoreline Variance is granted.

4. Adjoining Development Located Within Shoreline Buffer. The setback requirement for the subject property shall be based on the location of the adjoining properties' primary residential structure(s) as described in subsections (a) through (d) below.

    a. Primary Residential Structure Located on One Side. When an existing primary residential structure is located on one side of the subject property, the shoreline structure setback line shall be determined as follows:

        i. If the adjoining primary residence is partially or wholly located within Zone 2, the shoreline setback line is determined by drawing a line from the most waterward point of the adjoining primary residential structure to the point at which the subject property's Shoreline Buffer boundary intersects the subject property's opposite property line. (See Figure 4.1.a below).

        ii. If the adjoining primary residence is located partially or wholly in Zone 1, the shoreline structure setback line shall be determined by drawing a line from the point of intersection of the subject property and the adjoining property's Zone 1 boundary, to the point at which the subject property's Shoreline Buffer boundary intersects the subject property's opposite property line. (See Figure 4.1.b, below).

    b. Primary Residential Structure Located on Both Sides. When existing primary residential structures are located on both sides of the subject property, the shoreline structure setback line shall be determined as follows:

        i. If both the adjoining primary residential structures are located partially or wholly in Zone 2, then the shoreline structure setback line shall be determined by drawing a line between the most waterward points of each of the adjoining primary residential structures. (See Figure 4.1.b, below)

        ii. If one of the adjoining primary residences is partially or wholly in Zone 1, and the other adjoining primary residence is partially or wholly in Zone 2, the shoreline structure setback line shall be determined by drawing a line from the point of intersection of the subject property and the adjoining property's Zone 1 boundary (for that adjoining residence located in Zone 1), to the most waterward point of the other adjoining primary residential structure located in Zone 2. (See Figure 4.1.b, below).

        iii. If both of the adjoining primary residences are located partially or wholly within Zone 1, the shoreline structure setback line shall be determined by drawing a line from the point of intersection of the subject property's Zone 1 boundary and the adjoining property's Zone 1 boundary to the same intersection point on the subject property's opposite property line. (See Figure 4.1.c. below)

c. Primary Residential Structure Located on a Shoreline Forming a Cove or Headland. The Administrator shall make the determination whether a shoreline forms a cove or headland. When existing primary residential structures are located on a cove or headland, the shoreline structure setback line shall be determined as follows:

   i. If there is a primary residential structure on only one side of the subject property, then the shoreline structure setback line for the subject property shall be either the distance from the OHWM to the most waterward portion of the primary residence structure of the adjoining property, or the subject property's Zone 1, whichever is greater.

   ii. If there are adjoining primary residential structures located on both sides of the subject property, the shoreline structure setback line shall be determined by averaging the distance from OHWM to the most waterward portion of the two adjoining property's primary residential structures. (See Figure 4-1(c) ii, below)

5. Adjoining Development Located Outside the Shoreline Buffer. The setback requirement for the subject property shall be based on the location of the adjoining properties' primary residential structure(s) as described in subsections (a) and (b) below.

   a. Primary Structure Located on One Adjoining Property, Outside Shoreline Buffer. When an existing primary residential structure is located on one side of the subject property, the shoreline structure setback line shall be determined by drawing a line from the most waterward point of the primary residential structure of the adjoining property to a point at which the subject property's Shoreline Buffer boundary intersects the subject property's opposite property line. (See Figure 5-1(a), below).

   b. Primary Structures Located on Both Adjoining Properties, Outside the Shoreline Buffer. When existing primary residential structures are located on both sides of the subject property, the shoreline structure setback line shall be determined by drawing a line between the most waterward points of each of the adjoining primary residential structures. (See Figure 5-1(b), below).

   c. Primary Structures Located on Both Adjoining Properties, Outside the Shoreline on a Cove or Headland. When existing primary residential structures are located on both sides of the subject property, the shoreline structure setback line shall be determined by averaging the distance from OHWM to the most waterward portion of the two adjoining property's primary residential structures. (See Figure 5-1(c), below).

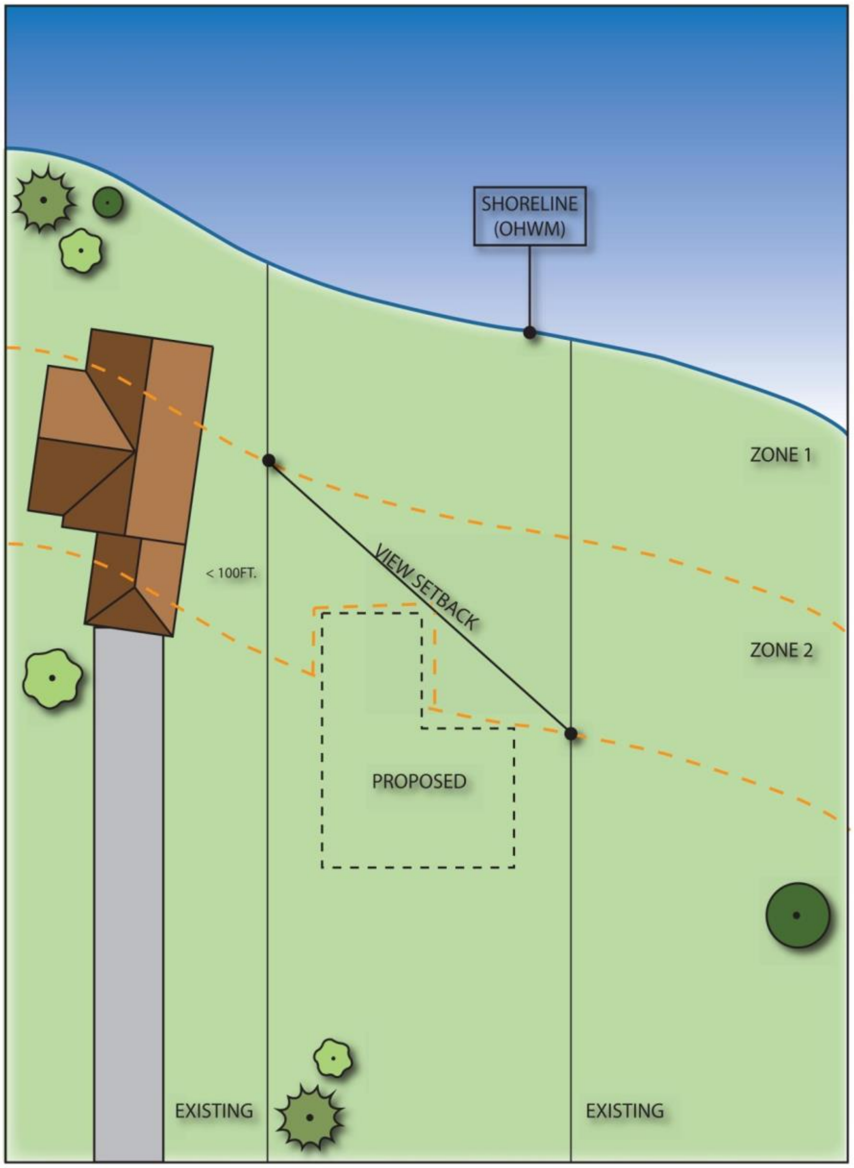

SHORELINE
(OHWM)
ZONE 1
VIEW SETBACK
< 100FT.
ZONE 2
PROPOSED
EXISTING
EXISTING

FIGURE 4-1(A) I

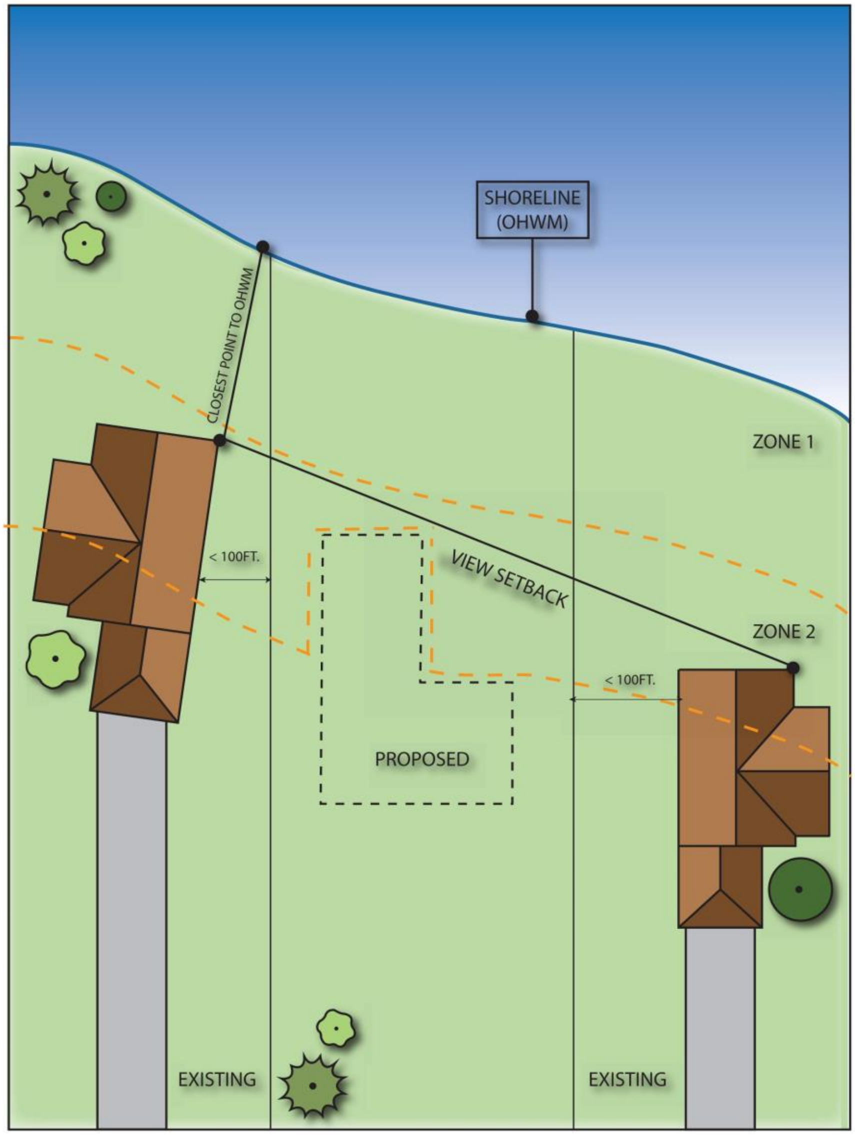

SHORELINE
(OHWM)
CLOSEST POINT TO OHWM
ZONE 1
< 100FT.
VIEW SETBACK
ZONE 2
< 100FT.
PROPOSED
EXISTING
EXISTING

FIGURE 4-1(B) I

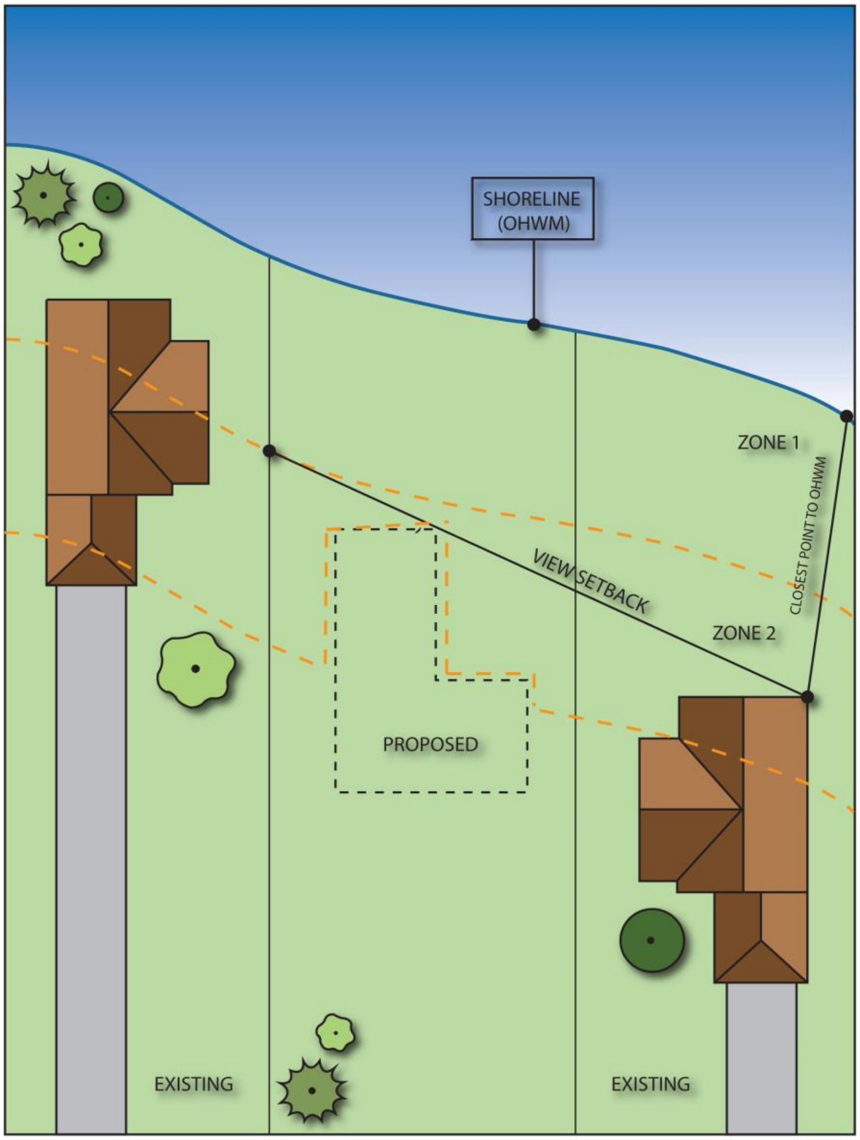


FIGURE 4-1(B) II

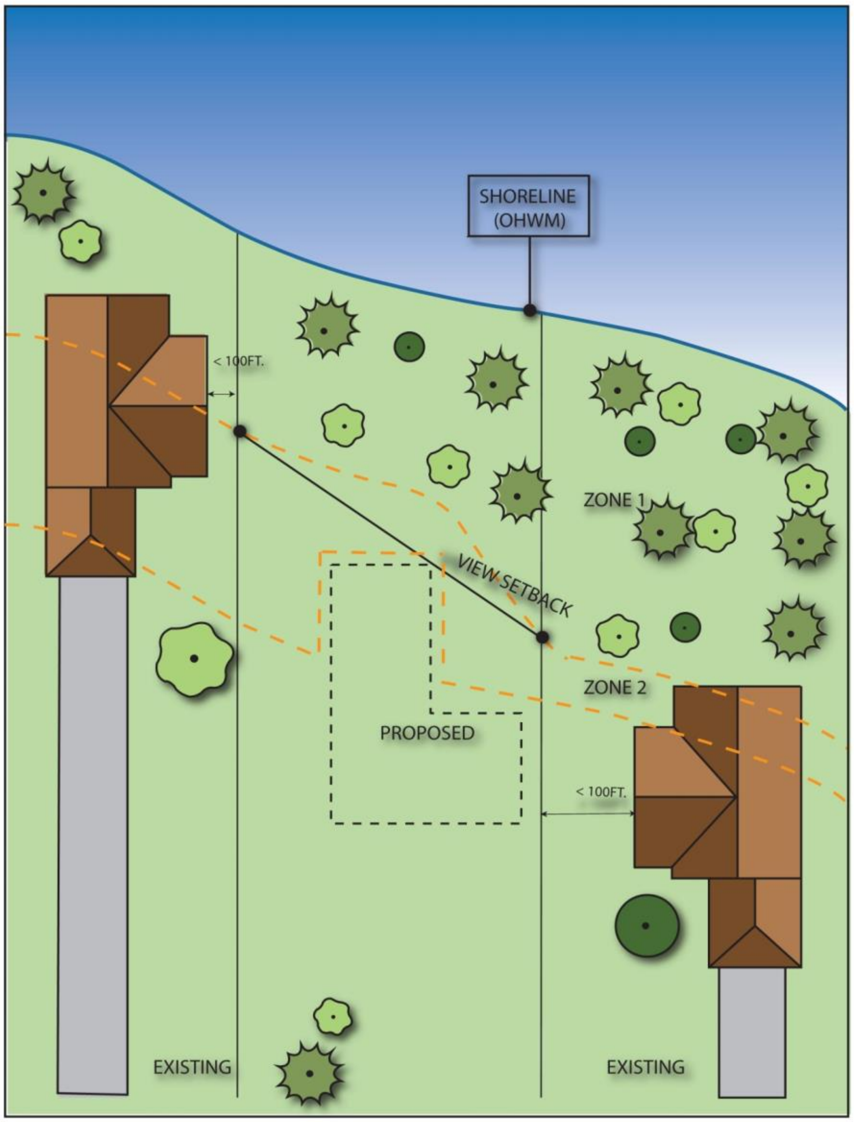


FIGURE 4-1(B) III

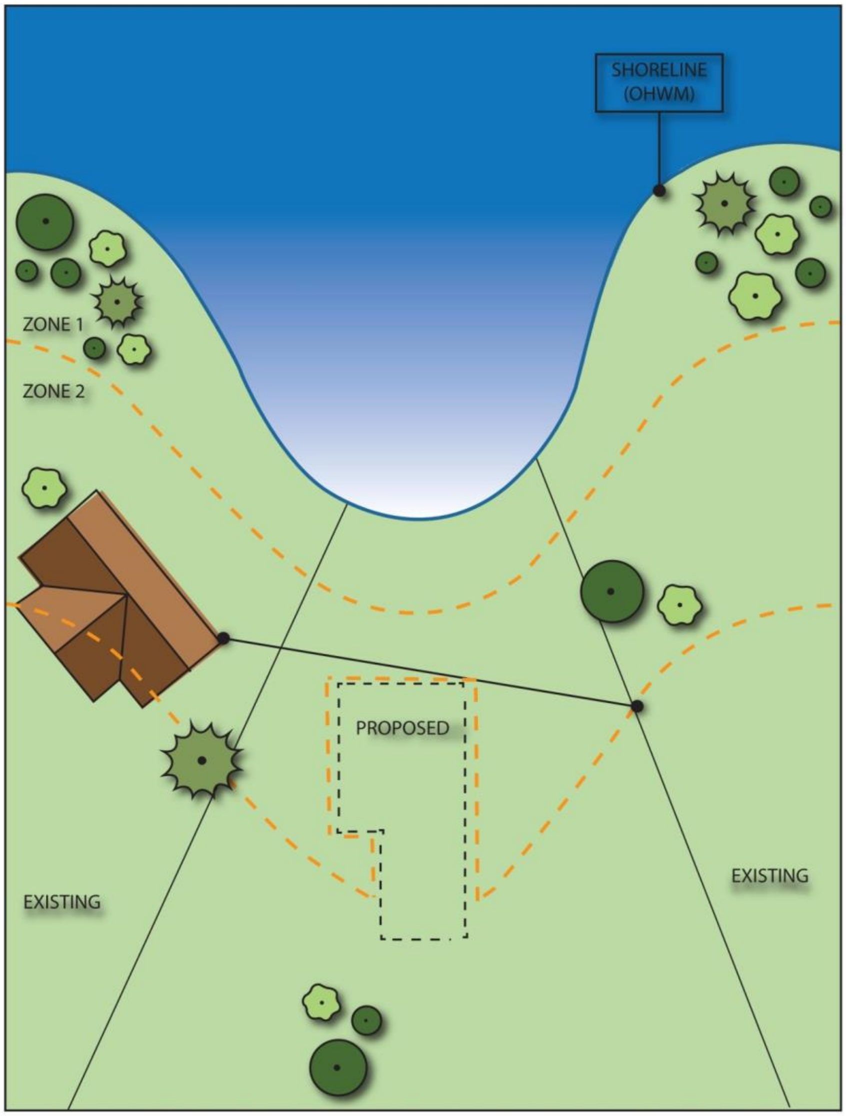


FIGURE 4-1(C) I

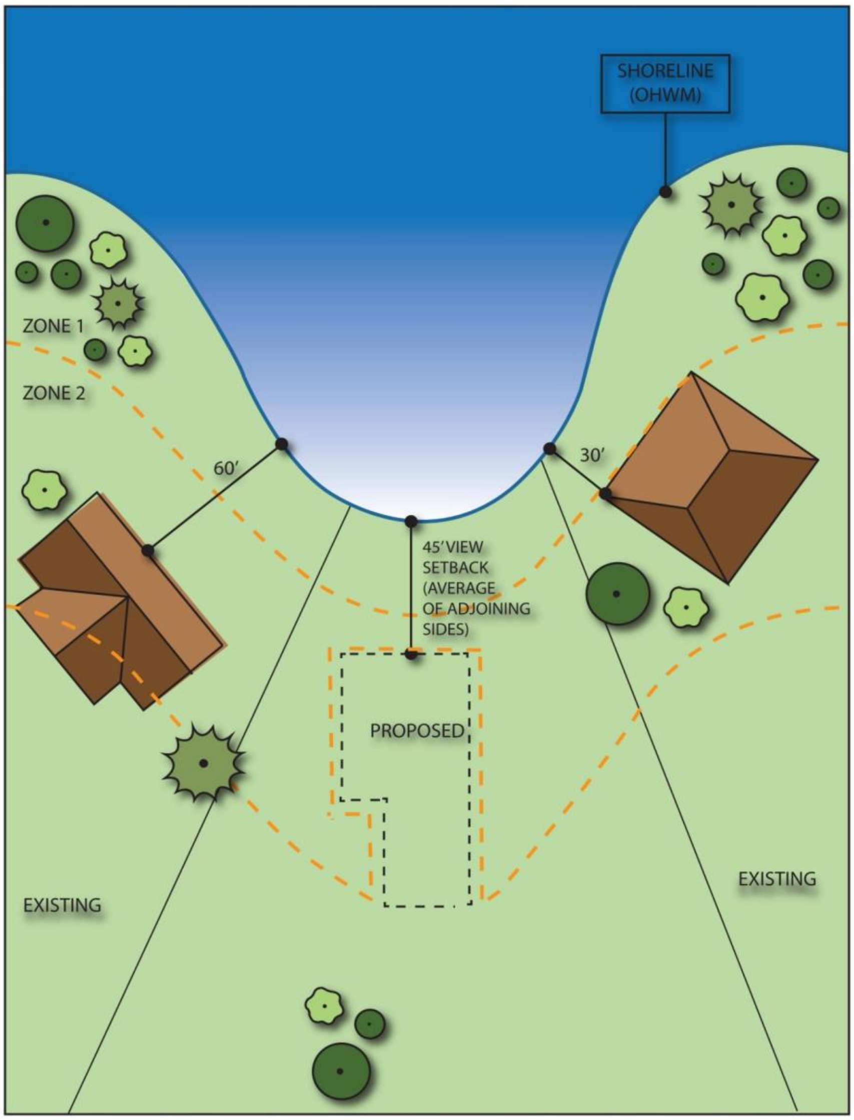


FIGURE 4-1(C) II

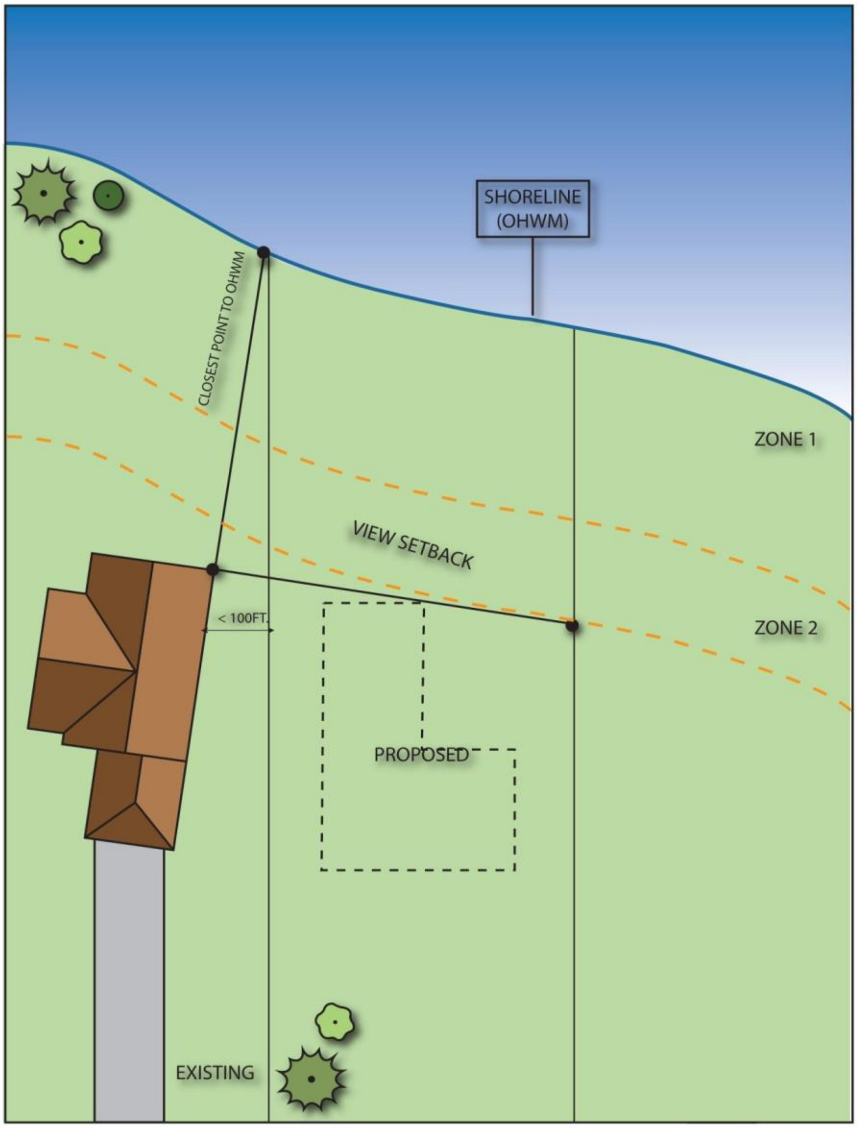
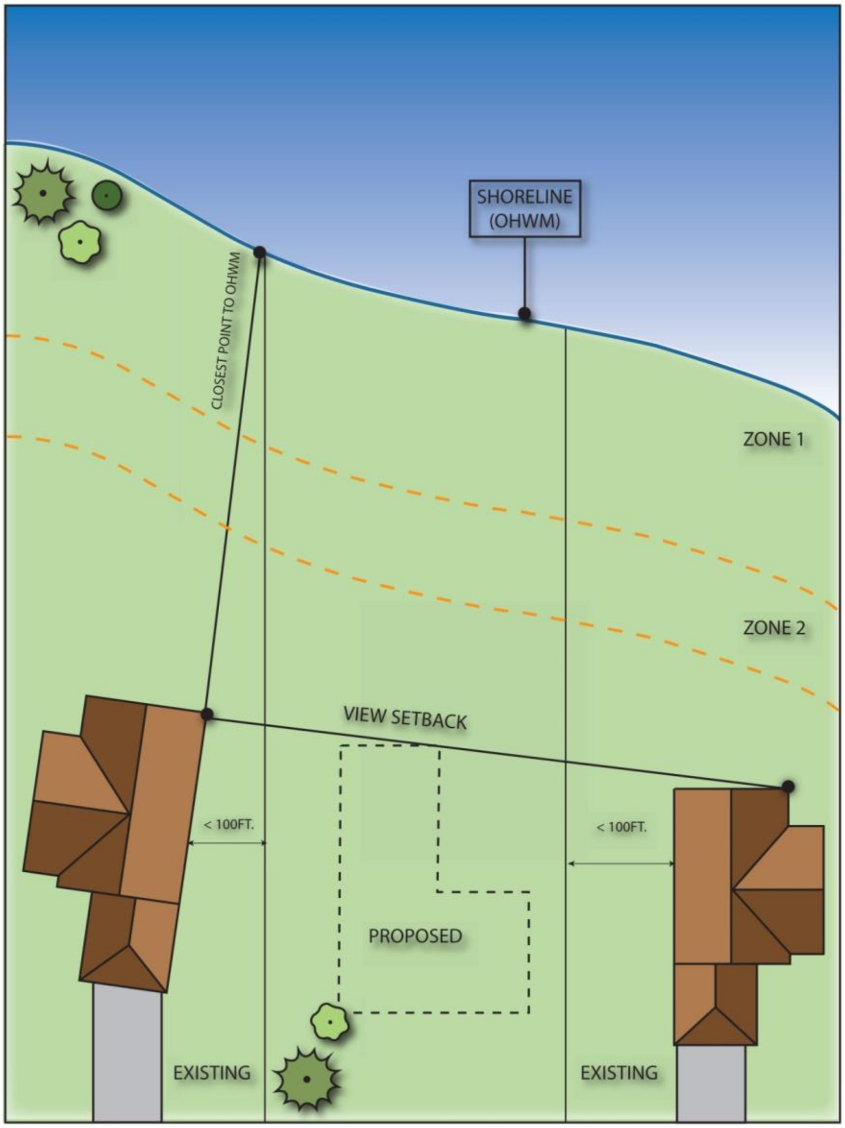

SHORELINE
(OHWM)
CLOSEST POINT TO OHWM
ZONE 1
VIEW SETBACK
< 100FT.
ZONE 2
PROPOSED
EXISTING

FIGURE 5-1(A)



SHORELINE
(OHWM)
CLOSEST POINT TO OHWM
ZONE 1
ZONE 2
VIEW SETBACK
< 100FT.
< 100FT.
PROPOSED
EXISTING
EXISTING

FIGURE 5-1 B

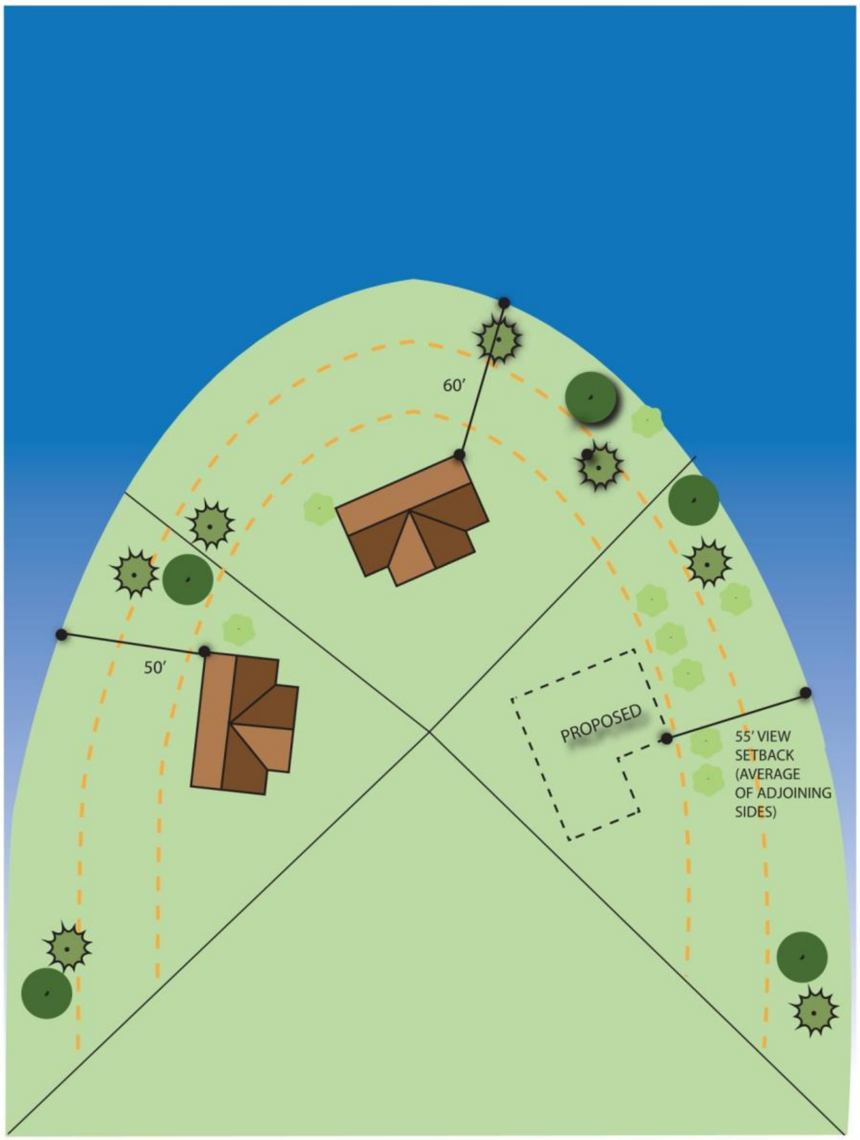


FIGURE 5-1 C