

(DRAFT) AGENDA
Regular Meeting - Bremerton Planning Commission
(Subject to PC approval)
September 20, 2011
5:30 P.M.
345 – 6th Street
Meeting Chamber – First Floor

- I. CALL TO ORDER**
 - II. ROLL CALL (quorum present)**
 - III. APPROVAL OF THE AGENDA**
 - IV. APPROVAL OF MINUTES:**
 - o July 19, 2011 Regular meeting.
-

V. PUBLIC MEETING

A. Call to the Public: Public comments on any item not on tonight's agenda

B. Workshop

1. Shoreline Master Program Update:

- a. Authority and Purpose
 - b. Administration
 - c. Non-conformities
-

VI. BUSINESS MEETING

A. Chair Report: Chairman Hoell

B. Director Report: Andrea Spencer.

C. Old Business:

D. New Business

VII. ADJOURNMENT: The next regular meeting of the Planning Commission is
October 18, 2011

Planning Commission meeting packets are available on-line at

www.ci.bremerton.wa.us

**Minutes for
City of Bremerton Planning Commission
Regular Meeting**

July 19, 2011

I. Call to Order

The meeting was called to order by **Chairman Hoell** at 5:35 p.m.

II. Roll Call

Those present were: Commissioner Cockburn, Commissioner Jose, Commissioner Tift, and Chairman Hoell. Commissioners Lambert and Streissguth had been excused. Quorum certified.

Also present: SMP Consultant, David Sherrard, (Parametrix), Andrea Spencer, Nicole Floyd, and Pam Bykonen (DCD staff).

III. Approval of Agenda

Chairman Hoell introduced the agenda. **A motion was made by Commissioner Jose and seconded by Commissioner Cockburn to approve the agenda as presented.** It was agreed by general consensus to approve the agenda as presented.

IV. Approval of Minutes

The minutes of the Regular Meeting held on May 17, 2011 were presented for approval by **Chairman Hoell**. **A motion was made by Commissioner Tift and seconded by Commissioner Jose to approve the Regular Meeting Minutes of May 17, 2011 as presented.** Called for a vote: Commissioner Cockburn: Yes; Commissioner Jose: Yes; Commissioner Tift: Yes; Chairman Hoell: Yes. The motion carried.

V. Public Meeting

A. Call To The Public (public comments on any item not on tonight's agenda). **Chairman Hoell** asked if there were any comments from citizens. Seeing none, she closed this portion of the meeting.

B. Workshop – Shoreline Master Program Update – Regulations and Designation Policies: Using a Powerpoint presentation, **Nicole Floyd, City Planner**, reviewed the most recent updates to the Shoreline Master Program (SMP). Topics covered at this workshop were Mapping, the Citizen Advisory Group (CAG), and General Standards. A mapping exercise had been planned but the map projection did not clearly show the shoreline areas to be discussed so Nicole moved on to the next portion of the workshop, the Citizen Advisory Group's work on code creation. The shoreline

codes were drafted by city staff and Parametrix, the consultant group hired to work on Bremerton's shoreline code update. Using the Department of Ecology's (DOE) requirements, Bremerton's shoreline inventory and characterization, the existing shoreline code, and examples from other jurisdictions, staff and Parametrix created a document to be reviewed by the Citizen Advisory Group for additional input. A summary of the CAG's comments was included in the meeting packet.

Three chapters of the draft code were to be reviewed at this workshop. The first was General Standards, specifically *Buffers and Setbacks*, *Vegetation Conservation*, and *Public Access*. Nicole used several pictures to illustrate what a buffer is, how differing buffer measurement techniques could affect properties, and examples of preferred aquatic vegetation management. Exemptions from the proposed buffer requirements will be discussed in greater depth at a future workshop.

The draft document proposes that public access to the shoreline be required for all shoreline development except single-family developments of less than five houses, or if an unavoidable security or safety risk results from that access. Public access easements would be required for all shoreline development except single-family homes unless the structure is greater than twenty-five feet but not more than thirty-five feet. View corridors would only be required in the downtown area or new multi-family or commercial developments.

The second chapter reviewed was Use Regulations. For this workshop, Nicole focused on *Commercial, Industrial, and Residential Developments*, and *Marinas and Boating Facilities*. DOE has determined that any commercial or industrial development located on the shoreline must be water dependent. If a development is not water dependent but wants to be located within the 200-foot shoreline jurisdiction, it must prove it needs to be located on the shoreline and either be physically separated from the shoreline, have severely limited navigability, or provide a significant public benefit.

The proposed regulations for marinas call for upland boat storage unless no upland area is available, provide public access, and have no net loss of habitat function.

DOE considers Single-Family Residential a priority use along the shoreline. The draft regulations propose that Multi-Family Residential developments will be allowed if a significant public benefit or be mixed with a water related use is provided. Subdivisions with five or more lots must provide public access, either physical or visual, to the shoreline.

The last chapter reviewed was Shoreline Modifications which included *Docks, Piers, and In-water Structures*, and *Shoreline Stabilization* (bulkheads). The proposed regulations would allow docks, piers, and in-water structures for water dependent uses and single-family residential only after alternatives have been addressed. Light penetrating materials must be used and no net loss achieved. Shared docks are required for subdivisions with five or more lots; access to the shared dock must be provided. Over-water structures would be prohibited in areas of Aquatic Conservancy, although mooring buoys would be allowed.

Proposed regulations for bulkheads would include a series of steps showing a need for a bulkhead (hard armoring). Issues such as upland drainage, a need for additional vegetation, use of woody debris and/or woody debris with rocks must be considered before constructing hard armoring along a shoreline.

Chairman Hoell asked if there were any comments from citizens.

Karen Danis (Jacobsen Boulevard), expressed concern regarding the limitations placed upon owners of property that will be designated Aquatic Conservancy although she is pleased that mooring buoys will be acceptable and wondered if floats would be acceptable as well in shallow waters where swimmers would be. Ms. Danis has tried to increase public awareness through Neighborhood Block Watch groups and the Kitsap Sun, although the Kitsap Sun was not as responsive as she would have liked. She felt that if the reporter waited until the Public Hearing for final approval by City Council to report on the update, it will have been too late. She suggested informing council members with constituents on shorelines regarding the SMP update. She stressed the point that Bremerton residents don't like surprises regarding property rights.

Alan Beam (Manette), said he hadn't seen any science presented regarding what the natural vegetation is and the ecological functions the natural vegetation is going to protect. He wondered why his lawn was not "good enough" vegetation. He stated that bulkheads were needed in his neighborhood because of the Washington State Ferries and that bulkheads are benign instruments that reflect energy. He takes a different view from DOE because he thinks erosion and beach feeding from his property is a net loss of his yard and worries about the ability to protect his yard. He feels that existing development needs to be considered and it has been "bypassed entirely". He questioned what was to be done with the existing development that has already occurred along Bremerton's shorelines. He wanted to know how [the SMP update] was going to affect him and other citizens.

Karen Danis (Jacobsen Boulevard), shared Mr. Beam's concern regarding the science used for making decisions [about the shoreline management update]. She believes that [decision makers] need to be reasonably certain of the resulting impacts of those decisions before making changes in shoreline uses and it should be science based. She also feels that the proposed dock requirements are too strong and it is not possible to prove that no net loss of ecological function would occur and it is an unachievable standard. Ms. Danis understands the dock regulations are a DOE requirement and suggested listing alternatives that would meet the requirements. She referred to other jurisdictions such as Kirkland or Renton who have used the term "no significant impact" rather than no net loss to make the goal more achievable. Ms. Danis appreciated the work Nicole has done regarding variable buffers because it showed a more practical approach.

Chairman Hoell asked if there were any further comments from citizens. Seeing none, she closed this portion of the meeting.

Commissioner Tift asked staff where the term "no net loss" came from. **Nicole** explained that it was a term used by the Department of Ecology because other statements

such as “no significant impact” implies the use of differing standards of measurement each time a project is analyzed. DOE’s requires that new shoreline development prove no net loss of ecological functions. **Commissioner Hoell** asked how no net loss can be proven. **David Sherrard, Parametrix**, explained that the “no net loss” provision came from a long history of Growth Management hearing board decisions about critical areas and those decisions became the standards by which jurisdictions were required to meet when adopting critical area regulations. When new shoreline regulations were being negotiated, the deciding committee included the standards that had been developed over the previous decade. Regulations have to be applied to individual development and be able to demonstrate that the regulations that Bremerton will be adopting will cumulatively meet the standard of no net loss. Mr. Sherrard did not feel that using the standard “no significant impact” was appropriate because “significant impact” is the commonly used level at which an environmental impact statement is required and is a much higher requirement level than “no net loss”. He felt the use of “no net loss” encouraged the use of new information and techniques, such as grating and limiting the size of docks, without the need to amend the code. Although the additional aspect of performance standards increased the difficulty of achieving “no net loss”, Mr. Sherrard felt it was “doable”.

Commissioner Jose asked for a clear description of the process a property owner would have go through to demonstrate “no net loss” and examples of how it would be met. **Mr. Sherrard** said it would be an administrative procedure the City would have to work out but assumed it would be similar to a SEPA (State Environmental Protection Act) review or an environmental checklist. He spoke at length about the necessity for protecting areas of high ecological function such as the Gorst Estuary. **Commissioner Jose** asked for further clarification on how a property owner can prove that there will be “no net loss”. **Nicole** explained that the property owner will have to hire a biologist to review the project and submit a report that will contain details of how the project will achieve “no net loss”; this is similar to current requirements for shoreline development.

Nicole asked the Commission for comments on buffers and vegetation conservation, specifically the increase in vegetation conservation requirements to justify a reduction in buffers.

Commissioner Cockburn asked where a retaining wall/bulkhead would be located in a designated buffer area and how was its location measured. **Nicole** said that buffers are measured from the ordinary high water mark. If there is a bulkhead on the shoreline, the bulkhead becomes the ordinary high water mark.

Commissioner Jose was in favor of the flexibility the variable buffer option provided in the code. He felt that the more flexibility that can be offered to citizens, the better, as long as the goals can be achieved as it relates to the prescriptive standard versus performance standards.

Nicole asked for input regarding the proposed percentages used in the variable buffers. **Chairman Hoell** commented that using percentages to determine buffers seemed logical. She asked if the proposed code change would be applied retroactively to existing development. **Nicole** said it would not; it would only apply to new development or

substantial remodels, not general maintenance or minor additions. **Commissioner Tift** asked if that rule applied to bulkheads as well. **Nicole** said it would, unless more than one year had passed before a demolished bulkhead is replaced.

Commissioner Tift asked how much of Bremerton's shoreline was undeveloped. **Nicole** said more than 20% but less than 50% of the shoreline did not have bulkheads or houses, but she did not have exact numbers.

Commissioner Tift wondered about Ms. Danis' suggestion about notifying council members who have shorelines within their district. **Andrea Spencer, Director of Community Development**, explained that four council members (Maupin, Wofford, Robinson, and Wheeler) sit on the Planning Committee where they are apprised of upcoming items originating in Community Development, including the Shoreline Master Program update. The committee members report back to the full council the information they receive at the committee meetings. Staff is available to participate in district meetings but have not yet received a request to do so. **Chairman Hoell** suggested reporting back to the Planning Committee the public comments regarding lack of communication to shoreline property owners.

Regarding the proposed percentage option for determining buffer size, **Commissioner Jose** reiterated his approval of the flexibility, but was concerned about the maximum size for buffers on large lots resulting in overly large buffers. **Chairman Hoell** also approved of the percentage option's flexibility but was concerned about remaining fair and equitable. **Commissioner Jose** urged staff to avoid being inflexible unless DOE's requirements forces the City to do so. **Nicole** said that the DOE has not been clear regarding vegetation requirements within a buffer but samples of other jurisdictions' SMP updates consistently show that smaller buffers have denser vegetation. **Commissioner Tift** expressed concern for property owners that have deep lots with a requirement for a 100-foot buffer, specifically that a buffer that deep would defeat the purpose of owning waterfront property. **Nicole** and **Mr. Sherrard** both stated that a maximum buffer size of 100-foot was the standard in jurisdictions throughout the state.

Commissioner Tift asked if the location of a shoreline property owner's neighbors' homes would be taken into consideration when determining the depth of a new buffer area. For example, if the neighbors' homes were immediately adjacent to the shoreline, would a new home be required to have a significantly larger buffer? **Mr. Sherrard** said that it made sense to look at adjacent buffers and would look into having a provision in the code for anomalies, perhaps with a reference to averaging the buffer size. **Nicole** added that a similar provision is currently in the zoning code.

Nicole moved on to height limits, public access to shorelines in residential areas, and view corridors. **Commissioner Jose** asked what was the percentage of shorelines properties already had public access/easements. **Nicole** said most likely there were none, but there may be easements depending on when the lots were platted. **Mr. Sherrard** added that the State of Washington sold tidelands up until the 1950s. The proposal of requiring public access was in response of homeowners desiring structure heights of more than 25-feet but less than 35-feet, especially in areas where there are normally views of the water.

Reflecting on his years with the **Planning Commission** and the controversy view corridor requirements created, **Commissioner Cockburn** felt the best solution would be to focus on lot coverage and a 25-foot building height limit for shoreline properties. He questioned the perceived benefit of the public access requirement if the lot that is required to provide public access is surrounded by lots that are not.

Chairman Hoell agreed with **Commissioner Cockburn's** assessment. She asked Nicole if the core issue was actually access to the shore or the loss of shoreline views; if it was because of the loss of views then Chairman Hoell would support a height limit of 25-feet. **Nicole** explained that most people with a 25-foot height limit prefer a greater height for architectural reasons such as roof pitch. Also, there are areas in the city where the buildable land projecting into the water is so narrow that there is only room for one road with a single row of houses on either side; no views would be blocked if there were greater building heights. Nicole asked the Commission to consider greater building heights under those conditions. **Chairman Hoell** added that the code would continue its basis of flexibility if surrounding properties were considered when making a height determination for shoreline development. **Nicole** noted that the current code makes similar provisions for height limits along the shoreline but felt the language could be clarified.

Commissioner Jose suggested using the 25-foot height requirement/35-foot with public access as an example to DOE of protecting the social "no net loss" of public access to the shoreline. He supports provisions that encourage public access easements. **Mr. Sherrard** noted that DOE does not have a requirement for no net loss of public access or views. **Commissioner Tift** commented that he was fine with how the draft document was worded regarding a 35-foot height restriction combined with requiring public access.

Nicole asked for the commissioners' opinion of a view corridor requirement. **Commissioner Jose** said that if view corridors were a continuing problem, he would support removing that requirement.

The next item for discussion was new standards and prohibitions for docks. **Nicole** noted that most of the language is mandated by the Department of Ecology but she wanted to give the Commission an opportunity to discuss the proposed requirements.

Chairman Hoell asked for additional information on the requirement for shared docks in new subdivisions of five or more lots. **Nicole** explained that the new proposal is meant to reduce the number of private docks in higher density areas which will reduce water shading and improve fish habitat. **Mr. Sherrard** added that the requirement has been a part of the DOE rules since 1975 and is a requirement for any subdivision regardless of the size of the subdivision with the assumption that any dock constructed will be shared among the residents of the subdivision and built to the minimum requirement to reduce over-water shading and ecological impact. A biological study would determine how large a dock could be. **Commissioner Jose** asked how much a typical biological study would cost. **Nicole** said it depends on the size and extent of the project but can range from \$500 to \$3,000 and is currently required for shoreline development.

The final item for discussion was bulkheads. Referring to Mr. Beam's comments at the start of the meeting regarding wakes created by ferries, **Commissioner Jose** asked to what degree wakes were accounted for in the SMP. **Mr. Sherrard** spoke about wave action and how it can affect shoreline property. Waves, wakes, and land orientation relative to the water are all conditions that are considered by a consultant/biologist when determining if a bulkhead is needed and to what degree (soft armoring versus hard armoring). Bulkheads are subject to public comments from local tribes, scientists, Department of Natural Resources, etc. and must be approved by DOE.

Commissioner Cockburn asked if marinas in residential areas are subject to a Conditional Use permit in the current code. **Nicole** said they are.

There were no further questions for staff regarding this portion of the SMP document. **Andrea** summarized the Commission's comments:

Buffers:

- The Commission liked the flexibility of using a percentage of the lot size to determine the buffer size;
- Smaller buffers of higher quality were encouraged;
- Requested staff to further explore how to implement setback averaging.

Public Access:

- More research is needed regarding a 25-foot height limit versus a 35-foot height limit because of roof pitch and higher quality architecture.
- Requested staff to further explore how to implement preservation of upland views.
- Approved removing the view corridor requirement for single-family residential.

Docks:

- No comments.

Bulkheads:

- No comments.

Commissioner Jose expressed appreciation on behalf of the entire Commission for the SMP Citizen Advisory Group's time and hard work on the draft document.

VI. Business Meeting

A. **Chairman's Report: None.**

B. **Director's Report:** **Andrea** also thanked Nicole and the members of the Citizens Advisory Group for their hard work on this project.

Beginning July 24, 2011, the Manette Bridge will close to pedestrian traffic for two weeks and vehicular traffic until mid-November, when the new Manette Bridge is scheduled to open.

The cinema project that will be built on the parking garage located at 4th Street and Park Avenue is scheduled for its second presentation before the Design Review Board on July 28, 2011. Construction is anticipated to begin in August.

A grading permit has been issued for the new WinCo store that will be located in Bay Vista (formerly Westpark) on Kitsap Way.

The SKIA Sub-Area Plan and draft EIS is in its comment period which had been extended to July 21, 2011. A preferred alternative will be selected once the comment period has closed.

The Planner II/Long Range Planner position is still open. Andrea suggested cancelling the August meeting because of lack of staff to provide items for the agenda.

C. Old Business:

D. New Business: None.

VII. Adjournment

Meeting was adjourned at 7:11 p.m. The next Regular Meeting is scheduled for September 20, 2011.

Respectfully submitted by:

Andrea L. Spencer, AICP, Executive Secretary

Approved by:

Lois Hoell, Chairman

**CITY OF BREMERTON, WASHINGTON
PLANNING COMMISSION AGENDA ITEM**

AGENDA TITLE:	Workshop to discuss three sections of the Draft SMP
DEPARTMENT:	<i>Community Development</i>
PRESENTED BY:	<i>Nicole Floyd, City Planner</i>

SUMMARY:

This workshop is part of a series of workshops to discuss the Draft Shoreline Master Program (SMP) update. Each workshop focuses on a different set of topics and or sections of the code. In order to help identify sections which have been discussed and will be discussed, the table of contents has been provided as **Attachment I**. This workshop will focus on the following sections:

- Authority and purpose
- Permit Administration
- Nonconformities

In drafting these sections, the City intended to utilize language from the existing SMP where applicable, bring the code into compliance with State requirements, and clarify portions of the code that have been difficult to interpret or enforce in the past. Prior to presenting these sections to the Planning Commission, the Citizen Advisory Committee reviewed them in detail and recommended revisions. A summary of the Citizen Advisory Committee's discussion and recommendations can be reviewed in **Attachment II**. Staff has revised the three draft sections based on the Committee's input. The revised code sections are in this packet and are identified as **Attachments III – V**, respectively.

CODE SECTION OVERVIEW:

20.16.100 – Authority and Purpose:

This section is intended to introduce the reader to the document and identify the relationship between the State mandates and the Bremerton SMP. This section is relatively straight forward as it follows the recommended format and is nearly identical to most other updated SMP documents throughout the Puget Sound.

20.16.400 – Administration:

This section outlines the way in which shoreline permits are to be processed. It is intended as a supplement to the existing permit processing section found in BMC 20.02. Generally, a shoreline permit follows the same permitting procedures as a standard permit. However, there are some key differences such as increased public noticing requirements and increased oversight and review by the Department of Ecology. Unlike standard land use permits where the City makes the final decision, many shoreline permits must be approved by the City and then reviewed and approved by the Department of Ecology prior to permit issuance.

This section is intended to work in concert with the requirements of BMC 20.02. Rather than duplicating all of the information in BMC 20.02 into the SMP, Staff has referenced the requirements of 20.02 and added only those requirements that are specific to shoreline development.

20.16.500 – Nonconformities:

The concepts and code language in this section are very similar to the existing citywide nonconforming provisions. This section is intended as a protection for existing developments. It establishes when the new requirements are triggered, and more importantly, when they are not.

Commonly when a land use code is updated, the requirements change, and therefore a home that was built in compliance with the applicable code at the time is no longer in compliance. It would be unfair to require older homes to come into compliance each time a land use code was changed. Recognizing this, the concept of “grandfathering” or legal nonconformity was established in order to protect property owners from undue hardship.

The topic of nonconformities is not new; in fact the existing nonconforming code section looks much the same as it did in 1988. In the most recent update of the Comprehensive Plan and Zoning Code which took place in 2005, the Planning Commission and City Council spent considerable time reviewing the City wide nonconforming regulations. At that time language was added and changed, but the overall concepts remained the same. The amendments to the SMP keep with this principle, changing some language as necessary, but maintaining the original regulations intent. It is Staff’s intent to do the same with the SMP update: to change some language as necessary, but to maintain the provisions overall intent.

Nonconformities are one of the most misunderstood topics relating to land use requirements. Many people in the community have received misinformation regarding this topic; it is for this reason that the primary concepts of nonconformities will be discussed during the commission workshop as well as those relating specifically to the SMP.

Existing Citywide Nonconforming Provisions

Nonconforming Use: This relates to how a structure is being used. A nonconforming use is one that is no longer permitted by the zone in which it is located. For example on the corner of Kitsap Way and 11th Street there was a small Knife Shop. The Knife Shop was likely permitted long before the zoning was changed to residential only. The Knife Shop was not a residential use as the zoning required, but was permitted before the code change, therefore it was considered a “Nonconforming use” or as is it is often called, it was “grandfathered”.

Discontinuation of a Nonconforming Use: The overall goal is eventual compliance with new code provisions, without causing an undue hardship. For nonconforming uses this means once the nonconformity is discontinued (vacant for one year or more), it will no longer be permitted. In the case of the Knife Shop, the owner eventually decided to close up and move. When the Knife Shop closed, the nonconforming use clock started ticking. After one year of vacancy, the nonconforming or “grandfathered” status was lost. The structure is now being used as a residence which is in full compliance with the current zoning code. Please note that if another similar nonconforming use went into this location before the year had lapsed, that new use would carry on the nonconforming status. As this did not happen, the nonconforming status was terminated.

Nonconforming Structure: This relates to the building and its location on the site. Typically a nonconforming structure does not comply with setbacks. For example, a house was legally constructed on the property line; however the code now requires a 5’ side yard setback. In this case the structure can be maintained, repaired, and even expanded provided the expansion does not make the structure more nonconforming.

Discontinuation of a Nonconforming Structure: As with the nonconforming use section the overall goal is eventual compliance with the new code provisions, without causing undue hardship. In order to achieve this goal, the code limits the replacement of a structure to 75%. Once more than 75% of a structure is being replaced it loses its nonconforming status and must comply with existing land use requirements, the logic being that once 75% of the structure and/or the structure's value is being replaced very little is left of the building and moving it to comply with the code would not represent an undue hardship. The "75% Rule" has been in effect since 1988.

Natural Disaster: Should a nonconforming use or structure experience a natural disaster such as fire, the structure can be rebuilt regardless of the extent of damage. A complete building permit must be submitted within one year of the casualty.

Proposed Nonconforming Provisions (Shoreline Jurisdiction Only):

Staff intends to keep this section consistent with the citywide nonconforming provisions and proposes to make as few changes as possible. Some areas that are in need of modification include:

No Net Loss: Language has been added to ensure that no net loss is achieved and that the code is in compliance with the State guidelines. While adding such language, Staff edited the section for general readability and clarity helping ensure the intent of the provisions is clear.

75% Rule: Language has been updated to make clear how the 75% value is measured.

Natural Disaster: Staff has added language that clarifies and ensures homes experiencing substantial destruction from a natural disaster are allowed to rebuild. The existing code explicitly states this exemption for nonconforming uses, but is not as explicit in the nonconforming structure section. Staff believes this is an error and should be corrected.

Vegetation Management: As you may remember from the previous workshop, the SMP includes new provisions that require natural plantings within the buffer when new construction is proposed. As these are new provisions, they must also be addressed in the nonconforming code section. These provisions are intended to be applied fairly and to not create an undue hardship for property owners. As with all nonconforming provisions these requirements are only applicable when new construction is proposed. Such construction is broken into the following two groups:

Additions outside of the buffer/setback:

- Small additions (500 square feet or less) are exempt. No new vegetation will be required.
- Large additions (501 square feet or more) must improve the vegetation on 25% of the required buffer, with a minimum of 10'.

Additions within the buffer or setback:

- An addition that follows an existing building line, but encroaches into the setback/buffer is limited to 250 square feet.
- The addition cannot encroach further into the setback/buffer than the existing structure.
- 50% of the buffer must be enhanced with native vegetation.

The Citizen Advisory Committee spent a considerable amount of time discussing these new provisions. The committee debated the following concepts: Is the owner of a nonconforming structure at an advantage or disadvantage? On the one hand the property owner may be at a disadvantage when they decide its time to add on to their nonconforming house because they will likely lose 10' or more of their existing yard area to natural vegetation. On the other hand the property owner may be at an advantage because the nonconforming home is already closer to the water than anyone else is allowed to build and will be allowed to develop further waterward while only being required to install half the vegetation as everyone else is required to install.

SUMMARY:

The workshop series is intended to discuss and deliberate specific code sections. For this round of code sections, Staff will focus mostly on the last section, nonconformities; however, questions, discussion, deliberation and direction for staff is appropriate for all sections. Staff offers the following discussion topic questions to help focus the commission's review:

1. Are there any areas in need of further clarification or are hard to understand?
2. Should the list the State adopted permit exemptions be included in the Bremerton SMP within the Permit Administration section?

The following questions relate the nonconforming section:

3. Do you think that the nonconforming regulations within the shoreline should be as similar as possible to the citywide nonconforming regulations?
4. Do you think the language relating to the 75% rule is clear?
5. Should minor expansions of nonconforming structures (500 square feet or less) be exempt from new vegetation requirements?
6. What do you think about requiring 25% improvement to the buffer for additions outside the setback/buffer? How about the 10' minimum?
7. Do you think additions should be permitted within the buffer/setback? Is 250 square feet an appropriate limit?

ATTACHMENTS:

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Attachment II: Summary from the Citizen Advisory Committee Meeting

Attachment III: Authority and Purpose

Attachment IV: Permit Administration

Attachment V: Nonconforming Provisions

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APPENDICES

DRAFT

Meeting Summary
Citizen Advisory Committee Meeting
June 21, 2011

The Citizen Advisory Committee held a meeting to discuss the Shoreline Master Program Update. This meeting focused on three sections: Authority and Purpose, Administration, and Nonconformities. The committee reviewed these documents for content, clarity, and palatability of the proposed regulations.

Topics of interest are summarized in the following chart. Based on the comments made by the committee, Staff has revised the code sections to represent their suggestions.

SECTION	QUESTION / COMMENTS	STAFF RESPONSE / ANSWER
Authority and Purpose		
20.16.100 Page 1	Citations from State regulations should be clarified.	Citations were revised to be clearer.
Administration		
20.16.400 All pages	Consistency of capitalization typo's, and general scrivener's errors.	Revisions have been made.
20.16.410(d) Page 1	Suggestion to remove exemptions listed that are not applicable to Bremerton.	This section is directly from the WAC and therefore cannot be modified per Ecology. The City can either put the whole section in, or leave the whole section out, but cannot choose portions. For readers ease Staff suggests putting the whole section into the SMP.
20.16.420 Page 9	Suggestion to add a description of permit types to aid the reader.	The code references BMC 20.02 which has the full description of permit types and processes. Rather than duplicating language Staff recommends leaving the citation to the full permit processing section.
20.16.470(e) Page 16	Suggestion to clarify that the City is not required to file a law suit against everyone who violates a portion of the code, rather the City has the option to do so.	Code has been revised to reflect the proposed change.
Nonconforming		
20.16.500	Correction of general typos, capitalization and scriveners errors.	Corrections have been made.
20.16.540(d)(2) Page 2	Suggestion to exempt interior remodel from meeting the definition of substantial destruction.	Code language has been revised. This section has been problematic in the past as developers constantly want to push the envelope as to how much they can tear down without losing nonconforming status. Staff intends to clarify the code, but not make it less restrictive on shorelines

		than elsewhere in the City.
20.16.560(c) Page 3	Suggestion to make sure the code is clear that this section is discussing nonconforming uses, and not structures.	Code language has been revised.
20.16.5(e)(2) Page 4	Clarify the intent of this provision. Does this mean a house that was demolished 10 years ago can be rebuilt?	Code has been revised by adding a 1 year limit for the building permit application to be submitted. This language is consistent with other similar provisions in the code.
20.16.560(b) Page 5	<ul style="list-style-type: none"> • Suggest different regulations for additions that are outside of the setback/buffer than those additions inside the setback/buffer: • Outright permit additions of 500sf outside the setback/buffer. • Suggest requiring vegetation enhancement for large additions outside of the setback/buffer. • Propose using 25% of lot depth to determine vegetation requirements with a cap of 10’ • Additions inside the setback/buffer should be limited to 250 sf, should not extend past existing foundation, and should require 50% buffer to be revegetated. 	<p>As this is the only new portion of the nonconforming code, Staff and the committee spent a substantial amount of time reviewing other jurisdictions codes and evaluating the pro’s and con’s of each provision.</p> <p>The code has been revised to represent this collaboration and includes all of the suggestions shown in the Colum to the left.</p>

Authority and Purpose:

The City of Bremerton recognizes the intent of the voters and the legislature of the State of Washington in adopting the "Shoreline Management Act (SMA) of 1971" and adopts by reference the findings therein including, but not limited to, the intent to protect shorelines of statewide significance, their associated natural resources, and providing opportunities for the general public to have access to generally enjoy shorelines.

The State legislature has established that shorelines of the State are among the most valuable and fragile of its natural resources (such as Puget Sound and Kitsap Lake) and there is great concern throughout the State relating to their utilization, protection, restoration, and preservation. In addition, ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development of the shorelines of the State.

The legislature has determined that much of the shorelines of the state and the uplands adjacent thereto are not necessarily being utilized in a way that is in the best interest of the public. This conclusion was drawn by evaluating the public and private development which has taken place on or adjacent to shorelines of statewide significance. Due to this, the legislature has determined that coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state, while at the same time, recognizing and protecting private property rights consistent with the public interest. There is, therefore, a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal state and local governments, to prevent the inherent harm in uncoordinated and piecemeal development along such shorelines.

In drafting this latest version of the Bremerton Shoreline Master Program, the City has followed the State mandates and guidelines established in the WAC and RCW. These requirements have had a significant impact on the goals, policies, and regulations within this document. In order to better understand the programs objectives the portions of RCW 90.58.020 are provided as follows:

It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to ensure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the State and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.

The legislature declares that interest of all people shall be paramount in the management of shorelines of statewide significance. The Department of Ecology, in adopting guidelines for shorelines of statewide significance

and local government in developing master programs for shorelines of statewide significance, shall give preference to uses in the following order:

- 1 Recognize and protect statewide interest over local interest;
2. Preserve the natural character of the shoreline;
3. Result in long-term over short term benefit;
4. Protect the resources and ecology of the shoreline;
5. Increase public access to publicly owned areas of the shorelines;
6. Increase recreational opportunities for the public in the shoreline;
7. Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

The Shoreline Management Act's paramount objectives are to protect and restore the valuable natural resources that shorelines represent and to plan for and foster all "reasonable and appropriate uses" that are dependent upon a waterfront location, or which will offer the opportunities for the public to enjoy the State's shorelines. With this clear mandate, the provisions of the Shoreline Management Act established a planning and regulatory permit program which is initiated at the city and county level under State guidance through the local Shoreline Master Program.

This cooperative effort balances local and statewide interests in the management and development of shoreline areas. Local governments are required to plan for shoreline development by developing local Shoreline Master Programs (SMPs). They are also required to regulate such development through a shoreline permit system for substantial development projects.

Local government actions are monitored by the State of Washington's Department of Ecology (DOE), which approves new or amended SMPs, reviews substantial development permits, and approves conditional use permits and variances. The local Shoreline Master Program is essentially a shoreline Comprehensive Plan with a distinct environmental orientation applicable to shoreline areas customized to local circumstances. Collectively, all the local master programs comprise the State Shoreline Master Program.

20.16.400 Permit Administration

20.16.410 – Applicability

20.16.420 – Permit Application Types

20.16.430 – Noticing Requirements

20.16.440 – Criteria of Approval

20.16.450 – Appeals

20.16.460 – Time Periods

20.16.470 – Violations and Penalties

20.16.480 – Shoreline Moratorium

20.16.490 – Restoration Project Relocation of OHWM

20.16.410 Applicability:

- (a) **Liberal Construction:** All regulations applied within the shoreline shall be liberally construed to give full effect to the objectives and purposes for which they have been enacted. Shoreline Master Program policies establish intent for the shoreline regulations in addition to RCW 90.58 and Chapter 173 of the Washington Administrative Code 173-26 and 173-27.
- (b) **Burden of Proof:** The applicants for any permit shall have the burden of proving that the proposed development is consistent with the criteria as set out in the Shoreline Management Act.
- (c) **Development Permit Compliance:** For all development within shoreline jurisdiction, the responsible official shall not issue a development or construction permit for such development until compliance with the Shoreline Master Program has been documented. If a Shoreline Substantial Development Permit is required, no permit shall be issued until all comment and appeal periods have expired. Any development permit for work within the shoreline jurisdiction (200' from the OHWM) shall be subject to the same terms and conditions that apply to the shoreline permit.

(d) Exemptions:

A Shoreline Substantial Development Permit shall be required for all proposed use and development within the shoreline jurisdiction unless the proposal is specifically exempt from permit requirements pursuant to WAC 173-27-040. The following list of exemptions is an exact copy from the WAC, and is located here as a courtesy to the reader. Any exemptions adopted subsequently by the legislature shall apply without amendment to this program. An exemption from a shoreline permit is not an exemption from compliance with the Act or the Shoreline Master Program, or from any other regulatory requirements. Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed

exemptions may be granted exemption from the Shoreline Substantial Development Permit process. Exemptions are as follows:

- (1) Any development of which the total cost or fair market value, whichever is higher, does not exceed five thousand dollars, if such development does not materially interfere with the normal public use of the water or shorelines of the state. The dollar threshold established in this subsection must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the Bureau of Labor and Statistics, United States Department of Labor. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the *Washington State Register* at least one month before the new dollar threshold is to take effect. For purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state as defined in RCW [90.58.030](#) (2)(c). The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials;
- (2) Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition, including but not limited to its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment;
- (3) Construction of the normal protective bulkhead common to single-family residences. A "normal protective" bulkhead includes those structural and nonstructural developments installed at or near, and parallel to, the ordinary high water mark for the sole purpose of protecting an existing single-family residence and appurtenant structures from loss or damage by erosion. A normal protective bulkhead is not exempt if constructed for the purpose of creating dry

land. When a vertical or near vertical wall is being constructed or reconstructed, not more than one cubic yard of fill per one foot of wall may be used as backfill. When an existing bulkhead is being repaired by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated such that an ordinary high water mark has been established by the presence and action of water landward of the bulkhead then the replacement bulkhead must be located at or near the actual ordinary high water mark. Beach nourishment and bioengineered erosion control projects may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and when the project has been approved by the department of fish and wildlife.

- (4) Emergency construction necessary to protect property from damage by the elements. An "emergency" is an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with this chapter. Emergency construction does not include development of new permanent protective structures where none previously existed. Where new protective structures are deemed by the administrator to be the appropriate means to address the emergency situation, upon abatement of the emergency situation the new structure shall be removed or any permit which would have been required, absent an emergency, pursuant to chapter [90.58](#) RCW, these regulations, or the local master program, obtained. All emergency construction shall be consistent with the policies of chapter [90.58](#) RCW and the local master program. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency;
- (5) Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, construction of a barn or similar agricultural structure, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels: Provided, That a feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;

- (6) Construction or modification of navigational aids such as channel markers and anchor buoys;
- (7) Construction on shorelands by an owner, lessee or contract purchaser of a single-family residence for their own use or for the use of their family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to chapter [90.58](#) RCW. "Single-family residence" means a detached dwelling designed for and occupied by one family including those structures and developments within a contiguous ownership which are a normal appurtenance. An "appurtenance" is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and the perimeter of a wetland. On a statewide basis, normal appurtenances include a garage; deck; driveway; utilities; fences; installation of a septic tank and drainfield and grading which does not exceed two hundred fifty cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark. Local circumstances may dictate additional interpretations of normal appurtenances which shall be set forth and regulated within the applicable master program. Construction authorized under this exemption shall be located landward of the ordinary high water mark;
- (8) Construction of a dock, including a community dock, designed for pleasure craft only for the private, noncommercial use of the owner, lessee, or contract purchaser of single-family and multiple-family residences. A dock is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities or other appurtenances. This exception applies if either:
 - (i) In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars (\$2,500); or
 - (ii) In fresh waters the fair market value of the dock does not exceed ten thousand dollars (\$10,000), but if subsequent construction having a fair market value exceeding two thousand five hundred dollars (\$2,500) occurs within five years of completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this chapter.
 - (iii) For purposes of this section salt water shall include the tidally influenced marine and estuarine water areas of the state including the Pacific Ocean, Strait of Juan de Fuca, Strait of Georgia and Puget Sound and all bays and inlets associated with any of the above;
- (9) Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or

developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored groundwater from the irrigation of lands;

- (10) The marking of property lines or corners on state-owned lands, when such marking does not significantly interfere with normal public use of the surface of the water;
- (11) Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed or utilized primarily as a part of an agricultural drainage or diking system;
- (12) Any project with a certification from the governor pursuant to chapter [80.50](#) RCW;
- (13) Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:
 - (i) The activity does not interfere with the normal public use of the surface waters;
 - (ii) The activity will have no significant adverse impact on the environment including but not limited to fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;
 - (iii) The activity does not involve the installation of any structure, and, upon completion of the activity, the vegetation and land configuration of the site are restored to conditions existing before the activity;
 - (iv) A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to ensure that the site is restored to preexisting conditions; and
 - (v) The activity is not subject to the permit requirements of RCW [90.58.550](#);
- (14) The process of removing or controlling aquatic noxious weeds, as defined in RCW [17.26.020](#), through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the Department of Agriculture or Ecology jointly with other state agencies under chapter [43.21C](#) RCW;
- (15) Watershed restoration projects as defined herein. Local government shall review the projects for consistency with the shoreline master program in an expeditious manner and shall issue its decision

along with any conditions within forty-five days of receiving all materials necessary to review the request for exemption from the applicant. No fee may be charged for accepting and processing requests for exemption for watershed restoration projects as used in this section.

(i) "Watershed restoration project" means a public or private project authorized by the sponsor of a watershed restoration plan that implements the plan or a part of the plan and consists of one or more of the following activities:

(A) A project that involves less than ten miles of streamreach, in which less than twenty-five cubic yards of sand, gravel, or soil is removed, imported, disturbed or discharged, and in which no existing vegetation is removed except as minimally necessary to facilitate additional plantings;

(B) A project for the restoration of an eroded or unstable stream bank that employs the principles of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or

(C) A project primarily designed to improve fish and wildlife habitat, remove or reduce impediments to migration of fish, or enhance the fishery resource available for use by all of the citizens of the state, provided that any structure, other than a bridge or culvert or instream habitat enhancement structure associated with the project, is less than two hundred square feet in floor area and is located above the ordinary high water mark of the stream.

(ii) "Watershed restoration plan" means a plan, developed or sponsored by the department of fish and wildlife, Ecology, the department of natural resources, the department of transportation, a federally recognized Indian tribe acting within and pursuant to its authority, a city, a county, or a conservation district that provides a general program and implementation measures or actions for the preservation, restoration, recreation, or enhancement of the natural resources, character, and ecology of a stream, stream segment, drainage area, or watershed for which agency and public review has been conducted pursuant to chapter [43.21C](#) RCW, the State Environmental Policy Act;

(16) A public or private project that is designed to improve fish or wildlife habitat or fish passage, when all of the following apply:

(i) The project has been approved in writing by the department of

fish and wildlife;

(ii) The project has received hydraulic project approval by the department of fish and wildlife pursuant to chapter [77.55](#) RCW; and

(iii) The local government has determined that the project is substantially consistent with the local shoreline master program. The local government shall make such determination in a timely manner and provide it by letter to the project proponent.

(iv) Fish habitat enhancement projects that conform to the provisions of RCW [77.55.181](#) are determined to be consistent with local shoreline master programs, as follows:

(A) In order to receive the permit review and approval process created in this section, a fish habitat enhancement project must meet the following and (II) of this subsection:

(I) A fish habitat enhancement project must be a project to accomplish one or more of the following tasks:

- a. Elimination of human-made fish passage barriers, including culvert repair and replacement; or restoration of an eroded or unstable streambank employing the principle of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or
- b. Placement of woody debris or other instream structures that benefit naturally reproducing fish stocks.

The department of fish and wildlife shall develop size or scale threshold tests to determine if projects accomplishing any of these tasks should be evaluated under the process created in this section or under other project review and approval processes. A project proposal shall not be reviewed under the process created in this section if the department determines that the scale of the project raises concerns regarding public health and safety; and

(II) A fish habitat enhancement project must be approved in one of the following ways: By the department of fish and wildlife pursuant to chapter [77.95](#) or [77.100](#) RCW; or By the sponsor of a watershed restoration plan as provided in chapter [89.08](#) RCW; or

- By the department as a department of fish and wildlife-sponsored fish habitat enhancement or restoration project;

- Through the review and approval process for the jobs for the environment program;
- Through the review and approval process for conservation district-sponsored projects, where the project complies with design standards established by the conservation commission through interagency agreement with the United States Fish and Wildlife Service and the natural resource conservation service;
- Through a formal grant program established by the legislature or the department of fish and wildlife for fish habitat enhancement or restoration; and
- Through other formal review and approval processes established by the legislature.

(B) Fish habitat enhancement projects meeting the criteria of (p)(iii)(A) of this subsection are expected to result in beneficial impacts to the environment. Decisions pertaining to fish habitat enhancement projects meeting the criteria of (p)(iii)(A) of this subsection and being reviewed and approved according to the provisions of this section are not subject to the requirements of RCW [43.21C.030](#) (2)(c).

(C)(I) A hydraulic project approval permit is required for projects that meet the criteria of (p)(iii)(A) of this subsection and are being reviewed and approved under this section. An applicant shall use a joint aquatic resource permit application form developed by the office of regulatory assistance to apply for approval under this chapter. On the same day, the applicant shall provide copies of the completed application form to the department of fish and wildlife and to each appropriate local government. Local governments shall accept the application as notice of the proposed project. The department of fish and wildlife shall provide a fifteen-day comment period during which it will receive comments regarding environmental impacts. Within forty-five days, the department shall either: issue a permit, with or without conditions; deny approval; or make a determination that the review and approval process created by this section is not appropriate for the proposed project. The department shall base this determination on identification during the comment period of adverse impacts that cannot be mitigated by the conditioning of a permit. If the department determines that the review and approval process created by this section is not appropriate for the proposed project, the department shall notify the applicant and the appropriate local governments of its determination. The applicant may reapply for approval of the project under other review and approval processes.

(II) Any person aggrieved by the approval, denial, conditioning, or modification of a permit under this section may formally appeal the decision to the hydraulic appeals board pursuant to the provisions of this chapter.

(D) No local government may require permits or charge fees for fish habitat enhancement projects that meet the criteria of (p)(iii)(A) of this subsection and that are reviewed and approved according to the provisions of this section.

20.16.420 Permit Application Types:

- (a) A permit for any action in Shoreline jurisdiction not requiring a Shoreline Substantial Development Permit, Conditional Use Permit or Variance will be processed as a Type I permit pursuant to BMC 20.02, Chapter 90.58 RCW and Chapter 173-27 WAC. All uses and developments within the shoreline jurisdiction shall be carried out in a manner that is consistent with this Program and the policy of the Act as required by RCW 90.58.140(1), regardless of whether a permit, exemption, variance, or conditional use permit is required.
- (b) All permits shall be submitted to the Department of Community Development and shall comply with the submittal requirements of BMC 20.02.
- (c) A Shoreline Substantial Development Permit application shall be processed as a Type II permit pursuant BMC 20.02 and as otherwise required by Chapter 90.58 RCW and Chapter 173-27. Permits may be approved, approved with conditions, or denied by the Director.
- (d) A Shoreline Conditional Use Permit shall be processed as either a Type II or Type III permit depending on project scope. Permits shall be processed pursuant to BMC 20.02 or as otherwise required by Chapter 90.58 RCW and Chapter 173-27 WAC. Permits may be approved, approved with conditions, or denied by the Director or Administrative Hearing Examiner respectively.
- (e) A Variance permit shall be processed as a Type III permit pursuant BMC 20.02 and as otherwise required by Chapter 90.58 RCW and Chapter 173-27 WAC. Permits may be approved, approved with conditions, or denied by the Administrative Hearing Examiner.

20.16.430 Noticing Requirements:

- When a notice of application is required, the following shall apply:
- (a) Timeline. The notice shall be provided within fourteen (14) days after the determination of completeness is issued.
 - (b) Content. The notice of application shall include the following:
 - (1) The file number assigned;

(2) The date of application, date of the notice of completeness, and the date of the notice of application;

(3) A description of the proposed project action and a list of permits included with the application and, if applicable, a list of requested studies;

(4) Identification of known permits not included with the application;

(5) Identification of existing environmental documents that evaluate the proposal;

(6) The location where the application and any studies can be reviewed;

(7) A statement of the public comment period and which shall not be less than thirty (30) days;

(8) A statement of the rights of any person to comment on the application, receive notice of and participate in any hearings, request a copy of the decision and any appeal rights;

(9) Any other information determined appropriate by the City.

(c) Legal Notice. Notice shall be provided in the following manner as applicable:

(1) Mail. The notice shall be sent by email, first class or higher mail to the following:

(i) The applicant;

(ii) Affected City Departments;

(iii) State, federal and local agencies with jurisdiction;

(iv) For Type III Permits mailed notice shall also be sent to all property owners of real property (As shown by the records of the Kitsap County Assessor's Office) within three hundred (300) feet of the subject property. Where any portion of a property abutting the subject property is owned, controlled, or under the option of purchase by the applicant, all property owners within a three hundred (300) foot radius of the total ownership interest shall be notified; and

(v) Any person who requests such notice in writing to the Department.

(2) Posting of the Property. Notice shall be posted according to the following:

(i) At least one (1) location on or adjacent to the subject property and that shall be clearly visible and legible from an adjacent street or public area;

(ii) The Director shall determine the specifications to the construction and installation of the notice boards.

(3) Publishing Notice. A published notice in the City's official newspaper of general circulation within the City boundaries is required. The content shall include the following:

(i) Project location;

(ii) Project description;

(iii) Type of permit(s) required;

(iv) Comment period and dates;
 (v) Location where the complete application may be viewed.

(d) Integration of Notices. The City will integrate the notice of application with SEPA review whenever possible. Notification for a notice of application should be combined with the notification for threshold determination and the scoping for a determination of significance whenever possible.

(e) Issuance of Decisions. Except for a threshold determination, the City may not issue a decision or a recommendation on a permit until the expiration of the public comment period.

(f) Public Comments. Comments shall be as specific as possible. Comments shall be received by the last day of the comment period specified in the notice. If no comments are received by the date specified it is presumed that those notified have no comments.

20.16.440 Criteria of Approval:

(a) Shoreline Substantial Development Permits:

- (1) A Shoreline Substantial Development Permit shall be granted only when the development proposed is consistent with:
 - (i) The policies and procedures of the Shoreline Management Act RCW 90.58; and the provisions of the Shoreline Guidelines WAC 173-26 and WAC 173-27, and
 - (ii) This Shoreline Master Program, Comprehensive Plan and Zoning Regulations, to the extent that they are consistent with the Shoreline Master Program.
- (2) The City may attach conditions to the approval of permits as necessary to assure consistency of the project with the act and this Shoreline Master Program.
- (3) Any ruling on an application for a Shoreline Substantial Development Permit under authority of this Master Program, whether it is an approval or denial, shall, with the transmittal of the ruling to the applicant, be filed concurrently with Ecology and the Attorney General by the Director. Filing shall occur in accordance with RCW 90.58.140(6) and WAC 173-27-130.

(b) Conditional Use Permits:

- (1) Conditional Use Permits are issued for proposed substantial development activities when the activity is classified as a Conditional Use or is an unlisted use in the Shoreline Use/ Activity Matrix (Table 20.16.690). The purpose of the Conditional Use Permit is to allow greater flexibility in the application of the Shoreline Master Program. Conditional Use Permits are processed as an Administrative Type II Directors decision, but can at any point in the permit process be elevated to a Nonadministrative Type III Hearings Examiner decision when the Director determines:

- (i) The use or project has a significant impact beyond the immediate site,
 - (ii) The use or project is of a neighborhood or community wide interest, or
 - (iii) The use or project is of a controversial nature.
- (2) Development activity considered a Conditional Use may be authorized if all of the criteria in WAC 173-27-160 are met. The criteria include:
- (i) The proposed use is consistent with RCW 90.58.020 and the policies of Bremerton's Shoreline Master Program;
 - (ii) The proposed use will not interfere with the normal public use of public shorelines;
 - (iii) The proposed use of the site and design are compatible with other permitted uses in the area;
 - (iv) The proposed use will cause no net loss of ecological function to the shoreline environment; and
 - (v) The public interest will not suffer a detrimental effect.
 - (vi) When considering the application, consideration must be given to the cumulative impact of additional requests for similar actions in the area. After the City makes a final decision on a Conditional Use Permit, the permit and application must be reviewed and approved by Ecology and the Attorney General.
- (c) Variance: Relief from specific bulk, dimensional or performance standards in the Shoreline Master Program can only be granted when there are extraordinary or unique circumstances relating to the property such that strict implementation of the Shoreline Master Program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020.
- (1) Development activities considered a Variance may be authorized if all of the criteria in WAC 173-27-170 are met. The criteria include:
- (i) The strict application of the bulk, dimensional, or performance standards would preclude or significantly interfere with the reasonable use of the property not otherwise prohibited by the Shoreline Master Program;
 - (ii) The hardship is specifically related to the property, and is the result of unique conditions such as lot shape, size or natural features, and the application of the Shoreline Master Program;

- (iii) The project design is compatible with other permitted uses in the area, and will not cause adverse effects to adjacent properties or the shoreline environment;
- (iv) The variance will not constitute a grant of special privilege, and is the minimum necessary to afford relief;
- (v) The public interest will suffer no substantial detrimental effect; and
- (vi) If the development is waterward of the ordinary high-water mark, the public rights of navigation and use of the shorelines will not be adversely affected.

(2) After the City makes a final decision on a variance permit, the permit and application must be reviewed and approved by the Department of Ecology.

20.16.450 Appeals:

- (a) Any person aggrieved by the granting, denying, or rescinding of a permit on shorelines of the state pursuant to RCW 90.58.140 may, except as otherwise provided in chapter 43.21B RCW, seek review from the shorelines hearings board by filing a petition for review within twenty-one days of the decision as provided for in RCW 90.58.140(6).
- (b) Type II Decisions: Type II decisions on Shoreline Substantial Development Permits, Conditional Use Permits, and revisions to shoreline permits may be appealed to the Administrative Hearing Examiner pursuant to Chapter 20.02 BMC within fourteen (14) calendar days of the date of the decision, provided that the applicant agrees to this local appeal. In the case of a Conditional Use Permit the Director may request that the Department of Ecology delay action in the approval until the local appeal process has been completed. In lieu of an appeal to the Administrative Hearing Examiner, or in the case where the applicant does not agree to a local appeal, an appeal of the local shoreline permit decision shall be heard by the Shorelines Hearings Board (SHB). Any person may file a Petition for Review to the SHB within twenty-one (21) calendar days of the date of filing of the decision with Ecology and the Attorney General pursuant to RCW 90.58.180(1).
- (c) Type III Decisions and Decisions on Appeals: Type III decisions, and decisions on appeal of Type II decisions may be appealed to the Shorelines Hearings Board by filing a Petition for Review within twenty-one (21) calendar days of the date of filing of the decision with the Department of Ecology and the Attorney General pursuant to RCW 90.58.180(1).
- (d) An appeal of a Conditional Use Permit or Variance by the Department of Ecology shall be filed with the Shoreline Hearings Board within twenty one

- (21) calendar days of notice of the Department of Ecology's decision, pursuant to RCW 90.58.180(1).
- (e) Shoreline Master Program Adoption and Amendments. The decision of the Department of Ecology pertaining to the adoption of, or amendment to, the Shoreline Master Program may be appealed to the Central Puget Sound Growth Management Hearing Board per Chapter 36.70A RCW.

20.16.460 Time Periods:

- (a) Type II Permits: No construction pursuant to such permit shall begin or be authorized and no building, grading or other construction permits or use permits shall be issued by the City until 21 days from the date a Shoreline Substantial Development Permit was filed with the Department of Ecology and the Attorney General, or until all review proceedings are completed as were initiated within the twenty one (21) days of the date of filing. Filing shall occur in accordance with RCW 90.58.140(6) and WAC 173-27-130.
- (b) Type III Permits or Type II Conditional Use Permits: No permits and construction shall begin or be authorized until 21 days from the date of notification of approval by the Department of Ecology, or until all review proceedings are completed as were initiated within the twenty one (21) days of the date of filing. Filing shall occur in accordance with RCW 90.58.140(6) and WAC 173-27-130.
- (c) Unless a different time period is specified in the shoreline permit as authorized by RCW 90.58.143, construction activities, or a use or activity for which a permit has been granted pursuant to this Master Program, must be commenced within two (2) years of the effective date of a shoreline permit, or the shoreline permit shall terminate and a new permit shall be necessary. However, the Director may authorize a single extension for a period not to exceed one year based on reasonable factors if a request for extension has been filed with the City before the expiration date and notice of the proposed extension is given to parties of record and the Department of Ecology. Construction activities or commencement of construction means that construction applications must be submitted, permits must be issued, and foundation inspections must be approved and completed.
- (d) A permit authorizing construction shall extend for a term of no more than five (5) years after the effective date of a shoreline permit, unless a longer period has been specified pursuant to RCW 90.58.143 or as authorized above. If an applicant files a request for an extension prior to expiration of the shoreline permit, the Director shall review the permit and upon a showing of good cause may authorize a single extension of the shoreline permit for a period of up to one year; otherwise, said permit shall terminate. Notice of the proposed permit extension shall be given to parties of record and the Department of Ecology. To maintain the validity of a shoreline permit, it is the applicant's

responsibility to maintain valid construction permits in accordance with adopted building codes.

- (e) If it is determined that standard time requirements of subsections (d) and (e) should not be applied, the Hearing Examiner, upon a finding of good cause, may establish shorter time limits, provided that, as a part of action on a conditional use or variance permit, the approval of the Department of Ecology shall be required. "Good cause" means that the time limits established are reasonably related to the time actually necessary to perform the development on the ground and complete the project that is being permitted.
- (f) For purposes of determining the life of a shoreline permit, the effective date of a Shoreline Substantial Development Permit, Shoreline Conditional Use Permit, or Shoreline Variance Permit shall be the date of filing as provided in RCW 90.58.140(6). The permit time periods do not include the time during which a use or activity was not actually pursued due to the pendency of appeals or legal actions, or due to the need to obtain any other government permits and approvals for the development that authorize the development to proceed.
- (g) It is the responsibility of the applicant to inform the director of other permit applications filed with agencies other than the City and of any related administrative or legal actions on any permit or approval.
- (h) If an appeal is filed, construction may not commence until disposition of the appeal unless otherwise established by the Shoreline Hearings Board pursuant to RCW 90.58.140(5)(b).

20.16.470 Violations and Penalties:

- (a) Any person who fails to conform to the terms of a Shoreline Substantial Development Permit, conditional use permit or variance issued under the Shoreline Master Program, who undertakes a development or use on shorelines of the state without first obtaining a permit, or violates any other provision of the Shoreline Master Program, or who fails to comply with a cease and desist order issued or notice of violation under Chapter 1.04 BMC may be subject to enforcement and penalties as follows:
- (b) Any violation, as noted above, constitutes a civil violation under Chapter 1.04 BMC, as currently enacted or hereinafter amended, for which a monetary penalty may be assessed and enforcement may be required as provided therein.
- (c) In addition to or as an alternative to any other penalty provided herein or by law, any person who commits a violation, as noted above, shall be guilty of a gross misdemeanor pursuant to RCW 90.58.220.
- (d) In lieu of or in addition to the above, the City may utilize the enforcement procedures and remedies, including requiring appropriate correction action, contained in WAC 173-27-240 through 173-27-300.

- (e) Any person subject to the regulatory program of this Master Program who violates any provision of this Master Program or the provisions of a permit issued pursuant thereto shall be liable for all damages to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to such violation. If a suit is pursued, the City Attorney shall bring suit for damages under this subsection on behalf of the City. Private persons shall have the right to bring suit for damages under this subsection on their own behalf and on behalf of all persons similarly situated. If liability has been established for the cost of restoring an area affected by violation, the Court shall make provision to assure that restoration will be accomplished within a reasonable time at the expense of the violator. In addition to such relief, including monetary damages, the Court in its discretion may award attorney's fees and costs of the suit to the prevailing party.

20.16.480 Shoreline Moratorium:

The City Council may adopt moratoria or other interim official controls as necessary and appropriate to implement the provisions of the Shoreline Management Act as outlined in RCW 90.58.590.

20.16.490 Restoration Project Relocation of Ordinary High Water Mark:

The City may grant relief from Shoreline Master Program development standards and use regulations when the following apply:

- (a) A shoreline restoration project causes, or would cause, a landward shift in the ordinary high water mark, resulting in the following:
- (1) Land that had not been regulated under this chapter prior to construction of the restoration project is brought under shoreline jurisdiction; or
 - (2) Additional regulatory requirements apply due to a landward shift in required shoreline buffers or other regulations of the applicable Shoreline Master Program; and
 - (3) Application of Shoreline Master Program regulations would preclude or interfere with use of the property permitted by local development regulations, thus presenting a hardship to the project proponent.
- (b) The proposed relief meets all of the following criteria:
- (1) The proposed relief is the minimum necessary to relieve the hardship; and
 - (2) After granting the proposed relief, there is net environmental benefit from the restoration project; and

- (3) Granting the proposed relief is consistent with the objectives of the shoreline restoration project and consistent with the Shoreline Master Program; and
 - (4) Where a shoreline restoration project is created as mitigation to obtain a development permit, the project proponent required to perform the mitigation is not eligible for relief under this section.
- (c) If approved by the City, the application for relief must be submitted to the Department of Ecology for written approval or disapproval.
- (1) This review must occur during the Department of Ecology's normal review of a shoreline Substantial Development Permit, Conditional Use Permit, or variance. If no such permit is required, then the department shall conduct its review when the local government provides a copy of a complete application and all supporting information necessary to conduct the review.
 - (2) Except as otherwise provided in subsection d of this section, the Department of Ecology shall provide at least 20-days notice to parties that have indicated interest to the department in reviewing applications for relief under this section, and post the notice on to their website.
 - (3) The department shall act within 30 calendar days of close of the Public Notice period, or within 30 days of receipt of the proposal from the local government if additional public notice is not required.
- (d) The public notice requirements of subsection c of this section do not apply if the relevant shoreline restoration project was included in a Shoreline Master Program or shoreline restoration plan as defined in WAC 173-26-201, as follows:
- (1) The restoration plan has been approved by the department under applicable Shoreline Master Program guidelines; and the shoreline restoration project is specifically identified in the Shoreline Master Program or restoration plan or is located along a shoreline reach identified in the Shoreline Master Program or restoration plan as appropriate for granting relief from shoreline regulations; and the Shoreline Master Program or restoration plan includes policies addressing the nature of the relief and why, when, and how it would be applied.

20.16.500 Nonconforming Provisions

20.16.510 – Intent

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20.16.550 – Nonconforming Lots

20.16.560 – Nonconforming Structures

20.16.570 – Unsuitable Structure for Uses

20.16.580 – Unlawful Uses and Structures

20.16.510 Intent:

- (a) To avoid undue hardship to property owners whose existing lots, structures, or uses were lawful at the time of their establishment, but are prohibited, regulated, or restricted under the Shoreline Master Program and Zoning Code.
- (b) To set forth conditions under which these nonconformities may continue to exist until such a time they are discontinued as prescribed by law. Nothing in this chapter shall be deemed to require a change in the plans, construction or designated use of any building or site legally established.

20.16.520 Establishment of a Legal Nonconformity and Applicability:

- (a) A party asserting the existence of a lawfully established nonconforming lot, use, or structure has the burden of proof that the lot, use, or structure was not substandard in meeting the requirements of the Shoreline Master Program or Zoning Code that were in effect at its creation.
- (b) The rules of this chapter are applied by first reviewing which provisions are applicable to the nonconformity. When a combination of nonconforming lot, use, or structure exists, each segment of the nonconformity is reviewed independent of the others.

20.16.530 Annexation:

- (a) Lots, structures, uses of land, and structures that were legally in existence prior to annexation to the City, but that do not conform to the requirements of the Shoreline Master Program or Zoning Code following the date of annexation, shall become a legal nonconformity subject to the requirements of this chapter.

20.16.540 Definitions: The following definitions are applicable to this chapter:

- (a) **Nonconforming Lots:** A lot that does not meet the lot area, width or street frontage requirements of the Shoreline Master Program or Zoning Code, but was lawfully created prior to the effective date of the adoption of the Shoreline Master Program and/or Zoning Code or subsequent amendments thereto.

- (b) **Nonconforming Use:** Any activity, development or condition that by the Shoreline Master Program or Zoning Code is not permitted outright or as an accessory use, or is not permitted by a Conditional Use Permit or other special permitting process; but was lawfully created prior to the effective date of the Shoreline Master Program or Zoning Code or subsequent amendments thereto and was continually maintained as defined in this chapter. A nonconforming use may or may not involve buildings or structures and may involve part of or all of a building or property.
- (c) **Nonconforming Structure:** A building or structure that does not comply with the required setbacks, height, lot coverage and other development requirements of the Shoreline Master Program or Zoning Code, but was lawfully constructed prior to the effective date of the Zoning Code and/or Shoreline Master Program or subsequent amendments thereto, and was continually maintained as defined in this chapter.
- (d) **Substantial Destruction:** For the purpose of this chapter, "substantial destruction" means the repair or replacement of a building or structure which exceeds one of the following:
 - (1) Seventy five percent (75%) of the assessed value of the structure as determined by the Kitsap County Assessor. An appraised value may be substituted for the assessed value at the request of the applicant and as deemed appropriate by the Director; or
 - (2) Seventy five percent (75%) of the structural components of the building envelope that are being replaced. The building envelope includes, but is not limited to, exterior walls, load bearing beams, roof, and foundation.

20.16.550 Nonconforming Lots:

- (a) **Continuation and Development:** A nonconforming lot may be developed for any use allowed by the Shoreline Master Program and Zoning Code, provided the development meets, through design or by an approved variance, the applicable development standards within.
- (b) **Illegal Lot Modifications or Split.** The following is applicable to all lots:
 - (1) No lot may be modified, divided, or adjusted in a manner that would violate the dimensional or area requirements of the Shoreline Master Program or Zoning Code.
 - (2) A government agency may lawfully modify a lot in a manner that would result in nonconformity if portions of a lot are acquired for a public use or purpose or is allowed otherwise by law.

20.16.560 Nonconforming uses:

- (a) **Continuation:** Any legally established nonconforming use may be continued until such time that it is discontinued as prescribed in subsection (4) or (5) of this section.

- (b) Change of Use: A structure or property containing a nonconforming use may be changed to the following:
- (1) A use that conforms to the requirements of the Shoreline Master Program and Zoning Code; or
 - (2) Another nonconforming use; provided, that all of the following criteria are met:
 - (i) A Shoreline Conditional Use Permit is approved pursuant to BMC 20.16.400; and
 - (ii) The existing nonconforming use was not discontinued as prescribed in subsection (d) or (e) of this section; and
 - (iii) The new use is clearly a reduction in the nonconformity and intensity of the existing nonconforming use; and
 - (iv) There is no net loss of ecological processes and functions resulting from the change in use.
- (c) Use Expansion: A nonconforming use may only be expanded or enlarged, in one (1) of following circumstances:
- (1) If the existing nonconformity is not utilizing the entire structure, it may be expanded to other portions of the structure provided the enlargement is within the existing physical space of the building or use and all of the following criteria are met:
 - (i) There is no increase outside the building walls of noise, light and glare and other proximity impacts that may adversely affect adjacent uses or elements of the natural environment; and
 - (ii) There is no net loss of ecological processes and functions resulting from the alteration; and
 - (iii) The expansion or enlargement does not restore the structure from substantial destruction.
 - (2) Residential dwellings may have the building area expanded if all of the following criteria are met:
 - (i) The number of dwelling units is not increased; and
 - (ii) There is no decrease in the number of off-street parking spaces below the minimum requirements and the addition complies with all applicable development standards; and
 - (iii) There is no expansion into an area designated as a critical area or shoreline buffer or building setback; and
 - (iv) There is no net loss of ecological processes and functions resulting from the expansion.
 - (3) Acquisition of additional accessory off-street parking provided the addition parking is not located in the buffer or setback areas.

- (d) **Discontinuation:** A nonconforming use that is discontinued shall have its legal nonconforming status terminated and any subsequent use of the property or building shall be that of a use that conforms to all applicable development standards. A nonconforming use is determined to be discontinued if any of the following circumstances apply:
 - (1) The nonconforming use is changed to a conforming use; or
 - (2) Another nonconforming use is approved pursuant to subsection (b)(2) of this section; or
 - (3) The nonconforming use has ceased for a period of more than one (1) year.
- (e) **Damage or Destruction:** If a structure containing a nonconforming use experiences substantial destruction, it shall constitute a discontinuation of the nonconforming use, except the nonconforming use may be allowed to continue under any of the following circumstances:
 - (1) The structure has suffered substantial destruction as a result of fire or other casualty not intentionally caused by the owner and a complete building permit application is filed within one (1) year of such fire or other casualty.
 - (2) The nonconforming use is a detached or attached single-family dwelling located in a zone in which they are prohibited. The use may be re-established provided a complete building permit application is filed within one (1) year of substantial destruction.
- (f) **Repair and Maintenance:** A building or structure containing a nonconforming use may be repaired and maintained if the work does not restore it from substantial destruction.

20.16.560 Nonconforming Structures:

- (a) **Continuation:** Any legally established nonconforming structure may be continued until such time that it experiences substantial destruction. If a structure experiences substantial destruction it shall constitute a discontinuation of the nonconforming structure and have its nonconforming status terminated. Any subsequent repair or reconstruction of the structure shall comply with the requirements of the Shoreline Master Program and the Zoning Code, except as follows:
 - (1) The nonconforming structure may be allowed to be rebuilt within the same footprint and size if the structure has suffered substantial destruction as a result of fire or other casualty not intentionally caused by the owner, and a complete building permit application is filed within one (1) year of such fire or other casualty.
- (b) **Expansion:** A nonconforming structure may be enlarged or extended provided the enlargement complies with the applicable setback; height, lot coverage, and other site development requirements of the Shoreline Master Program and the Zoning Code provided such work

does not restore the structure from substantial destruction. Such expansions shall comply with the following:

- (1) Expansions located outside of the setback and or buffer but within the shoreline jurisdiction may have a footprint expansion of up to five hundred (500) square feet without being required to provide vegetation enhancement. Such an addition must comply with all applicable development standards.
- (2) Expansions located outside of the setback and or buffer but within the shoreline jurisdiction with a footprint larger than five hundred (500) square feet may be permitted provided the existing buffer is densely vegetated with a native plant community. Should the vegetation within the buffer not be a dense community of native vegetation, enhancement shall be provided as follows (*These provisions are not applicable to that portion of a water dependent use which requires direct access to the shoreline*):
 - (i) A native community of vegetation shall be provided on the waterward twenty five percent (25%) of the required buffers width, with a minimum required width of ten feet (10').
 - (ii) The area to be planted shall comply with the vegetation management plan requirements of BMC 20.16.620.
 - (iii) There is no net loss of ecological processes and functions resulting from the alteration.
- (3) Expansions located within the setback/buffer are may be permitted provided:
 - (i) Such expansion is located no further waterward than the existing foundation. In the case that no foundation exists, the expansion shall not exceed the existing building line.
 - (ii) The expansion shall be limited to a footprint of two hundred and fifty (250) square feet.
 - (iii) At least fifty percent (50%) of the required buffer shall be restored with natural vegetation, if not currently characterized by a dense community of native vegetation. Alternately the Director may approve the enhancement of 50% of the distance between the structure and the shoreline. Such vegetation shall be located as close to the shoreline as possible.
 - (iv) Natural vegetation to be planted must comply with the requirements for vegetation management plans as established in BMC 20.16.620 for the portion of the buffer to be planted.
 - (v) There is no net loss of ecological processes and functions resulting from the alteration.

(c) Repair and Maintenance: Normal repair and maintenance work on a nonconforming structure may be performed that maintains continued safe and sanitary conditions provided such work does not restore the structure from substantial destruction as defined above in BMC 20.16.540.

20.16.570 Unsuitable Structures for Uses:

- (a) An existing structure constructed for a use no longer allowed by the Shoreline Master Program or Zoning Code, which has lost its legal nonconforming status, and is not suited for other uses permitted by the Shoreline Mater Program or Zoning Code, may have its use re-established if a shoreline Conditional Use Permit is approved pursuant to BMC 20.16.400; provided the applicant demonstrates that:
- (1) The remaining life of the structure is adequate to warrant the proposed use of the structure; and
 - (2) An allowed use of the zone cannot be established; and
 - (3) There is a demand for the use in the community or region that provides a public benefit; and
 - (4) The use and renovation to the structure is not inconsistent with the goals and policies of the Shoreline Master Program and Comprehensive Plan; and
 - (5) The Critical Area/Shoreline buffers are restored with native vegetation to the extent feasible as established by a qualified professional as outlined in vegetation management plan requirements (BMC 20.16.620); and
 - (6) There is no net loss of ecological processes and functions resulting from the use.

20.16.580 Unlawful Uses and Structures:

- (a) Nothing in this chapter shall be interpreted to be authorization for, or approval of, the continuation of the use of a structure that is in violation of any ordinance in effect at the time of the passage of the ordinance codified in this chapter. The intermittent, temporary, or illegal use of land or structures shall not be sufficient to establish the existence of a nonconforming use and/or structure.
- (b) Any use, structure, or lot which did not comply with the all applicable development standards at the time it was established or constructed, and does not comply with the current development standards, is illegal and shall be brought into compliance with all applicable development standards.