

# SHORELINE MASTER PROGRAM

SMP Update  
Bremerton Planning Commission  
Meeting  
August 17, 2010

# Agenda

- **Nonconformities - Overview**
- **Nonconformities – Ecology Guidance**
- **Nonconformities – Options**
- **Questions/Input**

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# Nonconforming

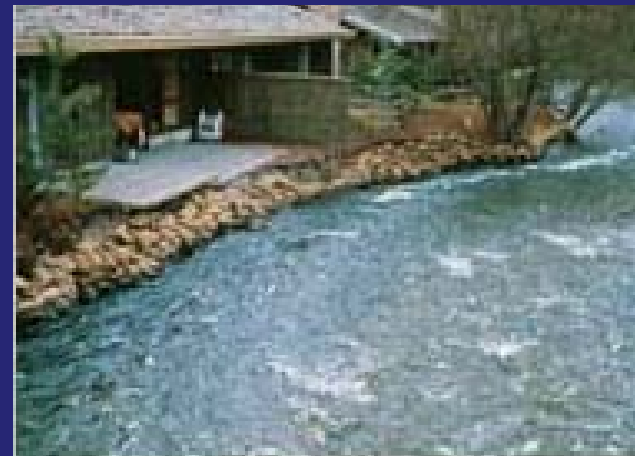
- What does it mean?
- When do these requirements apply?
- How will this impact the SMP update?

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# What Does Nonconforming Mean?

- As codes change existing structures and or uses are no longer in compliance with the code. This is known as nonconforming (grandfathered)

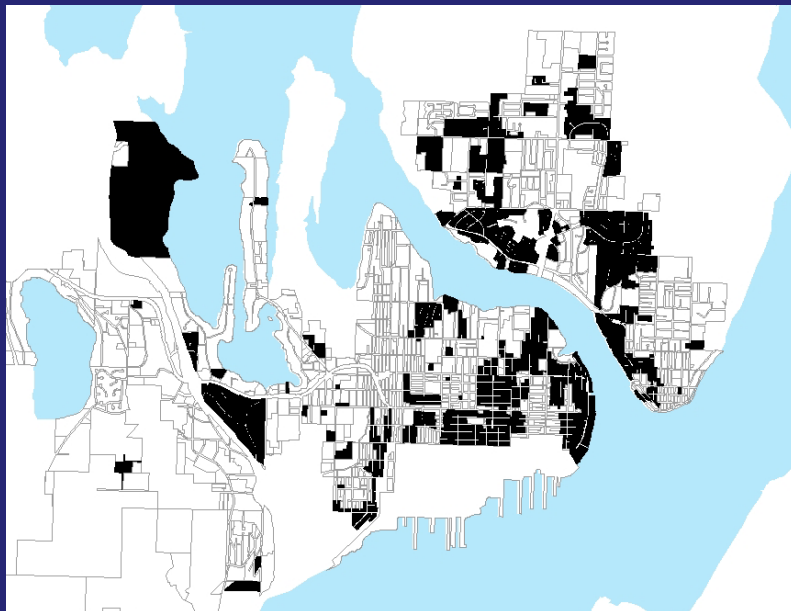


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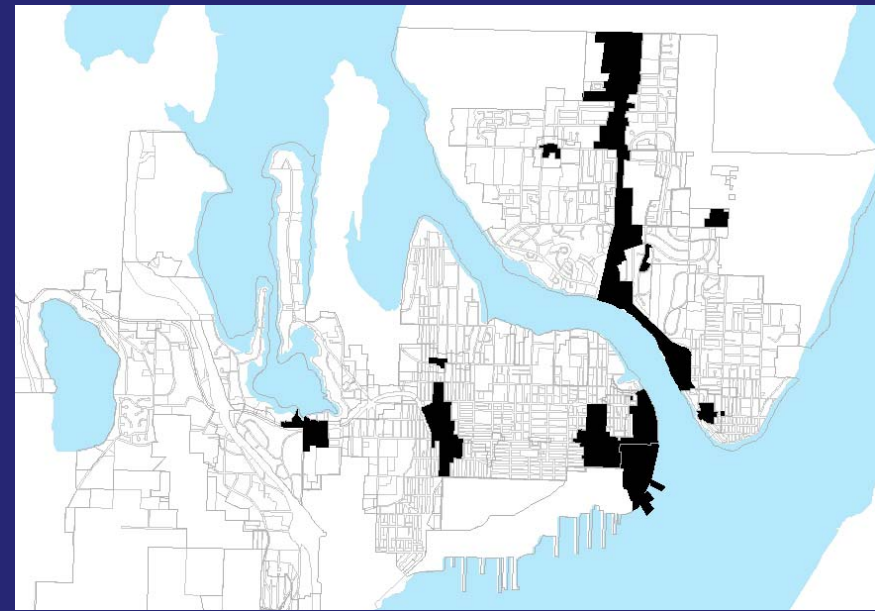


# Nonconforming structures/uses in the City

- Zoning code update of 2005 created a lot of nonconforming structures in order to develop a growth strategy



Multi-Family Zoning Prior to 2005



Multi-Family Zoning After 2005

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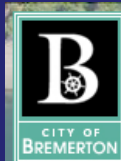


# Two Types of Nonconformities

- Buildings that do not meet a development standard anymore (nonconforming structure)
- Buildings that are used for incompatible uses (nonconforming use)



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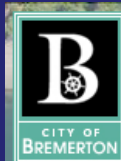
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# Nonconforming Structures

- Existing structures can be maintained until they experience “Substantial Destruction”
- “Substantial Destruction” means the removal or replacement of more than 75% of the structure.
- Expansions are ok, provided they comply with the new code.



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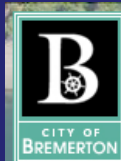
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# Nonconforming Use

- Uses that are no longer permitted in the zone.
- They can remain until they are “discontinued” for 1 year or more.
- Expansions are not permitted



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# Nonconformities

## Ecology Guidance

Ecology does not expect, nor is it asking, local governments to eliminate all nonconforming development from shorelines. Some nonconforming uses and structure within shoreline jurisdiction have existed for many years.

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# Nonconformities

## Ecology Guidance

- Grandfathered structures may be able to expand if they do not increase the nonconformity. For example, a house partially within the buffer could be expanded outside the buffer.
- Regulations must be applied fairly to new development and existing development. Local governments cannot excuse existing neighborhoods from meeting new standards while enacting new standards for new development.
- Local governments have the right to terminate nonconforming development.

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# Nonconformities

## Ecology Guidance

- As reflected in case law, local governments may adopt regulations to phase out nonconforming development over time. More commonly, phasing out is accomplished by adopting disincentives such as strict limits on change of use or expansion.
- For updated SMPs, the “no net loss” policy objective should guide review of proposed expansions or other changes to grandfathered uses and new development on substandard vacant lots.
- Consider whether nonconforming developments are “benign” or “detrimental”
- The cumulative impact of numerous minor or lesser impacting “benign” developments should be considered.

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# Nonconformities

## Ecology Guidance

SMPs need to cover the breadth of the nonconforming provisions that are in WAC 173-27-080, including:

- Definitions,
- Structures – maintenance and repair, expansion, moving the structure,
- Uses – expansion, change in use,
- Reconstruction after damage, including timelines for permitting and reconstruction. Ecology suggests that SMPs include criteria to avoid reconstruction in hazard areas,
- Abandonment,
- Undeveloped lots.

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# Nonconformities

## Existing Bremerton Code

- [20.54.010](#) Intent
- [20.54.020](#) Establishment of a Legal Nonconformity and Applicability
- [20.54.030](#) Annexation
- [20.54.040](#) Definitions
- [20.54.050](#) Nonconforming Lots
- [20.54.060](#) Nonconforming Uses
- [20.54.070](#) Nonconforming Structures
- [20.54.080](#) Nonconforming Landscaping
- [20.54.090](#) Conditional Nonconforming Uses
- [20.54.100](#) Nonconforming Signs
- [20.54.110](#) Unlawful Uses and Structures

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# Nonconformities

## Existing Code

(20.54.060(b) allows a change to another non-conforming use by CUP. The criteria, however, do not consider some of the important provisions of the SMA including the preference for “water oriented” uses and “no net loss”

The Ecology guidelines would likely require the “no net loss” policy objective to be added as a criteria

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# Nonconformities

## Existing Code

20.54.070(b) allows expansion of enlargement of a structure if it meets site development standards or if the expansion is not more than 20%

The Ecology guidelines likely would require

- the “no net loss” policy objective to be added as a criteria
- a criteria that expansion would not increase the nonconformity. For example, a house partially within the buffer could be expanded outside the buffer only

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# Nonconformities

## Existing Code

20.54.070(c) requires a structure damaged beyond 75 percent of its replacement value to be reconstructed in accordance with the zoning requirements.

The Ecology guidelines likely would support this provision as bringing uses into compliance.

However, if more stringent buffers and setbacks were implemented on some shorelines, existing lots sizes may constrain rebuilding in compliance with those standards.

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# Nonconformities

## Existing Code

20.54.080(c) addresses landscaping and requires additional landscaping related to the extent of the expansion

The Ecology guidelines likely would support this provision as it applies to buffers and vegetation conservation.

It also may be desirable to set a threshold of expansion at which any new requirements for buffer vegetation would be implemented.

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# Nonconformities

## Options

- a) Keep the existing provisions in Chapter 20.54 for Non Conforming uses and apply to the shoreline, as is presently the case.
- b) Keep the existing provisions in Chapter 20.54 for Non Conforming uses but add additional provisions specific to the shoreline, such as consideration of no-net loss.
- c) Adopt separate Nonconforming provisions in a separate code section applicable only to shorelines.
- d) Monitor the policies and regulations that are developed as part of the SMP update and determine whether they involve additional issues not currently foreseen in the city's nonconforming provisions

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# Nonconformities

## Options

- a) Keep the existing provisions in Chapter 20.54 for Non Conforming uses and apply to the shoreline, as is presently the case.

The major advantage of this is that it treats all property in the city the same.

The disadvantages are:

- It doesn't address specific shoreline criteria such as no net loss.
- Future revisions to city-wide regulations – if they apply in the shoreline – require Department of Ecology review and approval. This provides an extra layer of review.

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# Nonconformities

## Options

- b) Keep the existing provisions in Chapter 20.54 for Non Conforming uses but add additional provisions specific to the shoreline, such as consideration of no-net loss.
- This maintains the existing code structure, but adds specific provisions unique to shorelines.
  - The disadvantages is future revisions to city-wide regulations – if they apply in the shoreline – require Department of Ecology review and approval. This provides an extra layer of review.

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# Nonconformities

## Options

- c) Adopt separate Nonconforming provisions in a separate code section applicable only to shorelines.

This would address unique shoreline conditions, but may be more complicated to apply, especially for sites that span shoreline and non-shoreline jurisdiction.

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# Nonconformities

## Options - Recommendation

d) Monitor the policies and regulations that are developed as part of the SMP update and determine whether they involve additional issues not currently foreseen in the city's non-conforming provisions

Given the early stage of the process of updating the SMP, it appears prudent to pursue alternative (d) above and revisit these issues when the specific provisions under consideration in the updated SMP are better known.

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# Questions or comments:

Please do not ask questions about your specific property – as we have not yet gotten to that level of detail in the planning process.

Email : [smp@ci.bremerton.wa.us](mailto:smp@ci.bremerton.wa.us)

## Contact

Nicole Floyd, Land Use Planner

(360) 473-5279

[Nicole.Floyd@ci.bremerton.wa.us](mailto:Nicole.Floyd@ci.bremerton.wa.us)

345 6th Street Suite 600

Bremerton WA 98337

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