

**(DRAFT) AGENDA**  
**Regular Meeting – Bremerton Planning Commission**  
**(Subject to PC approval)**  
**February 16, 2016**  
**5:30 P.M.**  
**345 – 6<sup>th</sup> Street**  
**Meeting Chamber – First Floor**

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- I. CALL TO ORDER**
  - II. ROLL CALL (quorum present)**
  - III. APPROVAL OF THE AGENDA**
  - IV. APPROVAL OF MINUTES:**
    - o January 19, 2016 meeting.
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**V. PUBLIC MEETING**

- A. Call to the Public:** Public comments on any item not on tonight's agenda
  - B. Workshop:**
    - 1. Zoning Code amendments related to the 2016 Comprehensive Plan Periodic Update Bremerton Municipal Code (BMC) Chapters and City documents being discussed:
      - 20.04 Environmental Policy Act
      - 20.14 Critical Areas
      - 20.54 Nonconforming Provisions
      - Shoreline Master Program
- 

**VI. BUSINESS MEETING**

- A. Chair Report:** Nick Wofford
  - B. Director Report:** Andrea Spencer
  - C. Old Business:**
  - D. New Business:**
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**VII. ADJOURNMENT:**

**The next regular meeting of the Planning Commission is March 15, 2016**

**Planning Commission meeting packets are available on-line at**  
<http://www.BremertonWA.gov/AgendaCenter/Planning-Commission-4>

# DRAFT

Subject to February 16, 2016 Approval

## CITY OF BREMERTON

### PLANNING COMMISSION MINUTES OF REGULAR MEETING January 19, 2016

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#### CALL TO ORDER:

**Chair Wofford** called the regular meeting of the Bremerton Planning Commission to order at 5:30 p.m.

#### ROLL CALL

##### Commissioners Present

Chair Wofford  
Vice Chair Nethery  
Commissioner Goodnow  
Commissioner Nerf  
Commissioner Strube  
Commissioner Tift

##### Staff Present

Andrea Spencer, Director, Department of Community Development  
Garrett Jackson, Planner, Department of Community Development  
Allison Satter, Senior Planner, Department of Community Development

#### *Quorum Certified*

#### APPROVAL OF AGENDA

**COMMISSIONER TIFT MOVED TO APPROVE THE AGENDA AS PRESENTED. VICE CHAIR NETHERY SECONDED THE MOTION, WHICH CARRIED UNANIMOUSLY.**

#### APPROVAL OF MINUTES

**COMMISSIONER NERF MOVED TO APPROVE THE MINUTES OF NOVEMBER 17, 2015 AS PRESENTED. COMMISSIONER STRUBE SECONDED THE MOTION, WHICH CARRIED UNANIMOUSLY.**

#### PUBLIC MEETING

**Call to the Public** (public comments on any item not on the agenda)

**Chair Wofford** asked if there were any general comments from citizens. Seeing none, he closed the public portion of the meeting.

**Workshop: Zoning Code Amendments Related to the 2016 Comprehensive Plan Periodic Update (BMC 20.02—Project Permits, SMC 20.40—Administration, and SMC 20.46—Special Development)**

**Ms. Satter** presented the Staff Report. She reminded the Commissioners that the Growth Management Act (GMA) requires cities to complete periodic updates of their Comprehensive Plans. As the City's original Comprehensive Plan was adopted in 2004, a major update is required by June 30, 2016. She reviewed that the update process started with district tours with each City Council Member to identify what is and is not working, and a work program was adopted by council in November of

2014. The Commission's focus in 2015 was on updating the Comprehensive Plan based on the work program. In November of 2015, the Planning Commission recommended unanimous approval of the draft 2016 Comprehensive Plan, which was forwarded to the City Council.

**Ms. Satter** explained that the Comprehensive Plan is the vision for how Bremerton should grow over the next 20 years. The draft 2016 Comprehensive Plan addresses existing conditions and evaluates growth potential. Its main push is to plan for Bremerton to be a Metropolitan City in Kitsap County, as identified by the Puget Sound Regional Council (PSRC), which is a multi-county organization (King, Snohomish, Pierce, and Kitsap Counties). The City also wants to maintain the fundamental principles of a live, work, and play environment for citizens and visitors. In addition, the Comprehensive Plan must be consistent with the GMA, the PSRC's Vision 2040 and Transportation 2040 Plans, and Kitsap Countywide Planning Policies. She advised that the 2004 Comprehensive Plan provided a great foundation for the update, but there were opportunities to improve. For example, the document was reformatted and streamlined to make it easier to utilize.

**Ms. Satter** reminded the Commission that Puget Sound is expected to grow by up to 1.7 million people by 2040, totaling more than 5 million people in the next 25 years. She reviewed that the growth was allocated by the Washington State Office of Financial Management and is supported by the Multicounty Planning Policies (PSRC) and Kitsap County Planning Policies. It is anticipated that Kitsap County will get 80,000 additional people, with 62,000 of them being located within the cities and urban growth areas. Bremerton will likely get an additional 14,000 people. She provided a graph to show how Bremerton's Growth will be allocated, noting that the City is planning for 19,000 new jobs and 14,000 new residents in the next 20 years.

**Ms. Satter** reviewed that the "Centers" approach has been an important part of the Comprehensive Plan from its initial adoption in 2004. The intent is to encourage development in areas where existing infrastructure is already available. In addition to the Downtown Regional Center, the City has three District Centers (Wheaton/Riddell, Wheaton/Sheridan and Charleston), the Eastside Employment Center, the Puget Sound Industrial Center, and the Manette Neighborhood Center. The intent of the "Centers" approach is to push high density within the centers, with commercial development along the corridors (Kitsap and Wheaton Way) and all other areas remaining residential in nature.

**Ms. Satter** commented that the update process included an outreach program that offered a number of opportunities for public participation. Throughout 2015, the Planning Commission conducted 9 workshops, 2 open houses, and 2 public hearings. Information has been provided on the public television station, and two city-wide mass mailings were done. In addition, all information related to the update has been available at [www.Bremerton2030.com](http://www.Bremerton2030.com).

**Ms. Satter** reviewed the layout of the draft Comprehensive Plan, which is divided into six elements (Land Use, Housing, Economic Development, Transportation, City Services, and Environmental). An introduction section was provided, as well as technical appendices at the end. She noted that the draft Comprehensive Plan will be presented to the City Council for review and approval by June.

**Ms. Satter** explained that the zoning regulations are found in Title 20 of the Bremerton Municipal Code (BMC). The zoning regulations are the way governments control the physical development of land and the kinds of uses to which each individual property may be put. The City's Development Code is derived from, and must be consistent with, the goals and policies set forth in the Comprehensive Plan. The Commission's focus over the next several months will be updating the zoning code to ensure that the regulations are actually good for the City and compliant with the goals, policies and growth strategies identified in the Comprehensive Plan update.

**Ms. Satter** noted that the City's current zoning regulations (BMC 20—Land Use) were adopted in 2005 and will serve as a good starting point. Staff's initial research indicates that 33 of the 37 chapters in Title 20 need to be updated. Some of the amendments will be minor, but others will be more impactful. In addition to the amendments required to be consistent with the updated Comprehensive Plan, staff also anticipates amendments to implement low-impact development as required by the Department of Ecology (DOE) and amendments to the State Environmental Policy Act chapter to address inconsistencies with current state law. Staff will also present minor "bullpen items."

**Ms. Satter** announced that the Commission will conduct three workshops to discuss the proposed amendments. The January workshop will focus on basic permitting, the February workshop on the environment, and the March workshop on land use

designations. The Commission is tentatively scheduled to conduct a public hearing on the draft amendments in April of 2016.

**Ms. Satter** reviewed that in 2015, staff reviewed about 900 building and land use permits, which is a significant increase over recent years. Approved permit values in 2015 were \$81.7 million compared to \$76.7 million in 2005 and just \$36.7 million in 2014. It is exciting to see the transition that is happening to Bremerton.

**Ms. Satter** reviewed the proposed amendments as outlined in Attachment 1 of the Staff Report.

- **BMC 20.02 (Project Permits).** **Ms. Satter** explained that the City currently has four types of permits. Type I is an administrative permit that can usually be issued within four weeks. Type II is an administrative decision with public notice, usually with some environmental review aspect included. Type II permits require a two-week noticing period, and the process takes four to six weeks to complete. Type III is a Hearing Examiner decision with notice. This process requires the City to present how a project does or does not comply with the code, and applicants must present their applications to the Hearing Examiner. Type IV is a City Council decision with a notice, but it is not used often. **Ms. Satter** advised that the only change staff is proposing in BMC 20.02 is to remove development agreements. She emphasized that development agreements are not currently utilized by the City and they are not supported by the Comprehensive Plan.
- **BMC 20.40 (Administration).** **Ms. Satter** explained that this chapter identifies the administration's duties. It identifies the intent and purpose of the zoning code and talks about what happens when zoning and code interpretation conflicts occur. The chapter defines the terms "shall," which is mandatory, and "may," which is discretionary. It also includes provisions for enforcement. The Administration Chapter is important for setting the ground work of how staff will work through the zoning code when reviewing applications. The proposed amendments will update the Comprehensive Plan designations within the chart showing implementing zoning, and some designations will be consolidated, renamed or removed. The Commission will talk more about the land use designations at their March workshop.
- **BMC 20.46 (Special Development).** **Ms. Satter** advised that the policies and provisions in this chapter generally apply citywide and Comprehensive Plan Policy ED5(A), which calls for evaluating and working towards efficiency and effectiveness of all permit processes to ensure requirements and timelines are predictable, should be considered when reviewing the chapter. **Ms. Satter** said no changes are being proposed relative to accessory dwelling units, placement of manufactured homes, placement of dish antennas, outdoor storage areas, adult entertainment business criteria, and placement of public utility facilities. However, staff is proposing amendments to the following chapters:
  - **BMC 20.46.020 (Fences and Walls).** **Ms. Satter** explained that, typically, fences do not require a permit. However, they are still regulated. Staff is not proposing to reinstate a permit requirement for residential properties, but they are requesting a revision that would allow for barbed wired on fences and walls for public facilities. Currently, the barbed-wire fencing is only allowed in industrial zones. While the City encourages people to use other materials, there are some situations where barbed wire is needed for security. She referenced the Cascade Natural Gas site, which is located in a commercial zone where barbed wire is not allowed. People are currently jumping over the fences and pilfering materials from the lot. They have asked for permission to have barbed-wire fencing around the facility, and staff believes it is a reasonable request.
  - **BMC 20.46.030 (Home Occupations).** **Ms. Satter** explained that the provisions and requirements in this section are intended to promote the idea that home occupations should remain residential in appearance and character. Signage is limited to 2 square feet, and only one patron at a time is allowed. Automotive repair and other businesses that are likely to cause noise are prohibited. The City has the ability to remove a home occupation, after a hearing before the Hearing Examiner, if it receives neighborhood complaints. Staff is proposing to remove Item J, which requires a Conditional Use Permit (CUP) for barbershops or businesses that sell products not produced on premise. Staff feels the provision is onerous and requires an unnecessary and costly process. Further, staff is proposing that Item J be replaced with a provision for taxis. Because there are no code provisions relative to taxis, it has been difficult for staff to address the numerous complaints. She shared examples of how some property owners are parking several taxis at a residential property and neighbors

are complaining when the taxis move in and out in the middle of the night. To address neighborhood impacts, staff is recommending a revision to allow one taxi per home occupation.

- **BMC 20.46.050 (Recreational Vehicle).** Ms. Satter said staff is proposing to remove a provision that prohibits recreational vehicles from being parked in front yards for more than 30 days. The provision is difficult to regulate. She emphasized that recreational vehicles must still be parked on legal driveways/paved areas, and permanently living in a recreational vehicle would be prohibited.
- **BMC 20.46.070 (Adaptive Reuse).** Ms. Satter said the current zoning code only allows for the adaptive reuse of semi-public and public buildings. Staff believes the provision is very restrictive, and only two adaptive reuse permits have been approved by the City in the past nine years. Staff is proposing to make the provision more general to allow for the adaptive reuse of any legally-established commercial building in a residential zone, and Comprehensive Plan policies support the proposed change. Policy LU2(C) calls for supporting adaptive reuse of existing buildings with uses that are compatible with the surrounding neighborhoods. Policy ED1(A) calls for attracting new employment opportunities throughout the City by utilizing incentives for redevelopment of underutilized sites, such as encouraging adaptive reuse of existing commercial buildings. She provided examples of buildings that have been vacant for a number of years, noting that the current code only allows them to be redeveloped as single-family residential, a daycare, a cemetery, etc. Staff is proposing that hotel lodging, retail and restaurant uses also be allowed if compatible with the neighborhood. She acknowledged that there is minimal parking available on some of the sites. Staff is proposing that the Director have the ability to recognize when no parking is available, but approve a project if the applicant can prove there would be no increase in parking demand.

Ms. Satter said staff is proposing that adaptive reuse would be a Type II Permit, which would be an administrative review with a public notice requirement. If there is significant opposition to an application, the City could always elevate the permit to a Type III Permit, which would be a Hearing Examiner Decision.

- **BMC 20.46.080 (Mineral Resource Overlay).** Ms. Satter said the draft Comprehensive Plan update includes a newly created “Mineral Resource Overlay” zone. She provided a map to illustrate the location of the overlay areas. Staff is proposing amendments that will recognize the placement of Mineral Resource Overlays within the low-density areas of West Bremerton. Mining companies are required to prepare reclamation plans, which identify what the topography of the land will be when mining is done. Reclamation plans can identify the sites that will be prime for redevelopment at some point in the future.

Ms. Satter briefly summarized the Comprehensive Plan policies pertaining to Mineral Resource Overlays. She said staff is proposing to replace all of language in BMC 20.46.080. However, she noted that overlay zones will remain as Type III decisions. Proper noticing will be required, as will environmental review, and the final decision would be made by the Hearing Examiner. Ms. Satter explained that the amendments scale back the current provisions in BMC 20.46.080 because many of the requirements will be supported by other agencies. For example, GMA (RCW 36.70A) says that mining operations should be supported. The Surface Mining Act (RCW 78.44) also supports surface mining and includes a number of provisions that must be met, and the Department of Natural Resources (DNR) has a permitting process for mineral extraction. She emphasized that while the City is not allowed to require a reclamation plan, it is a DNR requirement. Air and water are regulated by other agencies for mining activities, but the activities must still comply with the City’s Critical Areas Ordinance (CAO). Ms. Satter summarized that the legislature recognizes that the extraction of minerals by surface mining is an essential activity, making an important contribution to the economic well-being of the state and nation. However, they also recognize it is not possible to extract minerals without producing some environmental impacts. The Mineral Resource Overlay is an overlay of the residential designated lands.

Ms. Satter said staff is proposing to amend BMC 20.46.080 to only allow mineral resource when permitted. While the City cannot request a reclamation plan, it can encourage what should be within the plan that is submitted to the DNR. The amendment would also require compliance with noise levels, which are slightly elevated for this industrial use. The hours of operation would be limited to Monday through Friday, 7:00 a.m. to 6:00 p.m., but exceptions may be granted if there is a public need. The amendment also includes a special

provision of notice for future development, which is a State requirement, as well as the implementation of Best Management Practices (BMPs).

- **BMC 20.46.140 (Wireless Communication Facilities).** Mr. Jackson referred to Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, which granted more broad powers to wireless companies. The change in BMC 20.46.140 is intended to bring the City's code into compliance. He explained that wireless communication facilities (WCF) can be located on towers or on existing structures. He briefly reviewed how regulations for WCFs have evolved over time and said the primary goal of the City's regulations has been to provide superior service to citizens while protecting the views as seen from residences and the rights-of-way. As wireless communications became a service that everyone needs, it became necessary to account for the different standards of each municipality in the nation. In an effort to have some uniformity in the requirements, the Federal Communications Commission (FCC) mandated that local governments have a set amount of time to approve or deny a permit, and denial has to be based on substantial evidence.

**Mr. Jackson** advised that as consumption exploded over time, the need for WCFs has increased. The Middle Class Tax Relief and Job Creation Act mandates that state and local governments approve "eligible facility requests" for modifying existing wireless towers or base stations if modifications would not substantially change the tower or base station's physical dimensions. While the requirements of the act seem reasonable, as per the definition for "substantial change," it means that the size of existing towers outside of public rights-of-way can be increased by 20 feet or 10% of the existing height, whichever is greater. Further, facilities can protrude from the edge of a tower up to 20 feet or more than the width of the tower structure at the level of the appurtenance, whichever is greater. He further explained that towers in public rights-of-way and all base stations could increase in height by more than 10% or 10 feet, whichever is greater, and protrude from the edge of the structure more than 6 feet. No local approval would be needed for any of these expansions.

**Mr. Jackson** summarized that the Federal Government has trumped local zoning on existing WCFs, allowing existing facilities to be easily enlarged. The question now is where they should be located. He said the goals and policies in the Comprehensive Plan remain unchanged. The intent is to provide quality services to citizens, while at the same time protecting neighborhoods and providing incentives to companies on where to place the antennas. Based on decisions already made by the Federal Government, staff recommends that wireless communication facilities be located based on the following priority:

1. **Locate the antennas on existing wireless sites.** There is language in the act that says the original standards of concealment cannot be breached. If there is a plan from the beginning that requires the facility to be hidden, they must stick with that requirement. However, the language in most situations is not very comprehensive.
2. **Locate the facilities within the rights-of-way.** As a government agency, the City cannot regulate the size or design of existing facilities, but they can as a proprietor. The City has more power to regulate what facilities look like and where they can be located going forward as a property owner than as a regulating agency. The existing power poles and light standards provide good locations for WCFs to locate. Any WCF located in a right-of-way would have already had a franchise agreement approved by the City. Given the work already done as part of the agreement, staff is recommending a simple, Type I Permit for WCFs to locate on existing facilities within the rights-of-way.
3. **Locate the facilities on existing structures.** There have been problems with facilities that are located on existing structures on private property because past agreements did not look far enough ahead into the future to consider potential expansion and because of the broad authority the Federal Government has given carriers. The City believes that future agreements will include more specific language about how to conceal the facilities.
4. **Locate the facilities on new towers.** Locating new towers should be the last resort, and a wireless carrier should be required to show they have considered the first three priority locations before siting a new tower. Staff is proposing that new towers be Type II Permits, which would be administrative, with a notice. Currently, the City requires a Type III Permit for new towers, which means the decision is made by the Hearing Examiner. The Hearing Examiner has requested that new towers no longer be a decision of the Hearing Examiner because he believes that there is little controversy involved with new tower placement.

**Mr. Jackson** noted that other minor amendments and small corrections were made to BMC 20.46.140 based on comments staff has received from the Planning Commission.

**Ms. Satter** advised that staff is seeking direction from the Planning Commission on the proposed amendments to BMC 20.02, BMC 20.40, and BMC 20.46 as presented by staff. She noted that Public Comments #71 through #76 were provided in the Staff Report. She particularly noted the agency comments from the Suquamish Tribe and the Washington State Department of Transportation. Both are supportive of the Comprehensive Plan, but would like more information. She said staff will continue to coordinate with both agencies throughout the process. She also referred to Public Comment #77 (provided at meeting) from Cherie Rose, who was present to provide oral testimony, as well. She emphasized that all public comments to date can be viewed at [www.Bremerton2035.com](http://www.Bremerton2035.com).

**Ms. Satter** reviewed that the Planning Commission has already forwarded the 2016 Comprehensive Plan Update to the City Council with a recommendation of approval, and the City Council will begin its review of the document on February 3<sup>rd</sup>, which will be a televised meeting. The deadline for final adoption is June 2016.

**Commissioner Nerf** asked how senior housing complexes, recycling collection stations and outdoor land uses will be addressed in the amended development code. **Ms. Satter** said the intent is to consolidate the chapters. Currently, senior housing complexes are allowed in any zoning designation, including commercial zones, and staff is proposing putting this information into the zoning district chapters. Senior housing complexes will be added to the residential designations, and staff is considering whether they should also be allowed in the employment center and other designations. Recycling collection stations are addressed in other sections of the code, and are required to be screened and located on paved surfaces.

**Commissioner Nerf** noted that the stated intent of a Mineral Resource Overlay (BMC 20.46.080) is to “protect and enhance significant sand, gravel and rock deposits as identified mineral resource lands.” He suggested that perhaps a word is missing after “enhance” because the City cannot enhance a gravel deposit by creating a law. Only a stream can do that. He also referred to BMC 20.46.080(a)(2), and asked for more information about what is meant by the phrase “all uses not listed above.” Lastly, he referred to BMC 20.46.080(b)(2)(i), and suggested that the phrase “District of Sound Source” should be clarified.

**Commissioner Tift** referred to the proposed changes in BMC 20.46.020 and noted that there are commercial vendors in Bremerton that have chain link fences with barbed wire on the top. However, the materials are not just limited to barbed wire. There is also concertina wire, razor wire, etc. He asked if these other wires would also be considered a type of “barbed wire.” **Ms. Satter** answered that concertina wire is prohibited in the City of Bremerton, so the material would be limited to “barbed wire” or “similar security devices.”

**Chair Wofford** invited members of the public to comment on the proposed amendments presented by staff.

**Ryan Sandstrom, President and Manager of the Alpine Evergreen Company**, said he owns land located in the Puget Sound Industrial Center. He referred to the proposed change to BMC 20.02.160, which would eliminate development agreements as an option for developers. While he understands staff’s concern about receiving arbitrary requests for deviations, it should be recognized that the Puget Sound Industrial Center is an environment where there is vast land and very little infrastructure. His company has struggled with how to make development in the area feasible, and a phased approach will be needed. At this time, there are no options for sewer other than on-site septic or pumping to the Port of Bremerton’s facility. However, no industrial grade effluence is permitted in the Port’s system. **Mr. Sandstrom** cautioned that when adding infrastructure, such as a water line, developers must cross over a large territory. He suggested that development agreements could be another tool for addressing these unique issues. He noted that there has not been a lot of development in the industrial area since 2004.

Regarding the proposed amendments to the Mineral Resource Overlay provisions, **Mr. Sandstrom** commented that he owns property in the Puget Sound Industrial Center that was painted as a mineral resource area in the original Kitsap County Comprehensive Plan. It was later annexed into the City of Bremerton. The property is adjacent to Stan Palmer’s gravel pit, which has since been exhausted. The mineral resource disappeared as it moved closer to his property, and he has since done some test excavation and have found dirty mineral below depths that are economically unviable to reach. He asked that the

City not make it more onerous on a property owner to do a large geologic study to prove that the mineral resource does not exist.

**Cherie Rose, Bremerton**, noted that she submitted a letter identified in the record as Public Comment #77. She respectfully requested that the Commission consider allowing a multi-level parking facility to be located at 541 Bruenn Avenue on the old bowling alley property. She noted that there is a bus transfer center in this location, which could be coordinated with the parking structure. She said she supports the draft Comprehensive Plan Update, including the goals to attract residents for current and developing condominiums and apartments downtown. The parking proposal would assist in these endeavors by diverting thousands of vehicles that overload the main ground entries into the City and the Puget Sound Naval Station/Intermediate Maintenance Facility (PSNS/IMF). Having been associated with the Navy since 1969, she said she empathizes with personnel and workers who now live in areas stretched from Gig Harbor to the Hood Canal. Many of them will not move downtown, and others cannot afford to own or only expect to be stationed in Bremerton for about two years. This brings her to a coordinated approach to developing 541 Bruenn Avenue, which may require adapting current codes. She said she believes that topping the facility with privatized military housing apartments is a well-considered concept that would draw into Bremerton those who would like to live closer. It would also alleviate the traffic congestion. She asked the Commission to consider her comments and move forward together with a dream for a bigger, better and more convenient Bremerton.

**Mark Mauren, Ueland Tree Farm**, complimented staff on the job they did putting together the Mineral Resource Overlay provisions. They are sound, doable and practical, which doesn't always happen in government these days. He voiced concern about the proposed amendment that would eliminate the development agreement option. He noted that mining does not happen in a year or two; it's something that will take five to ten years or longer, depending on the size of the deposit. He said Ueland Tree Farm entered into a 35-year development agreement with Kitsap County that included the precaution that changes could occur to the agreement based on changes in regulations. However, it gave some certainty over a period of time that they would be able to continue to develop the mine as proposed over the 35-year time frame. If development agreements are eliminated, the City must find some other way to acknowledge in the code that, at least for mining, construction is more than a two-year process.

**Director Spencer** explained that the City has a history of development agreements being used as a type of "spot rezone." The agreements done prior to 2004 include numerous provisions to change zoning and comprehensive plan policies. Development agreements were more than just about project phasing, and that is why staff does not support them. However, she understands the need for phasing of development, and she suggested staff work with the City Attorney's office to bolster the current language to address the need for project phasing without allowing agreements to be used as a type of "spot zoning" that allows development that was never intended in the Comprehensive Plan.

**Director Spencer** clarified that Mr. Sandstrom's property is located in the Puget Sound Industrial Center, which has an "Industrial" designation. Mineral resource is an allowed use in the "Industrial" designation so the Mineral Resource Overlay would not apply.

**Commissioner Tift** referred to BMC 20.46.030, which limits home-based businesses to one patron at a time. He asked how the provision would apply to a childcare facility. **Ms. Satter** answered that daycare is actually an allowed use in the residential zone, so the home occupation provisions would not be applicable.

**Commissioner Tift** referred to the proposed amendments in BMC 20.46.140 relative to Wireless Communication Facilities (WCFs). He asked if a tower could be rebuilt to become more stout so it can handle more equipment. **Mr. Jackson** answered that if the City received a permit of this type, he would consult with the City's legal department to understand the options. However, he believes a provider could replace an existing tower with a new, stouter tower. Because WCFs are so site specific and situational, it is difficult for staff to comment early on what the City's position will be. It is likely this issue will need to be addressed in the courts.

**Vice Chair Nethery** asked if staff will clarify the proposed amendments related to development agreements before the Commission is asked to take action. **Director Spencer** answered affirmatively. She explained that tonight's workshop is intended to be a discussion amongst the Commission and an opportunity to solicit public testimony. Changes will be made along the way, and a final version will be presented to the Commission in April for a public hearing.

**Commissioner Tift** asked if block grants or other types of funding are available to help the District Centers develop. **Director Spencer** answered that the City has a targeted strategy for spending block grant funds only in the downtown at this time. It is likely a new target area will be designated after the first five-year period, and one of the District Centers could very well be selected. She said that, within the next several months, staff will work with the City Council to expand the multi-family tax exemption to the other centers. Right now, this exemption only applies to a small area in the downtown.

**Chair Wofford** said he does not support the proposed amendment to BMC 20.46.050, which would remove the provision that restricts recreational vehicle parking in the front yard to no more than 30 days. He understands that many people cannot afford to park the vehicles elsewhere, but many neighbors do not like them to be in the front yard for extended periods of time. While the provision may not be highly enforceable, he would support it as currently written.

## **BUSINESS MEETING**

### **Chair Report**

**Chair Wofford** thanked the Commissioners for their volunteer service. He also thanked the citizens who take the time to participate in the public process.

### **Director Report**

**Director Spencer** expressed gratitude to Commissioner Goodnow for joining the Commission. She noted that they are still working to recruit another member to fill the remaining vacant position.

**Director Spencer** reiterated that the permit statistics for 2015 are remarkable. The highest year ever was 2005, which was the boom year. In 2005 the permit value was \$76.7 million. In each of the following years the permit value ranged between \$35 million and \$46 million. In 2015, the permit value was \$81.7 million. She expects that 2016 will also be a banner year.

### **Old Business**

There was no old business.

### **New Business**

There was no new business.

## **ADJOURNMENT**

The meeting was adjourned at 7:02 p.m.

Respectively Submitted by:

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Andrea L Spencer, AICP  
Executive Secretary

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Nick Wofford, Chair  
Planning Commission

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

**AGENDA TITLE:** Zoning Code amendments related to the 2016 Comprehensive Plan Periodic Update. Bremerton Municipal Code (BMC) Chapters being discussed: BMC 20.04 SEPA, BMC 20.14 Critical Areas, BMC 20.54 Nonconforming Provisions and limited amendments to the Shoreline Master Program

**DEPARTMENT:** Community Development

**PRESENTED BY:** Allison Satter, Senior Planner; (360) 473.5845

**SUMMARY**

The Planning Commission made a recommendation for City Council adoption of a new Comprehensive Plan (the draft can be seen at [www.bremerton2035.com](http://www.bremerton2035.com)). The draft Plan will be considered by City Council in the upcoming months and will be adopted by June 30, 2016.

To be fully compliant with Washington State's Growth Management Act (GMA) and to fully implement the City's Comprehensive Plan, the City of Bremerton Zoning Code needs to be updated to incorporate the changes within the Comprehensive Plan. The Planning Commission will be discussing amendments to specific chapters in the Bremerton Municipal Code and other supporting documents, such as subarea plans and the Shoreline Master Program.

This workshop will be focusing on the Zoning Code Amendments for the following Bremerton Municipal Code chapters: 20.04 State Environmental Protection Act (SEPA), 20.14 Critical Areas, 20.54 Nonconforming Provisions and limited amendments to the Shoreline Master Program. Description of the proposed amendments of each section is included in this Staff Report or attachment.

**WORKSHOP DESIRED OUTCOME**

Provide direction to staff regarding edits that the Commission determines are necessary to be added to the Bremerton Municipal Code Chapters 20.04, SEPA, 20.14 Critical Areas, 20.54 Nonconforming Provisions and limited amendments to the Shoreline Master Program to ensure consistency with amended Comprehensive Plan.

**ATTACHMENTS**

- **Attachment I:** Zoning Code Amendments:
  - BMC 20.04 SEPA and affected BMC 20.02 Project Permits
  - BMC 20.14 Critical Areas,
  - BMC 20.54 Nonconforming Provisions, and
  - Shoreline Master Program
- **Attachment II:** Memorandum of State Environmental Policy Act Rules and Proposed Amendments from BERK Consulting
- **Attachment III:** SMP and CAO Gap Analysis from the Watershed Company
- **Attachment IV:** Comments Matrix and Public Comment #78

## Information on Zoning Code Update

The Zoning Code in its entirety can be seen at the City of Bremerton website:

<http://www.ci.bremerton.wa.us/399/Zoning-Code-Map>. The Zoning Code is Bremerton Municipal Code (BMC) Title 20 and it is separated into 37 Chapters. It is anticipated that the Planning Commission will review chapters with proposed amendments and recommended revisions due to changes in the Comprehensive Plan.

Proposed schedule is:

- **January:** Introduction to Zoning Code and General Permitting Chapters (proposed amendments to BMC 20.02 Project Permits; BMC 20.40 Administration; BMC 20.46 Special Development can be seen within January's packet at the City of Bremerton Planning Commission website or [www.bremerton2035.com](http://www.bremerton2035.com) under "Project Documents" tab).
  - **Continued Analysis:** Staff heard from Planning Commission and the public regarding not removing the BMC 20.02.160 Development Agreement provisions and not removing the BMC 20.20.46.050(d) provision that establishes time limits on parking of a recreational vehicle in the front yard setback area. Staff is still researching these items and they will be addressed prior to the public hearing in April.
- **February:** Environmental Chapters: Critical Area Ordinance (BMC 20.14), State Environmental Policy Act (BMC 20.04), Shoreline Master Program limited updates; Nonconforming Provisions (BMC 20.54)
- **March:** Land Use Chapters (BMC 20.60 through 20.98), Parking (BMC 20.48), Landscaping (20.50), and Subarea Plans
- **April:** Public Hearing and make recommendation to City Council on Draft Zoning Code Update

## Summary of Zoning Code Update

The current City of Bremerton Zoning Code was adopted in 2005 as Ordinance No. 4938. Since that initial adoption, Staff has worked with Planning Commission to continually update the Code to ensure codes remain relevant. Most of the changes that will be discussed over the coming months are directly related to the Comprehensive Plan major update.

## Proposed Amendments to the Zoning Code

The **Attachment I** is the proposed Zoning Code Amendments for the BMC 20.04, SEPA, BMC 20.14 Critical Areas, BMC 20.54 Nonconforming Provisions and limited amendments to the Shoreline Master Program. It is provided in legislative track changes, with items underlined in red are proposed additions and ~~strikeouts~~ are deletions. Please note that not all municipal code sections have been provided for Planning Commission's review, only revised sections have been included in this report. To see the Zoning Code in its entirety, please visit: <http://www.ci.bremerton.wa.us/399/Zoning-Code-Map>. To see the Shoreline

Master Program in its entirety, please visit: <http://www.ci.bremerton.wa.us/315/Shoreline-Master-Program>. The following section summarizes the purpose and intent of the three chapters and SMP update and summarize the proposed amendments.

#### **BMC 20.04 SEPA.**

This chapter establishes how the City of Bremerton administers the State Environmental Policy Act (SEPA). SEPA provides a way to identify possible environmental impacts that may result from governmental decisions. These decisions may be related to issuing permits for private projects, constructing public facilities, or adopting regulations, policies, or plans. Information provided during the SEPA review process helps agency decision-makers, applicants, and the public understand how a proposal will affect the environment. This information can be used to change a proposal to reduce likely impacts, or to condition or deny a proposal when adverse environmental impacts are identified.

The City of Bremerton has hired BERK Consulting to assist in this update of these State requirements. BERK has provided analysis and identifies the proposed revisions for the SEPA section that can be seen in the BERK Consulting Memorandum of State Environmental Policy Act Rules and Proposed Amendments as **Attachment II**. Please note that additional revisions to BMC 20.02 Project Permits are also included at the end of the amendments to BMC 20.04 to provide further clarification to the SEPA regulations.

#### **BMC 20.14 Critical Area Provisions.**

This chapter establishes how the City of Bremerton is to protect the public health, safety, and welfare by establishing provisions to classify, protect, and preserve Bremerton's critical areas and their functions and values by providing standards for development that occurs in and around these areas. The identification and protection of critical areas is required by the Washington State Growth Management Act (GMA).

GMA requires the use of “Best Available Science” (BAS) when designating and protecting Critical Areas. This requires the City to include BAS in developing policies and development regulations to protect the functions and values of critical areas. The Watershed Company was hired by the City to assist in this evaluation and the analysis can be seen in **Attachment III**. The GMA has highlighted five critical areas that need to be addressed:

- Wetlands
- Critical Aquifer Recharge Areas
- Frequently flooded areas
- Geologically hazardous areas
- Fish and wildlife habitat conservation areas

Fortunately the current Critical Area provisions adopted in 2006 continue to address many of the GMA requirements and the BAS is still applicable. Due to this, Staff is not proposing any revisions to the Critical Aquifer Recharge Areas, or the Geologically Hazardous Areas.

In addition to updating our science, Department of Ecology (DOE) has required jurisdictions to update their Wetland Rating System. The Wetland Rating System is a system to categorize the quality and function of wetlands (categorizing them from category I to IV). This will also impact the Shoreline Master Program (SMP) thus limited revisions are being proposed to keep consistency throughout the City's plans.

The consulting team has provided a Gap Analysis for the Critical Areas Ordinance (CAO) and the SMP as **Attachment III**. This document identifies the needed revisions within in the Bremerton Municipal Code Critical Area Ordinance (BMC 20.14) and the Shoreline Master Program to be compliant with the BAS and DOE requirements.

### **Shoreline Master Program (SMP).**

The Shoreline Master Program (SMP) contains local land use policies and regulations designed to manage shoreline use (approximately 200' from the shoreline). This local program protects natural resources for future generations, provides for public access to public waters and shores, and plans for water-dependent uses. The Plan has been created in partnership with the local community and Department of Ecology (DOE), and must comply with the state Shoreline Management Act and Shoreline Master Program Guidelines set by DOE. The City of Bremerton adopted our Shoreline Master Program in December 2013 with DOE and City Council approval.

Most of the proposed amendments to the SMP are identified **Attachment III**, the GAP analysis described in the Critical Area description. The amendments within the SMP are to remove references that refer to BMC 20.14 Critical Area provisions as Staff updated the BAS.

In addition, Shoreline Maps were revised to address the changes to the Comprehensive Plan Land Use Maps. If you recall, the Commission recommended that the Comprehensive Plan included Multifamily Residential in areas that have existing multifamily residential development (to reduce nonconforming situations), Maps B and C have been revised to include areas of Multifamily Residential (instead of the current shoreline designation of Single Family Residential) as shown in **Attachment I**. All the other maps have no changes and have not been included to review.

Lastly, the SMP Use Matrix identifies what land uses are allowed within their associated shoreline designation. Though the Economic Development Goal within the SMP (page 9) identifies that *land use priority should be given to single family residences*. Staff is proposing

to update this chart to allow single family residential development within all designations except for Industrial (as the Comprehensive Plan is not supportive of residential in Industrial designations) to be compliant with the Economic Development goal.

**BMC 20.54 Nonconforming Provision.** This chapter establishes regulations for existing lots, structures, uses of land and structures that were lawful at the time of their establishment but are prohibited, regulated, or restricted under the existing zone requirements. These nonconformities are declared incompatible with the zone because they do not conform to the requirements of the zone in which they are located. However, these nonconformities may continue to exist until such time they are discontinued (as described in the chapter). This section was adopted in 2005.

As Staff has been utilizing this code for a decade, Staff is proposing a couple amendments to BMC 20.54 to provide further clarification and consistency:

Clarification has been added to the “substantial destruction” definition. The current definition is: *“substantial destruction” means the repair or replacement of a building or structure which exceeds seventy-five (75) percent of the replacement cost of the entire building, excluding the foundations. The replacement cost shall be derived from the market value of the structure or the value as defined by the City’s building code, whichever is greater.*

If a building suffers substantial destruction it will likely have its nonconforming status terminated (unless it was an act of nature or casualty such as a fire and a permit is applied for within 1 year).

**Example:** a single family house (or garage) located on the property line (it is nonconforming structure as it doesn’t meet the 15’ front yard setback) has been neglected and it’s about to fall down but the property owner wants to tear down and build in same spot. Per the BMC 20.54, the applicant would not be able to build it in the same spot and would be required to build the new home in an area that meets setbacks and today’s current codes.

Many applicants debate this provision with Staff to maintain their nonconforming status. The proposed amendment clarifies the definition and will reduce Staff and the applicant’s time. The proposal is to utilize the language used within the Shoreline Master Program Nonconforming section regarding “substantial destruction” to further ensure consistency across city codes.

Within section BMC 20.54.060, Staff is proposing to remove language that a single family home can be rebuilt on the same lot anywhere in the City if it loses its nonconforming status.

**Example:** a single family home in the industrial zone has been ignored for multiple decades and is about collapse, per this code the property owner has a right to rebuild a new single family home on that lot.

The City's nonconforming provisions are written to reduce nonconforming situations and get the City into more conformance with their surrounding neighborhood. This provision circumvents many of the nonconforming objectives and such is being proposed to be removed.

Last item to be updated in Nonconforming chapter is within the Nonconforming Structures (BMC 20.54.070(c)) Staff is proposing an exception to allow structures that suffer complete destruction due to accidental fire or other casualty, it can be rebuilt. Currently how the code is written, only structures that suffer partial damage due to accidental fire or other casualty can be rebuilt.

**Staff recommends that the Planning Commission review and provide direction on the proposed revisions shown in Attachment I.**

### **Comments Received**

Staff has included comments received from last Planning Commission Hearing for the Comprehensive Plan Update process as **Attachment IV**. The Comment included is #78. All comments and Comment Matrix with summarized Staff's response can be seen at [www.Bremerton2035.com](http://www.Bremerton2035.com).

# Proposed Zoning Code Amendments

## Bremerton Municipal Code (BMC) 20.04 State Environmental Policy Act (SEPA) and 20.02 Project Permits

The sections that have proposed Zoning Code Amendments are **highlighted below** and are included in this packet. The other portions of the code that have no proposed changes have been removed from this review. The complete BMC 20.04 SEPA provisions can be seen: <http://www.ci.bremerton.wa.us/399/Zoning-Code-Map>. Please note that Attachment II is Memorandum regarding the SEPA and Proposed Amendments discussed hereafter.

Sections (click on links for an electronic version of this chapter):

- [20.04.010 STATUTORY AUTHORITY.](#)
- [20.04.020 PURPOSE OF ARTICLE II - ADOPTION OF WAC PROVISIONS BY REFERENCE.](#)
- [20.04.030 ADDITIONAL DEFINITIONS.](#)
- [20.04.040 RESPONSIBLE OFFICIAL - DESIGNATION AND RESPONSIBILITY.](#)
- [20.04.050 LEAD AGENCY - DETERMINATION AND RESPONSIBILITIES.](#)
- [20.04.060 LEAD AGENCY - TRANSFER OF STATUS TO A STATE AGENCY.](#)
- [20.04.070 TIME LIMITS APPLICABLE TO THE SEPA PROCESS - ADDITIONAL CONSIDERATIONS.](#)
- [20.04.080 ADDITIONAL TIMING CONSIDERATIONS.](#)
- [20.04.090 PURPOSE OF ARTICLE III - ADOPTION OF WAC PROVISIONS BY REFERENCE.](#)
- [20.04.100 USE OF CATEGORICAL EXEMPTIONS.](#)
- [20.04.110 ENVIRONMENTAL CHECKLIST.](#)
- [20.04.120 MITIGATED DNS.](#)
- [20.04.130 PURPOSE OF ARTICLE IV - ADOPTION OF WAC PROVISIONS BY REFERENCE.](#)
- [20.04.140 PREPARATION OF EIS - ADDITIONAL CONSIDERATIONS.](#)
- [20.04.150 ADOPTION OF WAC PROVISIONS BY REFERENCE.](#)
- [20.04.160 PUBLIC NOTICE REQUIREMENTS.](#)
- [20.04.170 DESIGNATION OF OFFICIAL TO PERFORM CONSULTED AGENCY RESPONSIBILITIES FOR THE CITY.](#)
- [20.04.180 PURPOSE OF ARTICLE VI - ADOPTION OF WAC PROVISIONS BY REFERENCE.](#)
- [20.04.190 PURPOSE OF ARTICLE VII - ADOPTION OF WAC PROVISIONS BY REFERENCE.](#)
- [20.04.200 SUBSTANTIVE AUTHORITY.](#)
- [20.04.205 PLANNED ACTIONS.](#)
- [20.04.210 APPEALS.](#)
- [20.04.220 NOTICE OF ACTION - STATUTE OF LIMITATIONS.](#)
- [20.04.230 PURPOSE OF ARTICLE VIII - ADOPTION OF WAC PROVISIONS BY REFERENCE.](#)
- [20.04.240 ADOPTION OF WAC PROVISIONS BY REFERENCE.](#)
- [20.04.250 PURPOSE OF ARTICLE X - ADOPTION OF WAC PROVISIONS BY REFERENCE.](#)
- [20.04.260 ENVIRONMENTALLY SENSITIVE AREAS.](#)
- [20.04.270 FEES.](#)
- [20.04.280 ADOPTION OF WAC PROVISIONS BY REFERENCE.](#)

**Chapter 20.04**  
**STATE ENVIRONMENTAL POLICY ACT**

- [20.04.010 STATUTORY AUTHORITY.](#)  
[20.04.020 PURPOSE OF ARTICLE II - ADOPTION OF WAC PROVISIONS BY REFERENCE.](#)  
[20.04.030 ADDITIONAL DEFINITIONS.](#)  
[20.04.040 RESPONSIBLE OFFICIAL - DESIGNATION AND RESPONSIBILITY.](#)  
[20.04.050 LEAD AGENCY - DETERMINATION AND RESPONSIBILITIES.](#)  
[20.04.060 LEAD AGENCY - TRANSFER OF STATUS TO A STATE AGENCY.](#)  
[20.04.070 TIME LIMITS APPLICABLE TO THE SEPA PROCESS - ADDITIONAL CONSIDERATIONS.](#)  
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[20.04.120 MITIGATED DNS.](#)  
[20.04.130 PURPOSE OF ARTICLE IV - ADOPTION OF WAC PROVISIONS BY REFERENCE.](#)  
[20.04.140 PREPARATION OF EIS - ADDITIONAL CONSIDERATIONS.](#)  
[20.04.150 ADOPTION OF WAC PROVISIONS BY REFERENCE.](#)  
[20.04.160 PUBLIC NOTICE REQUIREMENTS.](#)  
[20.04.170 DESIGNATION OF OFFICIAL TO PERFORM CONSULTED AGENCY RESPONSIBILITIES FOR THE CITY.](#)  
[20.04.180 PURPOSE OF ARTICLE VI - ADOPTION OF WAC PROVISIONS BY REFERENCE.](#)  
[20.04.190 PURPOSE OF ARTICLE VII - ADOPTION OF WAC PROVISIONS BY REFERENCE.](#)  
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[20.04.260 ENVIRONMENTALLY SENSITIVE AREAS.](#)  
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[20.04.280 ADOPTION OF WAC PROVISIONS BY REFERENCE.](#)

**20.04.040 RESPONSIBLE OFFICIAL - DESIGNATION AND RESPONSIBILITY.**

- (a) For the proposals for which the City is the lead agency, the responsible official shall be the **Planning** Director or ~~his~~**their** appointed designee.
- (b) For all proposals for which the City is the lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required environmental impact statement (EIS), and perform any other functions assigned to the "lead agency" or "responsible official" by those sections of the SEPA rules that were adopted by reference in BMC ~~3.68.020~~**20.04**.
- (c) The City shall retain all documents required by the SEPA rules (Chapter **197-11** WAC) and make them available in accordance with Chapter ~~42-17~~ **42.56** RCW, **Public Records Act**.

**20.04.050 LEAD AGENCY - DETERMINATION AND RESPONSIBILITIES.**

- (a) The department within the City receiving an application for or initiating a proposal that involves a nonexempt action shall determine the lead agency for that proposal under WAC **197-11-050** and WAC **197-11-922** through **197-11-940**, unless the lead agency has been previously determined or the department is aware that another department or agency is in the process of determining the lead agency.
- (b) When the City is the lead agency for a proposal, the department receiving the application shall refer the proposal to the responsible official, who shall supervise compliance with the threshold determination requirements, and if an EIS is necessary, shall supervise preparation of the EIS.
- (c) When the City is not the lead agency for a proposal, all departments of the City shall use and consider, as appropriate, either the DNS or the final EIS of the lead agency in making decisions on the

proposal. No City department shall prepare or require preparation of a DNS or EIS in addition to that prepared by the lead agency, unless required under WAC [197-11-600](#). In some cases, the City may conduct supplemental environmental review under WAC [197-11-600](#).

(d) If the City or any of its departments receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC [197-11-922](#) through [197-11-940](#), it may object to the determination. Any objection must be made to the agency originally making the determination and resolved within fifteen (15) days of receipt of the determination, or the City must petition the Department of Ecology for a lead agency determination under WAC [197-11-946](#) within the fifteen (15) day time period. Any such petition on behalf of the City may be initiated by the ~~Planning~~ Director.

(e) The City is authorized to make agreements as to lead agency status or shared lead agency duties for a proposal under WAC [197-11-942](#) and [197-11-944](#). The City may assume lead agency status in accordance with WAC 197-11-948.

(f) In making a lead agency determination for a private project the City shall require sufficient information from the applicant to identify which other agencies have jurisdiction over the proposal, i.e., which agencies require nonexempt licenses.

#### **20.04.060 LEAD AGENCY - TRANSFER OF STATUS TO A STATE AGENCY.**

For any proposal for a private project where the City would be the lead agency and for which one or more state agencies have jurisdiction, the City's responsible official may elect to transfer the lead agency duties to a state agency. The state agency with jurisdiction appearing first on the priority listing in WAC [197-11-936](#) shall be the lead agency, and the City shall be an agency with jurisdiction. To transfer lead agency duties, the City's responsible official must transmit a notice of the transfer together with any relevant information available on the proposal to the appropriate state agency with jurisdiction. The responsible official of the City shall also give notice of the transfer to the private applicant and any other agencies with jurisdiction over the proposal.

#### **20.04.070 TIME LIMITS APPLICABLE TO THE SEPA PROCESS - ADDITIONAL CONSIDERATIONS.**

For project permits, see BMC 20.02.

~~The following time limits (expressed in calendar days) shall apply when the City processes licenses for all private projects and those governmental proposals submitted to the City by other agencies:~~

~~(a) Categorical Exemptions. The City should identify whether an action is categorically exempt within seven (7) days of receiving a completed application.~~

~~(b) Threshold Determinations. When the responsible official requires further information from the applicant or consultation with other agencies with jurisdiction:~~

~~(1) The City shall wait no longer than thirty (30) days for a consulted agency to respond;~~

~~(2) The responsible official should complete the threshold determination within fifteen (15) days of receiving the requested information from the applicant or the consulted agency.~~

#### **20.04.080 ADDITIONAL TIMING CONSIDERATIONS.**

(a) A final threshold determination or Final EIS shall normally precede or accompany the final staff recommendation, if any, in a quasi-judicial proceeding on a non-exempt application by the Administrative Hearing Examiner.

~~(a)~~ For nonexempt legislative proposals, the DNS or draft EIS or other threshold determination and SEPA environmental documentation for the proposal shall accompany the City's staff recommendation to the appropriate advisory decision-making body, such as the Planning Commission.

~~(b)~~ If the City's only action on a proposal is a decision on a building permit or other license that requires detailed project plans and specifications, the applicant may request in writing that the City conduct environmental review prior to submission of the detailed plans and specifications.

#### **20.04.120 MITIGATED DNS.**

(a) As provided in this section and in WAC [197-11-350](#), the responsible official may issue a determination of nonsignificance (DNS) based on conditions attached to the proposal by the responsible official or on changes to, or clarifications of, the proposal made by the applicant.

(b) An applicant may request in writing early notice of whether a DS is likely under WAC [197-11-350](#). The request must: follow submission of a permit application and environmental checklist for a nonexempt

proposal for which the department is lead agency, and precede the City's actual threshold determination for the proposal.

- (c) The responsible official should respond to the request for early notice within ten (10) working days. The response shall: be written; state whether the City currently considers issuance of a DS likely and, if so, indicate the general or specific area(s) of concern that are leading the City to consider a DS; and state that the applicant may change or clarify the proposal to mitigate the indicated impacts, revising the environmental checklist and/or permit application as necessary to reflect the changes or clarifications.
- (d) As much as possible, the City should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures.
- (e) When an applicant submits a changed or clarified proposal, along with a revised environmental checklist, the City shall base its threshold determination on the changed or clarified proposal and should make the determination within fifteen (15) days of receiving the changed or clarified proposal; if the City indicated specific mitigation measures in its response to the request for early notice, and the applicant changed or clarified the proposal to include those specific mitigation measures, the City shall issue and circulate a determination of nonsignificance under WAC [197-11-340\(2\)](#); if the City indicated areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, the City shall make the threshold determination, issuing a DNS or DS as appropriate; the applicant's proposed mitigation measures (clarifications, changes or conditions) must be in writing and must be specific. For example, proposals to "control noise" or "prevent stormwater runoff" are inadequate, whereas proposals to "muffle machinery to X decibel" or "construct two hundred (200) foot stormwater retention pond at Y location" are adequate; mitigation measures which justify issuance of a mitigated DNS may be incorporated in the DNS by reference to agency staff reports, studies or other documents.
- (f) A mitigated DNS is issued under WAC [197-11-340\(2\)](#), requiring a fifteen (15) day comment period and public notice. The optional DNS process may be used in WAC [197-11-355](#) to combine the SEPA comment period with the notice of application comment period, if any, for the underlying permit. If a notice of application is not required for the underlying permit, the SEPA comment period shall follow issuance of the DNS and shall be concluded prior to the decision on the underlying action.
- (g) Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the permit decision, and may be enforced in the same manner as any term or condition of the permit, or enforced in any manner specifically prescribed by the City.
- (h) If the City's tentative decision on a permit or approval does not include mitigation measures that were incorporated in a mitigated DNS for the proposal, the City should evaluate the threshold determination to assure consistency with WAC [197-11-340\(3\)\(a\)](#) (withdrawal of DNS).
- (i) The City's written response under subsection (b) of this section shall not be construed as a determination of significance. In addition, preliminary discussion of clarifications or changes to a proposal, as opposed to a written request for early notice, shall not bind the City to consider the clarification or changes in its threshold determination.

#### **20.04.160 PUBLIC NOTICE REQUIREMENTS.**

- (a) Whenever the City issues a DNS under WAC [197-11-340\(2\)](#) or [197-11-355](#) or [197-11-360\(3\)](#), the City shall give public notice as follows:
- (1) If public notice is required for a nonexempt license, the City shall state whether a DS or DNS has been issued and a DS notice when comments are due;
  - (2) If no public notice is required for the nonexempt proposal, the City shall give notice of the DNS or DS by publishing notice in a newspaper of general circulation in the county, City or general area where the proposal is located;
  - (3) Whenever the City issues a DS under WAC [197-11-360\(3\)](#), the City shall state the scoping procedure for the proposal in the DS as required in WAC [197-11-408](#) and in the public notice.
- (b) Whenever the City issues a DEIS under WAC [197-11-455\(5\)](#) or a SEIS under WAC [197-11-620](#), notice of the availability of those documents shall be given by:
- (1) Indicating the availability of the DEIS in any public notice required for a nonexempt license;
  - (2) Publishing notice in a newspaper of general circulation in the county, City or general area where the proposal is located.

(c) Whenever possible, the City shall integrate the public notice required under this section with existing notice procedures for the City's nonexempt permit(s) or approval(s) required for the proposal.

(d) The City may require an applicant to complete the public notice requirements for the applicant's proposal at his or her expense.

**20.04.170 DESIGNATION OF OFFICIAL TO PERFORM CONSULTED AGENCY RESPONSIBILITIES FOR THE CITY.**

(a) The ~~Planning~~ Director shall be responsible for preparation of written comments for the City in response to a consultation request prior to a threshold determination, participation in scoping and reviewing a draft EIS.

(b) The ~~Planning~~ Director shall be responsible for the City's compliance with WAC ~~197-115-50197-11-550~~ whenever the City is a consulted agency, and is authorized to develop operating procedures that will ensure that responses to consultation requests are prepared in a timely fashion and include data from all appropriate departments of the City.

**20.04.200 SUBSTANTIVE AUTHORITY.**

(a) The policies and goals set forth in this chapter are supplementary to those in the existing SEPA authorization of the City.

(b) The City may attach conditions to a permit or approval for a proposal so long as:

- (1) Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared pursuant to this chapter; and
- (2) Such conditions are in writing; and
- (3) The mitigation measures included in such conditions are reasonable and capable of being accomplished; and
- (4) The City has considered whether other local, state or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and
- (5) Such conditions are based on one or more policies in subsection (d) of this section and cited in the license or other decision document.

(c) The City may deny a permit or approval for a proposal on the basis of SEPA so long as:

- (1) A finding is made that approving the proposal would result in probable significant adverse environmental impacts that are identified in a final EIS or final supplemental EIS prepared pursuant to this chapter; and
- (2) A finding is made that there are no reasonable mitigation measures capable of being accomplished that are sufficient to mitigate the identified impact; and
- (3) The denial is based on one or more policies identified in subsection (d) of this section, and identified in writing in the decision document.

(d) The City designates and adopts by reference the following policies as the basis for the City's exercise of authority pursuant to this section:

- (1) The City shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs and resources to the end that the state and its citizens may:
  - (i) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
  - (ii) Assure for all people of Washington safe, healthful, productive and aesthetically and culturally pleasing surroundings;
  - (iii) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
  - (iv) Preserve important historic, cultural and natural aspects of our national heritage;
  - (v) Maintain, wherever possible, an environment which supports diversity and variety of individual choice;
  - (vi) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(vii) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(2) The City recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

(e) Applications not requiring a final decision by the City Council that are conditioned or denied on the basis of SEPA by a nonelected official shall be appealable to the Administrative Hearing Examiner pursuant to Chapter [2.13](#) BMC. Such appeal may be perfected by appellant by giving notice to the responsible official within ~~ten-fourteen~~ (10-14) days of the decision being appealed. The hearing before the Hearing Examiner shall be an open-record appeal. However, the decision of the SEPA Official shall be presumed correct.

#### **20.04.210 APPEALS.**

(a) The City establishes the following administrative appeal procedures under RCW [43.21C.075](#) and WAC [197-11-680](#):

(1) **Project Permits:** Any agency or person may appeal the City's procedural compliance with Chapter [197-11](#) WAC for issuance of the following (the appeal must be made to the Administrative Hearing Examiner within ~~ten~~ (10) ~~fourteen~~ (14) days of the date of issuance. A decision involving a SEPA determination of nonsignificance which required public comments shall have the appeal period extended an additional seven (7) days:

- (i) A final DNS;
- (ii) A DS; ~~or-~~
- (iii) A Final EIS.

(2) Legislative Proposals: There is no administrative appeal of a DNS, DS or Final EIS adequacy associated with a legislative decision.

~~(23)~~ For any administrative appeal under this section, the City shall provide for a record that shall consist of the following:

- (i) Findings and conclusions;
- (ii) Testimony under oath; and
- (iii) A taped or written transcript.

~~(34)~~ The procedural determination by the City's responsible official shall carry substantial weight in any appeal proceeding.

(b) The City shall give official notice under WAC [197-11-680](#)(5) whenever it issues a permit or approval for which a statute or ordinance establishes a time limit for commencing judicial appeal.

#### **20.04.250 PURPOSE OF ARTICLE X - ADOPTION OF WAC PROVISIONS BY REFERENCE.**

This article contains rules for agency compliance with SEPA, including rules for charging fees under the SEPA process, designating environmentally sensitive areas, listing agencies with environmental expertise, selecting the lead agency, and applying these rules to current agency activities. The City adopts the following sections of Chapter [197-11](#) WAC by reference, ~~through WAC [173-06-053](#)~~ and this article:

WAC [197-11-900](#) - Purpose of this part.

902 Agency SEPA policies.

916 Application to ongoing actions.

920 Agencies with environmental expertise.

922 Lead agency rules.

924 Determining the lead agency.

926 Lead agency for governmental proposals.

928 Lead agency for public and private proposals.

930 Lead agency for private projects with one agency with jurisdiction.

932 Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a City.

- 934 Lead agency for private projects requiring licenses from a local agency, not a county and one or more state agencies.
- 936 Lead agency for private projects requiring licenses from more than one state agency.
- 938 Lead agencies for specific proposals.
- 940 Transfer of lead agency status to a state agency.
- 942 Agreements on lead agency status.
- 944 Agreements on division of lead agency duties.
- 946 DOE resolution of lead agency disputes.
- 948 Assumption of lead agency status.

**20.04.260 ENVIRONMENTALLY SENSITIVE AREAS.**

- (a) The ~~Planning~~ Director shall designate environmentally sensitive areas under the standards of WAC [197-11-908](#), and shall file maps designating such areas, together with the exemptions from the list in WAC [197-11-908](#) that are inapplicable in such areas, with the Planning Department and the Department of Ecology, Headquarters Office, Olympia, Washington. The environmentally sensitive area designations shall have full force and effect of law as of the date of filing.
- (b) The City shall treat proposals located wholly or partially within an environmentally sensitive area no differently than other proposals under this chapter, making a threshold determination for all such proposals. The City shall not automatically require an EIS for a proposal merely because it is proposed for location in an environmentally sensitive area.
- (c) Certain exemptions do not apply on lands covered by water, and this remains true regardless of whether or not lands covered by water are mapped.

## Due to the Proposed Amendments in BMC 20.04 SEPA, BMC 20.02 Project Permits should be amended as follows.

The sections that have proposed Zoning Code Amendments related to SEPA are **highlighted below** and are included in this packet (please note that January's Planning Commission Packet has proposed amendments to remove BMC 20.02.160, Development Agreements). The other portions of the code that have no proposed changes have been removed from this review. The complete BMC 20.02 Project Permit provisions can be seen:

<http://www.ci.bremerton.wa.us/399/Zoning-Code-Map> or click on the links below.

### Chapter 20.02 PROJECT PERMITS

Sections (click on link below for an electronic version of this chapter):

- [20.02.010 PURPOSE AND INTENT.](#)
- [20.02.020 DEFINITIONS.](#)
- [20.02.030 GENERAL PROVISIONS.](#)
- [20.02.040 PROJECT PERMIT PROCESSING PROCEDURES.](#)
- [20.02.050 PRESUBMITTAL APPLICATION CONFERENCE.](#)
- [20.02.060 SUBMISSION REQUIREMENTS.](#)
- [20.02.070 VESTING.](#)
- [20.02.080 OPTIONAL CONSOLIDATED PERMITTING PROCESS.](#)
- [20.02.090 DETERMINATION OF COMPLETENESS.](#)
- [20.02.100 NOTICE OF APPLICATION.](#)
- [20.02.110 NOTICE OF HEARING.](#)
- [20.02.120 JOINT PUBLIC HEARING.](#)
- [20.02.130 NOTICE OF DECISION.](#)
- [20.02.140 APPEALS.](#)
- [20.02.150 DESIGN REVIEW.](#)
- [20.02.160 DEVELOPMENT AGREEMENT REVIEW PROCEDURES.](#)
- [20.02.170 PLANNED ACTIONS.](#)

#### **20.02.020 DEFINITIONS.**

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

"City" means the City of Bremerton.

"Closed-record appeal" means an administrative appeal on the record on a project permit application following an open-record hearing with no or limited new evidence or information allowed to be submitted and only appeal argument allowed.

"Days" means calendar days.

"Department" means Department of Community Development.

"Director" means the Director of the Department of Community Development of the City of Bremerton or his/her designee.

"Hearing body" means the City Council, Hearing Examiner or any other body designated by the City Council to preside over an open-record hearing or closed-record appeal.

"Hearing examiner" means the Administrative Hearing Examiner pursuant to Chapter [2.13](#) BMC.

"Open-record appeal hearing" means an open-record hearing held on an appeal when no open-record predecision hearing has been held on the project permit application.

"Open-record hearing" means a hearing that creates the City's record through testimony and submission of evidence and information, under procedures prescribed by the City by ordinance or resolution. An open-record hearing held prior to the City's decision shall be known as an "open-record predecision hearing."

"Parties of record" means:

- (1) The applicant;
- (2) The property tax payer as identified by the records available from the Kitsap County Assessor's Office;
- (3) Any person who testified at the open-record public hearing on the application; and/or
- (4) Any person who submitted written comments during administrative review or has submitted written comments concerning the application at the open-record public hearing (excluding persons who have only signed petitions or mechanically produced form letters).

"Project permit" or "project permit application" means any land use or environmental permit or license required from the City of Bremerton for a project action, including but not limited to building permits, site development permits, land use preparation permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, development plan review, site-specific rezones authorized by the Comprehensive Plan, but excluding adoption or amendment of the Comprehensive Plan and development regulations, zoning of newly annexed land, area-wide rezones, and zoning map amendments except as otherwise specifically included in this subsection.

"Public meeting" means an informal meeting, hearing, workshop, or other public gathering of persons to obtain comments from the public or other agencies on a proposed project permit prior to the City's decision. A public meeting may include, but is not limited to, a design review meeting, a special committee meeting, such as the short subdivision committee, or a scoping meeting on a draft environmental impact statement. A public meeting does not include an open-record hearing. The proceedings at a public meeting may be recorded and a report or recommendation may be included in the City's project permit application file.

"SEPA" means the State Environmental Policy Act and includes the provisions of Chapter [43.21C](#) RCW, Chapter [197-11](#) WAC and Chapter [20.04](#) BMC.

"Stand Alone Nonproject SEPA" means a non-exempt proposal involving a decision on policies, plans, or programs that requires SEPA review and that is not associated with Comprehensive Plan, development regulations, or areawide rezones subject to BMC 20.10, 20.18, and 20.58.050 respectively.

### **20.02.030 GENERAL PROVISIONS.**

(a) General Exemptions. The following permits or approvals are exempt from the procedures set forth in this chapter:

- (1) Landmark designations;
- (2) Street vacations;
- (3) Right-of-way/street use permits;
- (4) Permits or approvals relating to the use of public areas or facilities;
- (5) Permits or approvals involving the location or development of essential public facilities or utilities;
- (6) Project permits not listed in this chapter which are categorically exempt from SEPA;
- (7) Legislative actions such as the adoption of or amendments to the Comprehensive Plan, subarea plans, area-wide map amendments, and development regulations. Such legislative actions are addressed in BMC 20.10, 20.18, and 20.58.050.

(b) **Applicable Procedures.** The Director shall determine the proper procedure for the processing of each project permit application pursuant to the provisions of this chapter. Disputes shall be resolved in favor of the higher category. Type I is considered the lowest and Type IV is the highest.

(c) **Standard Consistency.** The City reviews proposals for consistency to applicable development regulations and the Comprehensive Plan. This determination includes consideration of the following:

- (1) The type of land use permitted, including uses that may be permitted under certain circumstances, provided the criteria for their approval is satisfied;
- (2) The density of development allowed such as units per acre or other measures of density;
- (3) Availability and adequacy of infrastructure, which includes public facilities and services identified in the Comprehensive Plan; and
- (4) Characteristics of the development such as development design standards.

(d) **Conflict with Other Regulations.** When any provisions of this chapter conflict with provisions of other City regulations, ordinances or resolutions, the more restrictive shall apply.

(e) **Severability.** If any part or provision of this chapter or the application of these regulations to any person or circumstances is adjudged invalid by any court of competent jurisdiction, the judgment shall be confined in its operations to the part, provision, or application directly involved in the controversy in which the judgment shall be rendered and it shall not affect or impair the validity of the remainder of these regulations or the application of them to other persons or circumstances.

(f) **General Notice Requirements.** The available records of the Kitsap County Assessor's Office shall be used to determine the property tax payer of record. All notices shall be deemed to have been provided or received on the date the notice is deposited in the mail or personally delivered, whichever occurs first. Failure to provide the public notice as described in this chapter shall not be grounds for invalidation of a decision on a permit.

(g) **Optional Public Notice.** In addition to required public notice, the City may provide notice to other individuals or organizations interested or possibly affected by the proposal. Failure to provide optional public notice shall not be grounds for invalidation of a decision on a permit.

#### **20.02.140 APPEALS.**

(a) **General.**

(1) Those land use and development decisions that are subject to appeal shall become final unless an appeal is filed within the designated time to file an appeal.

(2) The appellant shall bear the burden of proving the administrative decision was not supported by substantial evidence.

(3) Appeal of Type I or Type II project permit final decisions shall be to the Hearing Examiner. Appeals shall be filed within fourteen (14) days following the issuance of the notice of decision. A decision involving a SEPA determination of nonsignificance which required public comments shall have the appeal period extended an additional seven (7) days.

(4) Administrative appeal of a SEPA threshold determination on project permits is to the Hearing Examiner pursuant to Chapter [20.04](#) BMC and subsection (a)(3) of this section. The appeal shall consolidate any allowed appeals of procedural and substantive determinations under SEPA with a hearing or appeal on the underlying governmental action in a single simultaneous hearing before the Hearing Examiner consistent with RCW 36.70B, WAC 197-11-680 and BMC 20.02 and BMC 20.04.

(5) Appeal of Type III or Type IV project permit final decisions shall be to Kitsap County Superior Court pursuant to Chapter [36.70C](#) RCW. Appeals shall be filed within twenty-one (21) days following the issuance of the notice of decision.

(6) Final decision relating to the Bremerton Shoreline Master Program may be appealed as follows:

- (i) Director decisions and Type II shoreline permits may be appealed to the Hearing Examiner pursuant to subsection (a)(3) of this section or may be appealed directly to the Shoreline Hearings Board pursuant to RCW [90.58.180](#).
- (ii) Hearing Examiner decisions may be appealed to the Shoreline Hearings Board by filing a petition for review within twenty-one (21) days of the date of filing pursuant to RCW [90.58.140](#)(6).

(b) Standing to Appeal. Only parties of record with standing may initiate an appeal. Standing constitutes the following:

- (1) For Type I project permits, only the applicant has standing.
- (2) For project permits not Type I, the following have standing:
  - (i) Applicant;
  - (ii) Anyone who participates in the public hearing; or
  - (iii) Anyone who submits written comments in response to a legal notice within the required time limits.

(c) Filing an Appeal. Administrative appeals are filed by submitting a form provided by the Department. The appeal must be received by 5:00 p.m. on the last day of the appeal period. Appeals may be mailed, faxed or delivered to the Department.

(d) Timing of Decisions.

- (1) An open-record appeal shall be decided within ninety (90) days from the date the complete appeal was filed.
- (2) Should an occasion arise that would require a closed-record appeal hearing, such an appeal shall be decided within sixty (60) days.

(e) Computation of Time. For purposes of computing the time for filing an appeal, the day the decision is rendered shall not be included. The last day of the appeal period shall be included unless it is a Saturday, Sunday, a day designated by RCW [1.16.050](#) or by the City's ordinances as a legal holiday; then it also is excluded and the filing must be completed on the next business day.

(f) Content of Appeal. An administrative appeal shall not be accepted unless it is written, accompanied by the required appeal fee, and contains at least the following information:

- (1) Appellant's name, address and phone number;
- (2) Appellant's statement describing his or her standing, as a party of record, to appeal;
- (3) Identification of the application which is the subject of the appeal;
- (4) Statement of grounds for appeal and the facts upon which the appeal is based;
- (5) Statement of the relief sought, including the specific nature and extent; and
- (6) A statement that the appellant has read the appeal and believes the contents to be true, followed by the appellant's signature.

(g) Effect. The timely filing of an administrative appeal shall stay the effective date of the decision until the appeal is either decided or withdrawn.

(h) Notice of Appeal. The Director shall provide public notice of the appeal as provided in BMC [20.02.110](#)(c).

# Proposed Zoning Code Amendments

## Bremerton Municipal Code (BMC) 20.14 Critical Areas

The sections that have proposed Zoning Code Amendments are **highlighted below** and are included in this packet (as shown in **legislative markups**). The other portions of the code that have no proposed changes have been removed from this review. The complete BMC 20.14 Critical Area provisions can be seen: <http://www.ci.bremerton.wa.us/399/Zoning-Code-Map>.

Please note that **Attachment III** contains the professional evaluation of the adopted Critical Area provisions and the recommended changes.

<u>20.14.100</u>	<u>GENERAL PROVISIONS.</u>
<u>20.14.110</u>	<u>PURPOSE.</u>
<u>20.14.115</u>	<u>INTENT.</u>
<u>20.14.120</u>	<u>SCOPE AND APPLICABILITY.</u>
<u>20.14.125</u>	<u>RELATIONSHIP TO OTHER REGULATIONS.</u>
<u>20.14.130</u>	<u>ADMINISTRATION AND PROCEDURES.</u>
<u>20.14.140</u>	<u>APPEALS.</u>
<u>20.14.145</u>	<u>EXEMPTIONS.</u>
<u>20.14.150</u>	<u>PUBLIC AGENCY EXCEPTION.</u>
<u>20.14.155</u>	<u>REASONABLE USE EXCEPTION.</u>
<u>20.14.160</u>	<u>NONCONFORMING USES/STRUCTURES.</u>
<u>20.14.165</u>	<u>BONDS.</u>
<u>20.14.170</u>	<u>ENFORCEMENT.</u>
<u>20.14.175</u>	<u>VIOLATION - PENALTY.</u>
<u>20.14.180</u>	<u>SEVERABILITY.</u>
<u>20.14.190</u>	<u>TREE REMOVAL.</u>
<u>20.14.200</u>	<u>DEFINITIONS.</u>
<u>20.14.300</u>	<u>WETLANDS.</u>
<u>20.14.310</u>	<u>DESCRIPTION AND PURPOSE.</u>
<u>20.14.320</u>	<u>CLASSIFICATION AND DESIGNATION.</u>
<u>20.14.330</u>	<u>DEVELOPMENT STANDARDS - WETLANDS.</u>
<u>20.14.340</u>	<u>MITIGATION REQUIREMENTS - WETLANDS.</u>
<u>20.14.350</u>	<u>PERFORMANCE STANDARDS - SUBDIVISIONS.</u>
<u>20.14.360</u>	<u>WETLAND REPORT.</u>
<u>20.14.400</u>	<u>CRITICAL AQUIFER RECHARGE AREAS.</u>
<u>20.14.410</u>	<u>DESCRIPTION AND PURPOSE.</u>
<u>20.14.420</u>	<u>CLASSIFICATION AND DESIGNATION.</u>
<u>20.14.430</u>	<u>DEVELOPMENT STANDARDS.</u>
<u>20.14.440</u>	<u>ALLOWED USES WITH PERFORMANCE STANDARDS.</u>
<u>20.14.450</u>	<u>HYDROGEOLOGIC ASSESSMENT.</u>
<u>20.14.500</u>	<u>FREQUENTLY FLOODED AREAS.</u>
<u>20.14.510</u>	<u>DESCRIPTION AND PURPOSE.</u>
<u>20.14.520</u>	<u>CLASSIFICATION AND DESIGNATION.</u>
<u>20.14.530</u>	<u>DEVELOPMENT STANDARDS.</u>
<u>20.14.600</u>	<u>GEOLOGICALLY HAZARDOUS AREAS.</u>
<u>20.14.610</u>	<u>PURPOSE.</u>
<u>20.14.620</u>	<u>CLASSIFICATION.</u>
<u>20.14.630</u>	<u>DEVELOPMENT STANDARDS.</u>
<u>20.14.650</u>	<u>MITIGATION, PERFORMANCE STANDARDS AND REQUIREMENTS.</u>
<u>20.14.660</u>	<u>SPECIAL REPORTS.</u>
<u>20.14.700</u>	<u>FISH AND WILDLIFE HABITAT CONSERVATION AREAS.</u>
<u>20.14.710</u>	<u>DESCRIPTION AND PURPOSE.</u>
<u>20.14.720</u>	<u>CLASSIFICATION AND DESIGNATION OF FISH &amp; WILDLIFE HABITAT CONSERVATION AREAS.</u>
<u>20.14.730</u>	<u>DEVELOPMENT STANDARDS.</u>
<u>20.14.740</u>	<u>SPECIAL REPORTS.</u>
<u>20.14.750</u>	<u>MITIGATION STANDARDS AND CRITERIA.</u>
<u>20.14.760</u>	<u>MONITORING AND CONTINGENCY PLAN.</u>

## Chapter 20.14 CRITICAL AREAS

Sections:

[20.14.100 GENERAL PROVISIONS.](#)  
[20.14.110 PURPOSE.](#)  
[20.14.115 INTENT.](#)  
[20.14.120 SCOPE AND APPLICABILITY.](#)  
[20.14.125 RELATIONSHIP TO OTHER REGULATIONS.](#)  
[20.14.130 ADMINISTRATION AND PROCEDURES.](#)  
[20.14.140 APPEALS.](#)  
[20.14.145 EXEMPTIONS.](#)  
[20.14.150 PUBLIC AGENCY EXCEPTION.](#)  
[20.14.155 REASONABLE USE EXCEPTION.](#)  
[20.14.160 NONCONFORMING USES/STRUCTURES.](#)  
[20.14.165 BONDS.](#)  
[20.14.170 ENFORCEMENT.](#)  
[20.14.175 VIOLATION - PENALTY.](#)  
[20.14.180 SEVERABILITY.](#)  
[20.14.190 TREE REMOVAL.](#)  
[20.14.200 DEFINITIONS.](#)  
[20.14.300 WETLANDS.](#)  
[20.14.310 DESCRIPTION AND PURPOSE.](#)  
[20.14.320 CLASSIFICATION AND DESIGNATION.](#)  
[20.14.330 DEVELOPMENT STANDARDS - WETLANDS.](#)  
[20.14.340 MITIGATION REQUIREMENTS - WETLANDS.](#)  
[20.14.350 PERFORMANCE STANDARDS - SUBDIVISIONS.](#)  
[20.14.360 WETLAND REPORT.](#)  
[20.14.400 CRITICAL AQUIFER RECHARGE AREAS.](#)  
[20.14.410 DESCRIPTION AND PURPOSE.](#)  
[20.14.420 CLASSIFICATION AND DESIGNATION.](#)  
[20.14.430 DEVELOPMENT STANDARDS.](#)  
[20.14.440 ALLOWED USES WITH PERFORMANCE STANDARDS.](#)  
[20.14.450 HYDROGEOLOGIC ASSESSMENT.](#)  
[20.14.500 FREQUENTLY FLOODED AREAS.](#)  
[20.14.510 DESCRIPTION AND PURPOSE.](#)  
[20.14.520 CLASSIFICATION AND DESIGNATION.](#)  
[20.14.530 DEVELOPMENT STANDARDS.](#)  
[20.14.600 GEOLOGICALLY HAZARDOUS AREAS.](#)  
[20.14.610 PURPOSE.](#)  
[20.14.620 CLASSIFICATION.](#)  
[20.14.630 DEVELOPMENT STANDARDS.](#)  
[20.14.650 MITIGATION, PERFORMANCE STANDARDS AND REQUIREMENTS.](#)  
[20.14.660 SPECIAL REPORTS.](#)  
[20.14.700 FISH AND WILDLIFE HABITAT CONSERVATION AREAS.](#)  
[20.14.710 DESCRIPTION AND PURPOSE.](#)  
[20.14.720 CLASSIFICATION AND DESIGNATION OF FISH AND WILDLIFE HABITAT CONSERVATION AREAS.](#)  
[20.14.730 DEVELOPMENT STANDARDS.](#)  
[20.14.740 SPECIAL REPORTS.](#)  
[20.14.750 MITIGATION STANDARDS AND CRITERIA.](#)  
[20.14.760 MONITORING AND CONTINGENCY PLAN.](#)

**20.14.190 TREE REMOVAL**

Trees and other vegetation are important elements of the physical environment especially those located within or near critical areas. This section addresses removing trees within critical areas or their associated buffers. Removal of trees within geological hazardous area shall also comply with BMC 20.14.630(e) and (f).

(a) Elimination of Danger Trees. Removal of danger trees within the critical area or associated buffers may be allowed only if such activity is approved by the Department, provided a certified arborist in the State of Washington makes a written determination that the trees proposed for elimination present a legitimate safety hazard.

(b) Tree Replacement. Trees removed from the wetland critical area or associated buffers, including danger trees, must comply with the following provisions:

(1) Removal of trees greater than 6 inches in diameter at four (4) feet in height shall be replaced at a ratio of 3:1 with native species and shall be re-established within any required buffer on the project site.

(2) Shoreline Jurisdiction. Properties located within the City's shoreline jurisdiction are subject to additional tree removal and replacement standards if the tree(s) to be removed are located within the required shoreline setback. See Shoreline Master Program section 7.020 for additional standards.

**20.14.200 DEFINITIONS.**

Words not defined in this title shall be as defined in the Bremerton Municipal Code, the Washington Administrative Code, or the Revised Code of Washington. Words not found in either code shall be as defined in Webster's Third New International Dictionary, latest edition.

"Active fault" means a fault that is considered likely to undergo renewed movement within a period of concern to humans. Faults are commonly considered to be active if the fault has moved one (1) or more times in the last ten thousand (10,000) years, but faults may also be considered active in some cases if movement has occurred in the last five hundred thousand (500,000) years.

"Adaptive management" relies on scientific methods to evaluate how well regulatory and nonregulatory actions protect the critical area. An adaptive management program is a formal and deliberate scientific approach to taking action and obtaining information in the face of uncertainty.

"Adjacent," for the purposes of this chapter, means immediately adjoining (in contact with the boundary of the influence area) or within a distance that is less than that needed to separate activities from critical areas to ensure protection of the functions and values of the critical areas. "Adjacent" shall mean any activity or development located:

- A. On a site immediately adjoining a critical area;
- B. A distance equal to or less than the required critical area buffer width and building setback;

- C. A distance equal to or less than one-half (1/2) mile (two thousand six hundred forty (2,640) feet) from a bald eagle nest;
- D. A distance equal to or less than three hundred (300) feet upland from a stream, wetland, or water body;
- E. Bordering or within the floodway, floodplain, or channel migration zone; or
- F. A distance equal to or less than two hundred (200) feet from a critical aquifer recharge area.

"Advance mitigation" means mitigation of an anticipated critical area impact or hazard completed according to an approved critical area report and prior to site development.

"Agricultural land" means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW [84.33.100](#) through [84.33.140](#), or livestock, and/or that has been designated as long-term commercial significance for agricultural production.

"Alluvial fan flooding" means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.

"Alteration" means any human-induced change in an existing condition of a critical area or its buffer. Alterations include, but are not limited to, clearing, grubbing, grading, filling, channelizing, dredging, clearing (vegetation), construction, compaction, excavation, or any other activity that changes the character of the critical area.

"Anadromous fish" means fish that spawn and rear in freshwater and mature in the marine environment. While Pacific salmon die after their first spawning, adult char (bull trout) can live for many years, moving in and out of saltwater and spawning each year. The life history of Pacific salmon and char contains critical periods of time when these fish are more susceptible to environmental and physical damage than at other times. The life history of salmon, for example, contains the following stages: upstream migration of adults, spawning, inter-gravel incubation, rearing, smoltification (the time period needed for juveniles to adjust their body functions to live in the marine environment), downstream migration, and ocean rearing to adults.

"Applicant" means a person who files an application for permit under this title and who is either the owner of the land on which that proposed activity would be located, a contract purchaser, or the authorized agent of such a person.

"Aquifer" means a geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

"Aquifer, confined" means an aquifer bounded above and below by beds of distinctly lower permeability than that of the aquifer itself and that contains groundwater under sufficient pressure for the water to rise above the top of the aquifer.

"Aquifer recharge areas" means areas that, due to the presence of certain soils, geology, and surface water, act to recharge groundwater by percolation.

"Aquifer, sole source" means an area designated by the U.S. Environmental Protection Agency under the Safe Drinking Water Act of 1974, Section 1424(e). The aquifer(s) must supply fifty (50) percent or more of the drinking water for an area without a sufficient replacement available.

"Aquifer susceptibility" means the ease with which contaminants can move from the land surface to the aquifer based solely on the types of surface and subsurface materials in the area. Susceptibility usually defines the rate at which a contaminant will reach an aquifer unimpeded by chemical interactions with the vadose zone media.

"Aquifer, unconfined" means an aquifer not bounded above by a bed of distinctly lower permeability than that of the aquifer itself and containing groundwater under pressure approximately equal to that of the atmosphere. This term is synonymous with the term "water table aquifer."

"Area of shallow flooding" means an area designated AO or AH Zone on the flood insurance map(s). The base flood depths range from one (1) to three (3) feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident. AO is characterized as sheet flow and AH indicates ponding.

"Base flood" means a flood event having a one (1) percent chance of being equaled or exceeded in any given year, also referred to as the one hundred (100) year flood. Designations of base flood areas on flood insurance map(s) always include the letters A or V.

"Basement" means any area of the building having its floor below ground level on all sides.

"Best available science" means current scientific information used in the process to designate, protect, or restore critical areas, which is derived from a valid scientific process as defined by WAC [365-195-900](#) through [365-195-925](#). Sources of the best available science are included in "Citations of Recommended Sources of Best Available Science for Designating and Protecting Critical Areas" published by the Washington State Department of Community, Trade and Economic Development.

"Best management practices (BMPs)" means conservation practices or systems of practices and management measures that:

- A. Control soil loss and reduce water quality degradation caused by high concentrations of nutrients, animal waste, toxics, and sediment;
- B. Minimize adverse impacts to surface water and groundwater flow and circulation patterns and to the chemical, physical, and biological characteristics of wetlands;
- C. Protect trees and vegetation designated to be retained during and following site construction and use native plant species appropriate to the site for revegetation of disturbed areas; and
- D. Provide standards for proper use of chemical herbicides within critical areas.

The City shall monitor the application of best management practices to ensure that the standards and policies of this title are adhered to.

"Biodiversity" means the variety of animal and plant life and its ecological processes and interconnections represented by the richness of ecological systems and the life that depends on them, including human life and economies.

"Breakaway wall" means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or supporting foundation system.

"Buffer" or "buffer zone" means an area that is contiguous to and protects a critical area which is required for the continued maintenance, functioning, and/or structural stability of a critical area.

"Channel migration zone (CMZ)" means the lateral extent of likely movement along a stream or river during the next one hundred (100) years as determined by evidence of active stream channel movement over the past one hundred (100) years. Evidence of active movement over the one hundred (100) year time frame can be inferred from aerial photos or from specific channel and valley bottom characteristics. The time span typically represents the time it takes to grow mature trees that can provide functional large woody debris to streams. A CMZ is not typically present if the valley width is generally less than two (2) bankfull widths, if the stream or river is confined by terraces, no current or historical aerial photographic evidence exists of significant channel movement, and there is no field evidence of secondary channels with recent scour from stream flow or progressive bank erosion at meander bends. Areas separated from the active channel by legally existing artificial channel constraints that limit bank erosion and channel avulsion without hydraulic connections shall not be considered within the CMZ.

"Clearing" means the removal of noninvasive surface vegetation including, but not limited to, brush, shrubs, natural grasses, and trees. Removal of surface vegetation in quantities greater than the minimum necessary to maintain a well functioning natural habitat constitutes clearing. For the purposes of this chapter, activities described in BMC [20.14.630\(f\)](#), Vegetation Thinning, constitute clearing.

"Coastal high hazard area" means an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area is designated on the flood insurance map(s) as Zone V1-30, VE, or V.

"Compensation project" means actions necessary to replace project-induced critical area and buffer losses, including land acquisition, planning, construction plans, monitoring, and contingency actions.

"Compensatory mitigation" means replacing project-induced losses or impacts to a critical area, and includes, but is not limited to, the following:

- A. "Creation" means actions performed to intentionally establish a critical area such as a wetland at a site where it did not formerly exist.
- B. "Enhancement" means actions performed to improve the condition of existing degraded critical areas such as a wetland so that the functions they provide are of a higher quality.

C. "Preservation" means actions taken to ensure the permanent protection of existing, high-quality critical areas such as wetlands.

D. "Restoration" means actions performed to reestablish critical areas functional characteristics and processes that have been lost by alterations, activities, or catastrophic events within an area that no longer meets the definition of a wetland.

"Conservation easement" means a legal agreement that the property owner enters into to restrict uses of the land. Such restrictions can include, but are not limited to, passive recreation uses such as trails or scientific uses and fences or other barriers to protect habitat. The easement is recorded on a property deed, runs with the land, and is legally binding on all present and future owners of the property, therefore providing permanent or long-term protection.

"Critical aquifer recharge area" means areas determined to have a critical recharging effect on aquifers used for potable water as classified per BMC [20.14.420](#).

"Critical areas" include any of the following areas or ecosystems: aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, geologically hazardous areas, and wetlands, as defined in Chapter [36.70A](#) RCW and this title.

"Critical area tract" means land held in private ownership and retained in an open condition in perpetuity for the protection of critical areas. Lands within this type of dedication may include, but are not limited to, portions and combinations of forest habitats, grasslands, shrub steppes, on-site watersheds, one hundred (100) year floodplains, shorelines or shorelines of statewide significance, riparian areas, and wetlands.

"Critical facility" means a facility for which even a slight chance of flooding, inundation, or impact from a hazard event might be too great. Critical facilities include, but are not limited to, schools, nursing homes, hospitals, police, fire and emergency response installations, and installations that produce, use, or store hazardous materials or hazardous waste.

"Critical species" means all animal and plant species listed by the State or federal government as threatened or endangered.

"Cumulative impacts or effects" means the combined, incremental effects of human activity on ecological or critical areas functions and values. Cumulative impacts result when the effects of an action are added to or interact with other effects in a particular place and within a particular time. It is the combination of these effects, and any resulting environmental degradation, that should be the focus of cumulative impact analysis and changes to policies and permitting decisions.

"Danger tree" means a tree that is dead, or is so affected by a significant structural defect or disease that falling or failure appears imminent, or a tree that impedes safe vision or traffic flow, or that otherwise currently poses a threat to life or property.

Department. Unless otherwise noted, "Department" is defined as the City of Bremerton Department of Community Development.

"Developable area" means a site or portion of a site that may be utilized as the location of development, in accordance with the rules of this title.

"Development" means any activity upon the land consisting of construction or alteration of structures, earth movement, dredging, dumping, grading, filling, mining, removal of any sand, gravel, or minerals, driving of piles, drilling operations, bulkheading, clearing of vegetation, or other land disturbance.

Development includes the storage or use of equipment or materials inconsistent with the existing use.

Development also includes approvals issued by the City that binds land to specific patterns of use including, but not limited to, subdivisions, short subdivisions, zone changes, conditional use permits, and binding site plans. Development activity does not include the following activities:

- A. Interior building improvements.
- B. Exterior structure maintenance activities, including painting and roofing.
- C. Routine landscape maintenance of established, ornamental landscaping, such as lawn mowing, pruning, and weeding.
- D. Maintenance of the following existing facilities that does not expand the affected area: septic tanks (routine cleaning); wells; individual utility service connections; and individual cemetery plots in established and approved cemeteries.

"Development permit" means any permit issued by the City, or other authorized agency, for construction, land use, or the alteration of land.

"Director" means the Director of the Bremerton Department of Community Development or other responsible official, or other City staff granted the authority to act on behalf of the Director.

"Elevated building" means a building that has no basement and its lowest elevated floor is raised above-ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

"Emergent wetland" means a wetland with at least thirty (30) percent of the surface area covered by erect, rooted, herbaceous vegetation extending above the water surface as the uppermost vegetative strata.

"Erosion" means the process whereby wind, rain, water, and other natural agents mobilize and transport particles.

"Exotic" means any species of plants or animals which are foreign to the planning area.

"Fish and wildlife habitat conservation areas" means areas necessary for maintaining species in suitable habitats within their natural geographic distribution so that the habitat available is sufficient to support viable populations over the long term, -and isolated subpopulations are not created as designated by WAC ~~365-190-080365-190-130(5)~~. These areas include:

- A. Areas with which State or federally designated endangered, threatened, and sensitive species have a primary association;
- B. ~~Priority habitat species and species of local importance; including, but not limited to, areas designated as priority habitat by the Washington Department of Fish and Wildlife;~~

C. Streams and watercourses used by juvenile salmonids, and habitat of species essential to the juvenile salmonid diet;

D. Commercial and recreational shellfish areas;

E. Kelp, eelgrass beds, herring, smelt, and sandlance, and other forage fish spawning habitat;

~~F. Herring and smelt spawning areas;~~

~~GF.~~ Naturally occurring ponds under twenty (20) acres and their submerged aquatic beds that provide fish or wildlife habitat, including those artificial ponds intentionally created from dry areas in order to mitigate impacts to ponds;

~~HG.~~ Waters of the State, including lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and all other surface waters and watercourses within the jurisdiction of the State of Washington;

~~IH.~~ Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity;

~~J.~~ State natural area preserves and natural resource conservation areas; and

~~KJ.~~ Land essential for preserving connections between habitat blocks and open spaces.

"Fish habitat" means habitat that is used by fish at any life stage at any time of the year, including potential habitat likely to be used by fish that could be recovered by restoration or management and includes off-channel habitat.

"Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland waters and/or the unusual and rapid accumulation of runoff of surface waters from any source.

"Flood insurance map" means the official map on which the Federal Insurance Administration has delineated the areas of special flood hazards and includes the risk premium zones applicable to the community. Also known as "flood insurance rate map" or "FIRM."

"Flood insurance study" means the official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Boundary-Floodway Map, and the water surface elevation of the base flood.

"Floodplain" means the total land area adjoining a river, stream, watercourse, or lake subject to inundation by the base flood.

"Flood protection elevation" means the elevation that is one (1) foot above the base flood elevation.

"Flood-resistant material" means materials designed to be resistant to the impacts associated with flooding and defined and described in detail in the Federal Emergency Management Agency's Technical Bulletin No. 2-93, 1993, and FEMA publication FEMA-348, Protecting Building Utilities from Flood Damage.

"Floodway" means the channel of a river or other watercourse and the adjacent land area that must be reserved in order to discharge the base flood without cumulatively increasing the surface water elevation more than one (1) foot. Also known as the "zero rise floodway."

"Forested wetland" means a wetland with at least thirty (30) percent of the surface area covered by woody vegetation greater than twenty (20) feet in height that is at least partially rooted within the wetland.

"Formation" means an assemblage of earth materials grouped together into a unit that is convenient for description or mapping.

"Formation, confining" means the relatively impermeable formation immediately overlying a confined aquifer.

"Frequently flooded areas" means lands in the floodplain subject to a one (1) percent or greater chance of flooding in any given year and those lands that provide important flood storage, conveyance, and attenuation functions, as determined by the Director in accordance with WAC [365-190-080](#)(3). Frequently flooded areas perform important hydrologic functions and may present a risk to persons and property. Classifications of frequently flooded areas include, at a minimum, the one hundred (100) year floodplain designations of the Federal Emergency Management Agency and the National Flood Insurance Program.

"Functions and values" means the beneficial roles served by critical areas including, but not limited to, water quality protection and enhancement; fish and wildlife habitat; food chain support; flood storage, conveyance and attenuation; groundwater recharge and discharge; erosion control; wave attenuation; protection from hazards; historical, archaeological, and aesthetic value protection; educational opportunities; and recreation. These beneficial roles are not listed in order of priority. Critical area functions can be used to help set targets (species composition, structure, etc.) for managed areas, including mitigation sites.

"Geologically hazardous areas" means areas that may not be suited to development consistent with public health, safety, or environmental standards, because of their steep slopes, susceptibility to erosion, sliding, earthquakes, or other geological events. For the purposes of this code, "geologically hazardous areas" are those areas receiving high or moderate geologically hazardous classifications per BMC [20.14.600](#) through [20.14.660](#).

"Groundwater" means water in a saturated zone or stratum beneath the surface of land or a surface water body.

"Groundwater management area" means a specific geographic area or subarea designated pursuant to Chapter [173-100](#) WAC for which a groundwater management program is required.

"Groundwater management program" means a comprehensive program designed to protect groundwater quality, to ensure groundwater quantity, and to provide for efficient management of water resources while recognizing existing groundwater rights and meeting future needs consistent with local and State objectives, policies, and authorities within a designated groundwater management area or subarea and developed pursuant to Chapter [173-100](#) WAC.

"Groundwater, perched" means groundwater in a saturated zone, separated from the underlying main body of groundwater by an unsaturated rock zone.

"Grading" means excavating, filling or embanking of earth materials in quantities equal to or greater than fifty (50) cubic yards, as specified per the Bremerton Municipal Code grading permit requirement.

"Grubbing" means the removal of vegetative matter from underground, such as sod, stumps, roots, buried logs or other debris, and shall include the incidental removal of topsoil and earth in quantities lesser than fifty (50) cubic yards.

"Habitat conservation areas" means areas designated as fish and wildlife habitat conservation areas.

"Habitat management plan (HMP)" means a report prepared by a professional wildlife biologist or fisheries biologist which discusses and evaluates critical fish and wildlife habitat functions and evaluates the measures necessary to maintain, enhance and improve habitat conservation on a proposed development site.

Habitats of Local Importance. These areas include a seasonal range or habitat element with which a given species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long-term. These might include areas of high relative density or species richness, breeding habitat, winter range, and movement corridors. These might also include habitats that are of limited availability or high vulnerability to alterations such as cliffs, taluses, and wetlands. (WAC [365-190-030](#)).

"Hazard areas" means areas designated as frequently flooded areas or geologically hazardous areas due to potential for erosion, landslide, seismic activity, mine collapse, or other geological condition.

"Hazardous substances" means any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the physical, chemical, or biological properties described in WAC [173-303-090](#) or [173-303-100](#).

"High-intensity land use" means land uses which are associated with high levels of human disturbance or substantial habitat impacts including, but not limited to, medium- and high-density residential (more than one (1) home per five (5) acres), multifamily residential, some agricultural practices, and commercial and industrial land uses.

"High quality wetlands" means those wetlands that meet the following criteria:

- A. No, or isolated, human alteration of the wetland topography;
- B. No human-caused alteration of the hydrology or the wetland appears to have recovered from the alteration;
- C. Low cover and frequency of exotic plant species;
- D. Relatively little human-related disturbance of the native vegetation, or recovery from past disturbance;
- E. If the wetland system is degraded, it still contains a viable and high quality example of a native wetland community; and
- F. No known major water quality problems.

"Historic condition" means a condition of the land, including flora, fauna, soil, topography, and hydrology that existed before the area and vicinity were developed or altered by human activity.

"Hydraulic project approval (HPA)" means a permit issued by the Washington Department of Fish and Wildlife for modifications to waters of the State in accordance with Chapter [75.20](#) RCW.

"Hydric soil" means a soil that is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part. The presence of hydric soil shall be determined following the methods described in the [approved federal wetland delineation manual and applicable regional supplements](#). ~~Washington State Wetland Identification and Delineation Manual.~~

"Hydrologic soil groups" means soils grouped according to their runoff-producing characteristics under similar storm and cover conditions. Properties that influence runoff potential are depth to seasonally high water table, intake rate and permeability after prolonged wetting, and depth to a low permeable layer. Hydrologic soil groups are normally used in equations that estimate runoff from rainfall, but can be used to estimate a rate of water transmission in soil. There are four (4) hydrologic soil groups:

- A. Low runoff potential and a high rate of infiltration potential;
- B. Moderate infiltration potential and a moderate rate of runoff potential;
- C. Slow infiltration potential and a moderate-to-high rate of runoff potential; and
- D. High runoff potential and very slow infiltration and water transmission rates.

"Hydrophytic vegetation" means macrophytic plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content. The presence of hydrophytic vegetation shall be determined following the methods described in the [approved federal wetland delineation manual and applicable regional supplements](#). ~~Washington State Wetland Identification and Delineation Manual.~~

"Hyporheic zone" means the saturated zone located beneath and adjacent to streams that contains some portion of surface waters, serves as a filter for nutrients, and maintains water quality.

"Impervious surface" means any material which reduces or prevents absorption of stormwater into previously undeveloped land. Permeable paving technologies shall not be classified as impervious surfaces. (See also "Paved surface" in BMC [20.42.040](#) for a discussion of impervious pavements.)

"In-kind compensation" means to replace critical areas with substitute areas whose characteristics and functions closely approximate those destroyed or degraded by a regulated activity. It does not mean replacement "in category."

"Infiltration" means the downward entry of water into the immediate surface of soil.

"Injection well(s)" means:

- A. Class I. A well used to inject industrial, commercial, or municipal waste fluids beneath the lowermost formation containing, within one-quarter (1/4) mile of the well bore, an underground source of drinking water.
- B. Class II. A well used to inject fluids:

1. Brought to the surface in connection with conventional oil or natural gas exploration or production and may be commingled with wastewaters from gas plants that are an integral part of production operations, unless those waters are classified as dangerous wastes at the time of injection;
  2. For enhanced recovery of oil or natural gas; or
  3. For storage of hydrocarbons that are liquid at standard temperature and pressure.
- C. Class III. A well used for extraction of minerals, including but not limited to the injection of fluids for:
1. In-situ production of uranium or other metals that have not been conventionally mined;
  2. Mining of sulfur by Frasch process; or
  3. Solution mining of salts or potash.
- D. Class IV. A well used to inject dangerous or radioactive waste fluids.
- E. Class V. All injection wells not included in Classes I, II, III, or IV.

"Invasive" means a vegetative or animal species not native to a region, and marked by a tendency to spread, especially with proclivity to replace healthy native species.

"Isolated wetlands" means those wetlands that are outside of and not contiguous to any one hundred (100) year floodplain of a lake, river, or stream and have no contiguous hydric soil or hydrophytic vegetation between the wetland and any surface water.

"Joint aquatic resource permits application" means a single application form that may be used to apply for hydraulic project approvals, shoreline management permits, approvals of exceedance of water quality standards, water quality certifications, coast guard bridge permits, Washington State Department of Natural Resources use authorization, and U.S. Army Corps of Engineers permits.

Land Use, High-Intensity. See "High-intensity land use."

Land Use, Low-Intensity. See "Low-intensity land use."

Land Use, Moderate-Intensity. See "Moderate-intensity land use."

"Low-impact development (LID)" is a stormwater management and development strategy applied at the parcel and subdivision scale that emphasizes conservation and use of on-site natural features integrated with engineered, small-scale hydrologic controls to more closely mimic predevelopment hydrologic functions.

"Low-intensity land use" means land uses which are associated with low levels of human disturbance or low habitat impacts, including, but not limited to, passive recreation, open space, or forest management land uses.

"Lowest floor" means the lowest floor of the lowest enclosed area, including the basement. An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area, which is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable requirements of this title.

"Mine hazard areas" means areas that are underlain by, adjacent to, or affected by mine workings such as adits, gangways, tunnels, drifts, or airshafts, and those areas of probable sink holes, gas releases, or subsidence due to mine workings. Factors that should be considered include: proximity to development, depth from ground surface to the mine working, and geologic material.

"Mitigation" means avoiding, minimizing, or compensating for adverse critical areas impacts. "Mitigation," in the following sequential order of preference, is:

- A. Avoiding the impact altogether by not taking a certain action or parts of an action;
- B. Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts;
- C. Rectifying the impact to wetlands, critical aquifer recharge areas, and habitat conservation areas by repairing, rehabilitating, or restoring the affected environment to the conditions existing at the time of the initiation of the project;
- D. Minimizing or eliminating the hazard by restoring or stabilizing the hazard area through engineered or other methods, provided the engineered method creates the minimum disturbance necessary to mitigate the action, and the method does not adversely impact categories of critical areas other than those being mitigated;
- E. Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action;
- F. Compensating for the impact to wetlands, critical aquifer recharge areas, and habitat conservation areas by replacing, enhancing, or providing substitute resources or environments; and
- G. Monitoring the hazard or other required mitigation and taking remedial action when necessary.

Mitigation for individual actions may include a combination of the above measures.

"Mobile home" means a structure, transportable in one (1) or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "mobile home" does not include a "recreational vehicle."

"Mobile home park or subdivision" means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

"Moderate-intensity land use" means land uses which are associated with moderate levels of human disturbance or substantial habitat impacts including, but not limited to, low density residential (no more than one (1) home per five (5) acres), active recreation, and moderate agricultural land uses.

"Monitoring" means evaluating the impacts of development proposals on the biological, hydrological, and geological elements of such systems, and assessing the performance of required mitigation measures throughout the collection and analysis of data by various methods for the purpose of understanding and documenting changes in natural ecosystems and features, including gathering baseline data.

"Native growth protection area (NGPA)" means an area where native vegetation is preserved for the purpose of preventing harm to property and the environment, including, but not limited to, controlling surface water runoff and erosion, maintaining slope stability, buffering, and protecting plants and animal habitat.

"Native vegetation" means plant species that are indigenous to the area in question.

"Natural waters" means waters, excluding water conveyance systems that are artificially constructed and actively maintained for irrigation.

Nonconformity. See BMC [20.54.040](#), Definitions, of the nonconforming provisions of this title.

"Off-site compensation" means to replace critical areas away from the site on which a critical area has been impacted.

"On-site compensation" means to replace critical areas at or adjacent to the site on which a critical area has been impacted.

"Ordinary high water mark (OHM)" means that mark which is found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, that the soil has a character distinct from that of the abutting upland in respect to vegetation.

"Out-of-kind compensation" means to replace critical areas with substitute critical areas whose characteristics do not closely approximate those destroyed or degraded. It does not refer to replacement "out-of-category."

"Permeability" means the capacity of an aquifer or confining bed to transmit water. It is a property of the aquifer or confining bed and is independent of the force causing movement.

"Porous soil types" means soils, as identified by the National Resources Conservation Service, U.S. Department of Agriculture, that contain voids, pores, interstices, or other openings which allow the passing of water.

"Potable water" means water that is safe and palatable for human use.

"Practical alternative" means an alternative that is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes, and has less impacts to critical areas.

"Primary association area" means the area used on a regular basis by, is in close association with, or is necessary for the proper functioning of the habitat of a critical species. "Regular basis" means that the habitat area is normally, or usually, known to contain a critical species, or based on known habitat requirements of the species, the area is likely to contain the critical species. "Regular basis" is species and population dependent. Species that exist in low numbers may be present infrequently yet rely on certain habitat types.

"Priority habitat" means habitat type or elements with unique or significant value to one (1) or more species as classified by the State Department of Fish and Wildlife. A priority habitat may consist of a

unique vegetation type or dominant plant species, a described successional stage, or a specific structural element.

"Project area" means all areas within fifty (50) feet of the area proposed to be disturbed, altered, or used by the proposed activity or the construction of any proposed structures. When the action binds the land, such as a subdivision, short subdivision, binding site plan, planned unit development, or rezone, the project area shall include the entire parcel, at a minimum.

"Qualified professional" means a person with experience and training in the pertinent scientific discipline, and who is a qualified scientific expert with expertise appropriate for the relevant critical area subject in accordance with WAC [365-195-905\(4\)](#). A qualified professional must have obtained a B.S. or B.A. or equivalent degree in biology, engineering, environmental studies, fisheries, geomorphology, or related field, and five (5) years of related work experience.

A. A qualified professional for habitats or wetlands must have a degree in biology and professional experience related to the subject species, and meet the requirements set forth in BMC [20.14.360](#).

B. A qualified professional for a geological hazard must be a professional civil or geotechnical engineer with experience in the field, or geologist, licensed in the State of Washington.

C. A qualified professional for critical aquifer recharge areas means a hydrogeologist, geologist, engineer, or other scientist with experience in preparing hydrogeologic assessments, and meets the requirements set forth in BMC [20.14.450](#).

"Recharge" means the process involved in the absorption and addition of water to groundwater.

"Reclaimed water" means municipal wastewater effluent that has been adequately and reliably treated so that it is suitable for beneficial use. Following treatment, it is no longer considered wastewater (treatment levels and water quality requirements are given in the water reclamation and reuse standards adopted by the State Departments of Ecology and Health).

Recreation Vehicle. See definition in Chapter [20.42](#) BMC.

"Repair" or "maintenance" means an activity that restores the character, scope, size, and design of a serviceable area, structure, or land use to its previously authorized and undamaged condition. Activities that change the character, size, or scope of a project beyond the original design and drain, dredge, fill, flood, or otherwise alter critical areas are not included in this definition.

"Restoration" means measures taken to restore an altered or damaged natural feature including:

A. Active steps taken to restore damaged wetlands, streams, protected habitat, or their buffers to the functioning condition that existed prior to an unauthorized alteration; and

B. Actions performed to reestablish structural and functional characteristics of the critical area that have been lost by alteration, past management activities, or catastrophic events.

"Riparian habitat" means areas adjacent to aquatic systems with flowing water that contain elements of both aquatic and terrestrial ecosystems that mutually influence each other. The width of these areas extends to that portion of the terrestrial landscape that directly influences the aquatic ecosystem by

providing shade, fine or large woody material, nutrients, organic and inorganic debris, terrestrial insects, or habitat for riparian-associated wildlife. Widths shall be measured from the ordinary high water mark or from the top of bank if the ordinary high water mark cannot be identified or from the channel migration zone (CMZ). It includes the entire extent of the floodplain and the extent of vegetation adapted to wet conditions as well as adjacent upland plant communities that directly influence the stream system. Riparian habitat areas include those riparian areas severely altered or damaged due to human development activities.

"Scientific process" means a valid scientific process is one (1) that produces reliable information useful in understanding the consequences of a decision. The characteristics of a valid scientific process are as follows:

- A. Peer Review. The information has been critically reviewed by other qualified scientific experts in that scientific discipline.
- B. Methods. The methods that were used are standardized in the pertinent scientific discipline or the methods have been appropriately peer-reviewed to ensure their reliability and validity.
- C. Logical Conclusions and Reasonable Inferences. The conclusions presented are based on reasonable assumptions supported by other studies and are logically and reasonably derived from the assumptions and supported by the data presented.
- D. Quantitative Analysis. The data have been analyzed using appropriate statistical or quantitative methods.
- E. Context. The assumptions, analytical techniques, data, and conclusions are appropriately framed with respect to the prevailing body of pertinent scientific knowledge.
- F. References. The assumptions, techniques, and conclusions are well referenced with citations to pertinent existing information.

"Scrub-shrub wetland" means a wetland with at least thirty (30) percent of its surface area covered by woody vegetation less than twenty (20) feet in height as the uppermost strata.

"Section 404 permit" means a permit issued by the U.S. Army Corps of Engineers for the placement of dredge or fill material or clearing in waters of the United States, including wetlands, in accordance with [33 USC Section 1344](#). Section 404 permits may also be for endangered species consultation. They require a consultation under Section 7 of the Federal Endangered Species Act.

"Seeps" means a spot where water oozes from the earth, often forming the source of a small stream.

"Seismic hazard areas" means areas that are subject to severe risk of damage as a result of earthquake-induced ground shaking, slope failure, settlement, or soil liquefaction.

"Shorelines" means all of the water areas of the State as defined in RCW [90.58.030](#), including reservoirs and their associated shorelands, together with the lands underlying them except:

- A. Shorelines of statewide significance;

- B. Shorelines on segments of streams upstream of a point where the mean annual flow is twenty (20) cubic feet per second (20 cfps) or less and the wetlands associated with such upstream segments; and
- C. Shorelines on lakes less than twenty (20) acres in size and wetlands associated with such small lakes.

"Shorelines of the State" means the total of all "shorelines," as defined in RCW [90.58.030\(2\)\(d\)](#), and "shorelines of statewide significance" within the State, as defined in RCW [90.58.030\(2\)\(c\)](#).

"Shorelines of statewide significance" means those areas defined in RCW [90.58.030\(2\)\(e\)](#).

"Shorelands or shoreland areas" means those lands extending landward for two hundred (200) feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred (200) feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of Chapter [90.58](#) RCW.

"Soil survey" means the most recent soil survey for the local area or county by the National Resources Conservation Service, U.S. Department of Agriculture.

"Special flood hazard areas" means the land in the floodplain within an area subject to a one (1) percent or greater chance of flooding in any given year. Designations of special flood hazard areas on flood insurance map(s) always include the letters A or V.

"Special protection areas" means aquifer recharge areas defined by WAC [173-200-090](#) that require special consideration or increased protection because of unique characteristics, including, but not limited to:

- A. Groundwaters that support an ecological system requiring more stringent criteria than drinking water standards;
- B. Groundwater recharge areas and wellhead protection areas that are vulnerable to pollution because of hydrogeologic characteristics; and
- C. Sole source aquifer status.

"Species" means any group of animals classified as a species or subspecies as commonly accepted by the scientific community.

"Species, endangered" means any fish or wildlife species that is threatened with extinction throughout all or a significant portion of its range and is listed by the State or federal government as an endangered species.

"Species of local importance" means those species of local concern due to their population status or their sensitivity to habitat manipulation, or that are game species.

"Species, priority" means any fish or wildlife species requiring protective measures and/or management guidelines to ensure their persistence as genetically viable population levels as classified by the Washington Department of Fish and Wildlife, including endangered, threatened, sensitive, candidate and monitor species, and those of recreational, commercial, or tribal importance.

"Species, threatened" means any fish or wildlife species that is likely to become an endangered species within the foreseeable future throughout a significant portion of its range without cooperative management or removal of threats, and is listed by the State or federal government as a threatened species.

"Subdrainage basin" or "subbasin" means the drainage area of the highest order stream containing the subject property impact area. "Stream order" is the term used to define the position of a stream in the hierarchy of tributaries in the watershed. The smallest streams are the highest order (first order) tributaries. These are the upper watershed streams and have no tributaries of their own. When two (2) first order streams meet, they form a second order stream, and when two (2) second order streams meet they become a third order stream, and so on.

"Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.

"Substantial improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure either before the improvement or repair is started, or if the structure has been damaged and is being restored, before the damage occurred.

"Unavoidable" means adverse impacts that remain after all appropriate and practicable avoidance and minimization have been achieved.

"Vulnerability" means the combined effect of susceptibility to contamination and the presence of potential contaminants.

"Water-dependent" means a use or portion of a use that cannot exist in a location that is not adjacent to the water, but is dependent on the water by reason of the intrinsic nature of its operations. A use that can be carried out only on, in, or adjacent to water. Examples of water-dependent uses include: ship cargo terminal loading areas; fishing; ferry and passenger terminals; barge loading, ship building, and dry docking facilities; marinas, moorage, and boat launching facilities; aquaculture; float plane operations; surface water intake; and sanitary sewer and storm drain outfalls.

"Water resource inventory area (WRIA)" means one (1) of sixty-two (62) watersheds in the State of Washington, each composed of the drainage areas of a stream or streams, as established in Chapter [173-500](#) WAC as it existed on January 1, 1997.

"Water table" means that surface in an unconfined aquifer at which the pressure is atmospheric. It is defined by the levels at which water stands in wells that penetrate the aquifer just far enough to hold standing water.

"Water typing system" means waters are classified according to WAC [222-16-031](#). Waters are classified into four (4) types, S, F, Np, and Ns, based on whether the waters are shorelines of the State, their level of human and wildlife use, whether they are perennial streams, and other characteristics. Complete criteria for the water typing system are found in BMC [20.14.720](#).

"Watercourse" means any portion of a channel, bed, bank, or bottom waterward of the ordinary high water line of waters of the State including areas in which fish may spawn, reside, or through which they may pass, and tributary waters with defined beds or banks, which influence the quality of fish habitat downstream. This definition includes watercourses that flow on an intermittent basis or which fluctuate in level during the year and applies to the entire bed of such watercourse whether or not the water is at peak level. This definition does not include irrigation ditches, canals, stormwater runoff devices, or other entirely artificial watercourses, except where they exist in a natural watercourse that has been altered by humans.

"Well" means a bored, drilled, or driven shaft, or a dug hole whose depth is greater than the largest surface dimension for the purpose of withdrawing or injecting water or other liquids.

"Wellhead protection area (WHPA)" means the portion of a zone of contribution for a well, wellfield, or spring, as defined using criteria established by the Washington State Department of Ecology.

~~"Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands. For identifying and delineating a wetland, local government shall use the Washington State Wetland Identification and Delineation Manual.~~

"Wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands include artificial wetlands created from non-wetland areas to mitigate the conversion of wetlands. Identification of wetlands and delineation of their boundaries pursuant to this chapter shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements. All areas within the City meeting the wetland designation criteria in that procedure are hereby designated critical areas and are subject to the provisions of this program. Wetland delineations are valid for five years; after such date, the City shall determine whether a revision or additional assessment is necessary.

"Wetland classes," "classes of wetlands," or "wetland types" means the descriptive classes of the wetlands taxonomic classification system of the U.S. Fish and Wildlife Service (Cowardin, et al., 1979).

"Wetland edge" means the boundary of a wetland as delineated based on the definitions contained in this title.

"Wetlands mitigation bank" means a site where wetlands are restored, created, enhanced, or in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources.

"Zone of contribution" means the area surrounding a well or spring that encompasses all areas or features that supply groundwater recharge to the well or spring.

#### **20.14.300 WETLANDS.**

BMC [20.14.310](#) through [20.14.360](#) pertain to wetlands.

#### **20.14.310 DESCRIPTION AND PURPOSE.**

(a) ~~As identified currently in WAC 173-22-035 and as subsequently amended, identification of wetlands and delineation of their boundaries shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements. Wetlands are those areas, designated in accordance with the "Washington State Wetland Identification and Delineation Manual" (1997), that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions.~~ All areas within the City meeting the wetland designation criteria in the identification and delineation manual, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of this title.

(b) Wetlands help to maintain water quality; store and convey stormwater and floodwater; recharge groundwater; provide important fish and wildlife habitat; and serve as areas for recreation, education, scientific study and aesthetic appreciation.

(c) The City's overall goal shall be to achieve no net loss of wetlands. This goal shall be implemented through retention of the function and value of wetlands within the City. Wetland buffers serve to moderate runoff volume and flow rates; reduce sediment, chemical nutrient and toxic pollutants; provide shading to maintain desirable water temperatures; provide habitat for wildlife; protect wetland resources from harmful intrusion; and generally preserve the ecological integrity of the wetland area.

(d) The primary purpose of the wetland regulations is to avoid detrimental wetland impacts and achieve a goal of no net loss of wetland function and values, and where possible enhance and restore wetlands.

#### **20.14.320 CLASSIFICATION AND DESIGNATION.**

(a) Wetland Ratings. Wetlands shall be rated according to the Washington State Department of Ecology wetland rating system found in the "Washington State Wetland Rating System for Western Washington" (Department of Ecology Publication No. ~~04-06-0250~~[14-06-029](#)) or as amended hereafter. These documents contain the definitions and methods for determining if the criteria below are met.

## (1) Wetland Rating Categories.

(i) Category I. Category I wetlands are those that meet any of the following criteria:

- a. Represent a unique or rare wetland type; or
- b. Are more sensitive to disturbance than most wetlands; or
- c. Are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or
- d. Are providing a high level of functions, scoring twenty-three points or more, out of twenty-seven (27) (DOE Wetlands Rating System, 2014); ~~scoring seventy (70) points or more out of one hundred (100) (DOE Wetlands Rating System, 2004);~~ or
- e. Are characterized as Wetlands of High Conservation Value per the Washington Natural Heritage Program (WNHP) ~~a national heritage wetland;~~ or
- f. Are characterized as a bog; or
- g. Are over one (1) acre and characterized as a mature and old-growth forested wetland or are an estuarine.

(ii) Category II. Category II wetlands are those wetlands that are not Category I wetlands and that meet any of the following criteria:

- a. Provide high levels of some functions, being difficult, though not impossible to replace; or
- b. Perform most functions relatively well, scoring twenty (20) to twenty-two (22) points out of twenty-seven (27) (DOE Wetlands Rating System, 2014). ~~fifty-one (51) through sixty-nine (69) out of one hundred (100) points (DOE Wetlands Rating System, 2004);~~ or
- c. Estuarine wetlands smaller than one (1) acre or those that are distributed and larger than 1 acre.

(iii) Category III. Category III wetlands are those wetlands that are not Category I or II wetlands, and that meet the following criterion:

- a. Provide moderate levels of functions, scoring between sixteen (16) and nineteen (19) points out of twenty-seven (27) (DOE Wetland Rating System, 2014). ~~thirty (30) through fifty (50) out of one hundred (100) points (DOE Wetlands Rating System, 2004).~~

(iv) Category IV. Category IV wetlands are those that meet the following criterion:

- a. Provide low levels of functions, scoring less than sixteen (16) points out of twenty-seven (27) (DOE Wetlands Rating Systeme ~~thirty (30) out of one hundred (100) points (DOE Wetlands Rating System, 2004).~~ ~~em, 2014).~~

(2) Date of Wetland Rating. Wetland rating categories shall be applied as the wetland exists on the date of adoption of the rating system by the local government as the wetland naturally changes thereafter, or as the wetland changes in accordance with permitted activities. Wetland rating categories shall not change due to illegal modifications.

**20.14.330 DEVELOPMENT STANDARDS - WETLANDS.**

(a) Activities may only be permitted in a wetland or wetland buffer if the applicant can show that the proposed activity will not degrade the functions and functional performance of the wetland and other critical areas.

~~(b) Activities and uses shall be prohibited in wetlands and wetland buffers, except as provided for in this title.~~ The following activities are regulated if they occur in a regulated wetland or its buffer:

- (1) The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind.
- (2) The dumping of, discharging of, or filling with any material.
- (3) The draining, flooding, or disturbing of the water level or water table.
- (4) Pile driving.
- (5) The placing of obstructions.
- (6) The construction, reconstruction, demolition, or expansion of any structure.
- (7) The destruction or alteration of wetland vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a regulated wetland.
- (8) "Class IV – General Forest Practices" under the authority of the "1992 Washington State Forest Practices Act Rules and Regulations," WAC 222-12-030, or as thereafter amended.
- (9) Activities that result in:
  - (i) A significant change of water temperature.
  - (ii) A significant change of physical or chemical characteristics of the sources of water to the wetland.
  - (iii) A significant change in the quantity, timing, or duration of the water entering the wetland.
  - (iv) The introduction of pollutants.

(c) Activities Allowed in Wetlands. The activities listed below are allowed in wetlands. These activities do not require submission of a critical area report, except where such activities result in a loss of the functions and values of a wetland or wetland buffer. These activities include:

- (1) Conservation or preservation of soil, water, vegetation, fish, shellfish, and/or other wildlife that does not entail changing the structure or functions of the existing wetland.
- (2) Drilling for utilities/utility corridors under a wetland, with entrance/exit portals located completely outside of the wetland buffer, provided that the drilling does not interrupt the ground water connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the ground water connection to the wetland or percolation of surface water down through the soil column will be disturbed.
- (3) Enhancement of a wetland through the removal of non-native invasive plant species. Removal of invasive plant species shall be restricted to hand removal unless permits from the appropriate regulatory agencies have been obtained for approved biological or chemical treatments.

(4) Educational and scientific research activities.

(d) Category I Wetlands. Activities and uses shall be prohibited from Category I ~~except as provided for in the public agency and utility exception, reasonable use exception, and variance sections of this title.~~

(ed) Category II and III Wetlands. With respect to activities proposed in Category II and III wetlands, the following standards shall apply:

- (1) Water-dependent activities may be allowed where there are no feasible alternatives that would have a less adverse impact on the wetland, its buffers and other critical areas.
- (2) Where nonwater-dependent activities are proposed, it shall be presumed that alternative locations are available, and activities and uses shall be prohibited, unless the applicant demonstrates that:
  - (i) The basic project purpose cannot reasonably be accomplished and successfully avoid, or result in less adverse impact on, a wetland on another site or sites in the general region; and
  - (ii) All alternative designs of the project as proposed that would avoid or result in less of an adverse impact on a wetland or its buffer, such as a reduction in the size, scope, configuration, or density of the project, are not feasible.
  - (iii) Full compensation for the acreage and loss functions will be provided under the terms established under BMC [20.14.340](#)(f) and (g).

(fe) Category III and IV Wetlands. Isolated Category III and IV wetlands less than 1,000 square feet that meet all of the following criteria shall be exempt from the buffer provisions in BMC 20.14.330(g) and the normal mitigation sequencing process in BMC 20.14.340(a). Any direct impacts to these wetlands shall be fully mitigated.

(1) Is not associated with riparian areas or buffers.

(2) Is not part of a wetland mosaic, and

(3) Does not contain habitat identified by Washington State Department of Fish and Wildlife as essential for local populations of priority species, as identified under BMC 20.14.720.

(g) Category IV Wetlands. Activities and uses that result in unavoidable and necessary impacts may be permitted in Category IV wetlands and associated buffers in accordance with an approved wetland report and mitigation plan, and only if the proposed activity is the only reasonable alternative that will accomplish the applicant's objectives. Full compensation for the acreage and loss functions will be provided under the terms established under BMC [20.14.340](#)(f) and (g).

(hf) Wetland Buffers.

- (1) Standard Buffer Widths. The standard buffer widths presume the existence of a relatively intact native vegetation community in the buffer zone adequate to protect the wetland functions and values at the time of the proposed activity. If the vegetation is inadequate, then the buffer width shall be increased or the buffer should be planted to maintain the standard width. Required standard wetland buffers, based on wetland category, are as outlined in the following table. In the

table the wetland buffers vary according to the wetland type and/or habitat score (on a range of 3 to 9, with 9 representing high habitat function).

<b>Wetland Category</b>	<b>Standard Buffer</b>
I	200 ft.
II	100 ft.
III	75 ft.
IV	50 ft.

<u>Wetland Category and Type</u>	<u>Buffer width (in feet) based on habitat score</u>			
	<u>3-4 (Low)</u>	<u>5 (Medium)</u>	<u>6-7 (Medium)</u>	<u>8-9 (High)</u>
<u>I: Estuarine wetlands</u>	<u>200</u>			
<u>I: All others</u>	<u>100</u>	<u>140</u>	<u>220</u>	<u>300</u>
<u>II: Estuarine wetlands</u>	<u>150</u>			
<u>II: All</u>	<u>100</u>	<u>140</u>	<u>220</u>	<u>300</u>
<u>III: All</u>	<u>80</u>	<u>140</u>	<u>220</u>	<u>300</u>
<u>IV: All</u>	<u>50</u>			

(2) Measurement of Wetland Buffers. All buffers shall be measured horizontally from a perpendicular line established at the wetland edge as surveyed in the field. The width of the wetland buffer shall be determined according to the wetland category. The buffer for a wetland created, restored, or enhanced as compensation for approved wetland alterations shall be the same as the buffer required for the category of the created, restored, or enhanced wetland. Only fully vegetated buffers will be considered. Lawns, walkways, driveways, and other mowed or paved areas will not be considered buffers.

(3) Reducing Wetland Buffer Widths. For those projects that can mitigate the impacts and disturbances associated with surrounding land use, required wetland buffer widths may be reduced. The following table list impact-minimization measures which, when implemented where applicable, may allow a project to reduce the standard wetland buffer widths up to a total of twenty-five (25) percent).

<u>Disturbance</u>	<u>Required Measures to Minimize Impacts</u>
<u>Lights</u>	<u>(1) Direct lights away from wetland as illustrated in a photometric plan.</u>
<u>Noise</u>	<u>(2) Locate activity that generates noise away from wetland.</u> <u>(3) If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source</u> <u>(4) For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional ten (10) feet of heavily vegetated buffer strip immediately adjacent to the outer wetland buffer</u>
<u>Toxic runoff</u>	<u>(5) Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered</u>

	<u>(6) Establish covenants limiting use of pesticides within 150 feet of wetland</u>
<u>Stormwater runoff</u>	<u>(7) Retrofit stormwater detention and treatment for roads and existing adjacent development</u> <u>(8) Prevent channelized flow from lawns that directly enters the buffer</u> <u>(9) Use Low Intensity Development Best Management Practices where appropriate</u>
<u>Change in water regime</u>	<u>(10) Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns</u>
<u>Pets and human disturbance</u>	<u>(11) Use privacy fencing or plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion</u> <u>(12) Place wetland and its buffer in a separate tract or protect with a conservation easement</u>
<u>Dust</u>	<u>(13) Use best management practices to control dust</u>
<u>Disruption of corridors or connections</u>	<u>(14) Maintain connections to offsite areas that are undisturbed</u> <u>(15) Restore onsite corridors or connections to offsite habitats by replanting</u>

~~(34)~~ **Increased Wetland Buffer Widths.** The Director shall require increased buffer widths in accordance with the recommendations of an experienced, qualified professional wetland scientist, and the best available science on a case-by-case basis when a larger buffer is necessary to protect wetland functions and values based on site-specific characteristics. This determination shall be based on one (1) or more of the following criteria:

- (i) A larger buffer is needed to protect other critical areas;
- (ii) The buffer or adjacent uplands has a slope greater than fifteen (15) percent or is susceptible to erosion and standard erosion-control measures will not prevent adverse impacts to the wetland; or
- (iii) The buffer area has minimal vegetative cover. In lieu of increasing the buffer width where existing buffer vegetation is inadequate to protect the wetland functions and values, implementation of a buffer planting plan may substitute. Where a buffer planting plan is proposed, it shall include densities that are not less than three (3) feet on center for shrubs and eight (8) feet on center for trees and require monitoring and maintenance to ensure success. Existing buffer vegetation is considered "inadequate" and will need to be enhanced through additional native plantings and (if appropriate) removal of nonnative plants when: (1) nonnative or invasive plant species provide the dominant cover, (2) vegetation is lacking due to disturbance and wetland resources could be adversely affected, or (3) enhancement plantings in the buffer could significantly improve buffer functions.

~~(45)~~ **Wetland Buffer Width Averaging.** The Director may allow modification of the standard wetland buffer width in accordance with an approved wetland report and the best available science on a case-by-case basis by averaging buffer widths. Averaging of buffer widths may only be allowed where the applicant and a qualified professional wetland scientist demonstrates that:

- (i) No feasible site design exists without buffer averaging;

- (ii) It will not reduce wetland functions or functional performance;
- (iii) The wetland contains variations in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation, and the wetland would benefit from a wider buffer in places and would not be adversely impacted by a narrower buffer in other places;
- (iv) The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer; and
- (v) The buffer width is not reduced to less than seventy-five (75) percent of the standard width or thirty-five (35) feet.

(56) Buffer Consistency. All mitigation sites shall have buffers consistent with the buffer requirements of this chapter.

(67) Buffer Maintenance. Except as otherwise specified or allowed in accordance with this title, wetland buffers shall be retained in an undisturbed or enhanced condition. Removal of invasive nonnative weeds is required for the duration of the mitigation bond.

(78) Buffer Uses. The following uses may be permitted within a wetland buffer in accordance with the review procedures of this title, provided they are not prohibited by any other applicable law and they are conducted in a manner so as to minimize impacts to the buffer and adjacent wetland:

- (i) Conservation and Restoration Activities. Conservation or restoration activities aimed at protecting the soil, water, vegetation, or wildlife.
- (ii) Passive Recreation. Low-impact uses and activities which are consistent with the purpose and function of the wetland buffer and do not detract from its integrity may be permitted within the buffer depending on the sensitivity of the wetland. Uses may include:
  - a. Walkways and trails; provided, that those pathways that are generally parallel to the perimeter of the wetland may be located in the buffer area; provided, that:
    - i. They are no wider than six (6) feet, and generally constructed with a surface that does not interfere with substrate permeability. Raised boardwalks utilizing nontreated pilings may be acceptable; and
    - ii. They shall be limited to pedestrian use; and
    - iii. They shall not be allowed to fully enclose a habitat area or buffer; and
    - iv. They are subject to closure (at the Director's discretion) during critical spawning, migration or breeding time periods of the species present;
  - b. Wildlife viewing structures; and
  - c. Fishing access areas down to the water's edge that shall be no larger than six (6) feet.

(iii) Stormwater Management Facilities. Stormwater management facilities, limited to stormwater dispersion outfalls and bioswales, may be allowed within the outer twenty-five (25) percent of the buffer of Category III or IV wetlands only; provided, that:

- a. No other location is feasible; and
- b. The location of such facilities will not degrade the functions or values of the wetland.

(iv) Low-Impact Development (LID) Facilities. LID facilities may be allowed within the buffer of Category III or IV wetlands only; provided, that:

- a. No other location is feasible; and
- b. The location of such facilities will not degrade the functions or values of the wetland.

(ig) Signs and Fencing of Wetlands.

(1) Temporary Markers. The outer perimeter of the wetland or buffer and the limits of those areas to be disturbed pursuant to an approved permit or authorization shall be marked in the field in such a way as to ensure that no unauthorized intrusion will occur and is subject to inspection prior to the commencement of permitted activities. This temporary marking shall be maintained throughout construction and shall not be removed until permanent signs, if required, are in place.

(2) Permanent Signs. As a condition of any permit or authorization issued pursuant to this chapter, the Director may require the applicant to install permanent signs along the boundary of a wetland or buffer.

(i) Permanent signs shall be made of an enamel-coated metal face and attached to a metal post, or another nontreated material of equal durability. Signs must be posted at an interval of one (1) per lot or every fifty (50) feet, whichever is less, and must be maintained by the property owner in perpetuity. The sign shall be worded as follows or with alternative language approved by the Director:

Protected Wetland Area  
Do Not Disturb  
Contact City of Bremerton  
Department of Community Development  
Regarding Uses and Restriction

(3) Fencing.

(i) The Director shall determine if fencing is necessary to protect the functions and values of the critical area. If found to be necessary, any permit or authorization issued pursuant to this chapter shall be conditioned to require the applicant to install a permanent fence at the edge of the wetland buffer when fencing will prevent future impacts to the wetland.

(ii) Fencing installed as part of a proposed activity or as required in this subsection shall be designed so as to not interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes impacts to the wetland and associated habitat.

**20.14.340 MITIGATION REQUIREMENTS - WETLANDS.**

Compensatory mitigation for alterations to wetlands shall achieve equivalent or greater biologic functions. Compensatory mitigation plans shall be consistent with the State Department of Ecology publication "Guidance on Wetland Mitigation in Washington State," 2004-2006 (Publication Nos. 0406-06-013a-011a and 0406-06-013b-011b), or as revised.

- (a) Mitigation shall be required in the following order of preference:
- (1) Avoiding the impact altogether by not taking a certain action or parts of an action.
  - (2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts.
  - (3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
  - (4) Reducing or eliminating the impact over time by preservation and maintenance operations.
  - (5) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments.
- (b) Mitigation for Lost or Affected Functions. Compensatory mitigation actions shall address functions affected by the alteration to achieve functional equivalency or improvement and shall provide similar wetland functions as those lost, except when:
- (1) The lost wetland provides minimal functions as determined by a site-specific function assessment, and the proposed compensatory mitigation action(s) will provide equal or greater functions or will provide functions shown to be limiting within a watershed through a formal Washington State watershed assessment plan or protocol; or
  - (2) Out-of-kind replacement will best meet formally identified watershed goals, such as replacement of historically diminished wetland types.
- (c) Preference of Mitigation Actions. Mitigation actions that require compensation by replacing, enhancing, or substitution shall occur in the following order of preference:
- (1) Restoring wetlands on upland sites that were formerly wetlands.
  - (2) Creating wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of nonnative introduced species. This should only be attempted when there is a consistent source of hydrology and it can be shown that the surface and subsurface hydrologic regime is conducive for the wetland community that is being designed.
  - (3) Enhancing significantly degraded wetlands in combination with restoration or creation. Such enhancement should be part of a mitigation package that includes replacing the impacted area meeting appropriate ratio requirements.
- (d) Type and Location of Mitigation. Unless it is demonstrated that a higher level of ecological functioning would result from an alternate approach, compensatory mitigation for ecological functions shall be either in-kind and on-site, or in-kind and within the same stream reach, subbasin, or drift cell. Mitigation actions shall be conducted within the same subdrainage basin and on the site as the alteration except when all of the following apply:

- (1) There are no reasonable on-site or in-subdrainage basin opportunities or on-site and in-subdrainage basin opportunities do not have a high likelihood of success, after a determination of the natural capacity of the site to mitigate for the impacts. Consideration should include: anticipated wetland mitigation replacement ratios, buffer conditions and proposed widths, hydrogeomorphic classes of on-site wetlands when restored, proposed flood storage capacity, potential to mitigate riparian fish and wildlife impacts (such as connectivity);
  - (2) Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the impacted wetland; and
  - (3) Off-site locations shall be in the same subdrainage basin unless:
    - (i) Established watershed goals for water quality, flood or conveyance, habitat, or other wetland functions have been established and strongly justify location of mitigation at another site; or
    - (ii) Credits from a State-certified wetland mitigation bank are used as mitigation and the use of credits is consistent with the terms of the bank's certification.
- (e) **Mitigation Timing.** Mitigation projects shall be completed with an approved monitoring plan prior to activities that will disturb wetlands. In all other cases, mitigation shall be completed immediately following disturbance and prior to use or occupancy of the activity or development. Construction of mitigation projects shall be timed to reduce impacts to existing fisheries, wildlife, and flora.
- (1) The Director may authorize a one (1) time temporary delay, up to one hundred twenty (120) days, in completing minor construction and landscaping when environmental conditions could produce a high probability of failure or significant construction difficulties. The delay shall not create or perpetuate hazardous conditions or environmental damage or degradation, and the delay shall not be injurious to the health, safety, and general welfare of the public. The request for the temporary delay must include a written justification that documents the environmental constraints that preclude implementation of the mitigation plan. The justification must be verified and approved by the City and include a financial guarantee.
- (f) **Mitigation Ratios.**
- (1) **Acreage Replacement Ratios.** The following ratios shall apply to creation or restoration that is in-kind, is on-site, is the same category, is timed prior to or concurrent with alteration, and has a high probability of success. These ratios do not apply to remedial actions resulting from unauthorized alterations; greater ratios shall apply in those cases. These ratios do not apply to the use of credits from a State-certified wetland mitigation bank. When credits from a certified bank are used, replacement ratios should be consistent with the requirements of the bank's certification. The first number specifies the acreage of replacement wetlands and the second specifies the acreage of wetlands altered.

Category I	6 to 1			
Category II	3 to 1			
Category III	2 to 1			
Category IV	1.5 to 1			
<u>Wetland Category</u>	<u>Wetland Mitigation Type and Replacement Ratio</u>			
	<u>Creation</u>	<u>Re-establishment</u>	<u>Rehabilitation</u>	<u>Enhancement Only</u>
<u>Category I</u>	<u>6:1</u>	<u>6:1</u>	<u>12:1</u>	<u>Not allowed</u>
<u>Category II</u>	<u>3:1</u>	<u>3:1</u>	<u>6:1</u>	<u>12:1</u>
<u>Category III</u>	<u>2:1</u>	<u>2:1</u>	<u>4:1</u>	<u>8:1</u>
<u>Category IV</u>	<u>1.5:1</u>	<u>1.5:1</u>	<u>3:1</u>	<u>6:1</u>

(2) Increased Replacement Ratio. The Director may increase the ratios under the following circumstances:

- (i) Uncertainty exists as to the probable success of the proposed restoration or creation;
- (ii) A significant period of time will elapse between impact and replication of wetland functions;
- (iii) Proposed mitigation will result in a lower category wetland or reduced functions relative to the wetland being impacted; or
- (iv) The impact was an unauthorized impact.

(g) Wetlands Enhancement as Mitigation.

(1) Impacts to wetland functions may be mitigated by enhancement of existing significantly degraded wetlands, but ~~must~~ where feasible should be used in conjunction with restoration and/or creation. Applicants proposing to enhance wetlands must produce a wetland report that identifies how enhancement will increase the functions of the degraded wetland and how this increase will adequately mitigate for the loss of wetland area and function at the impact site. An enhancement proposal must also show whether existing wetland functions will be reduced by the enhancement actions.

(2) Ratios for rehabilitation and enhancement may be reduced when combined with 1:1 replacement through creation or re-establishment See Table 1a, Wetland Mitigation in Washington State – Part 1: Agency Policies and Guidance--Version 1, (Ecology Publication #06-06-011a, Olympia, WA, March 2006 or as revised).

~~(2) At a minimum, enhancement acreage shall be double the acreage required for creation or restoration under subsection (f)(1) of this section. The ratios shall be greater than double the required~~

~~acreage where the enhancement proposal would result in minimal gain in the performance of wetland functions and/or result in the reduction of other wetland functions currently being provided in the wetland.~~

~~(3) Mitigation ratios for enhancement in combination with other forms of mitigation shall range from 6:1 to 3:1 and be limited to Class III and Class IV wetlands.~~

(h) Mitigation of Wetland Buffer Impacts. Compensation for wetland buffer impacts shall occur at a minimum 1:1 ratio. Compensatory mitigation for buffer impacts shall include enhancement of degraded buffers by planting native species and removing structures and impervious surfaces within buffers.

~~(h)~~ Wetland Mitigation Banks.

(1) Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands when:

- (i) The bank is certified under Chapter [173-700](#) WAC; and
- (ii) The Director determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and
- (iii) The proposed use of credits is consistent with the terms and conditions of the bank's certification.

(2) Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the bank's certification.

(3) Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the bank's certification. In some cases, bank service areas may include portions of more than one (1) adjacent drainage basin for specific wetland functions.

~~(i)~~ Wetland Mitigation Monitoring. The mitigation plan shall include a program for monitoring construction of the compensation project and for assessing a completed project. A protocol shall be included outlining the schedule for site monitoring, and how the monitoring data will be evaluated. A monitoring report shall be submitted as needed to document milestones, successes, problems, and contingency actions of the compensation project. The compensation project shall be monitored for a period necessary to establish that performance standards have been met, but not for a period less than five (5) years.

#### **20.14.500 FREQUENTLY FLOODED AREAS.**

BMC [20.14.500](#) through [20.14.530](#) pertain to frequently flooded areas.

#### **20.14.510 DESCRIPTION AND PURPOSE.**

It is the purpose of this chapter to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas caused by flooding, while protecting the functions and values of the floodplains. In addition, this section will give special consideration to

anadromous fish habitat in combination with BMC [20.14.700](#), Fish and Wildlife Habitat Conservation Areas.

#### **20.14.520 CLASSIFICATION AND DESIGNATION.**

Frequently flooded areas are those areas established as areas of special flood hazard under Chapter 17.60 BMC, Floodplain Management. Under Chapter 17.60 BMC, this includes those areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for Kitsap County and Incorporated Areas" dated November 4, 2010, and any revisions thereto, with accompanying Flood Insurance Rate Maps (FIRM), and any revisions thereto. The best available information for flood hazard area identification as outlined in BMC 17.60.140(b) shall be the basis for regulation until a new FIRM is issued that incorporates data utilized under BMC 17.60.140(b). Classifications of flood hazard areas shall be consistent with the one hundred (100) year floodplain designation of the Federal Emergency Management Agency and the National Flood Insurance Program.

#### **20.14.530 DEVELOPMENT STANDARDS.**

(a) All development proposals shall comply with Chapter [17.60](#) BMC for general and specific flood hazard protection. Development shall not reduce the base flood water storage ability. Construction, grading or other regulated activities that would reduce the flood water storage ability must be mitigated by creating compensatory storage on- or off-site.

(b) Base flood data and flood hazard notes shall be shown on the face of any recorded plat or site plan including, but not limited to, base flood elevations, flood protection elevation, boundary of floodplain, and zero rise floodway.

(c) Unless exempted in [20.14.530\(d\)](#), when development occurs within the floodplain, a habitat assessment is required, that is prepared in accordance with *Regional Guidance for Floodplain Habitat Assessment and Mitigation* (FEMA Region X, 2010), or as hereafter amended. The assessment shall determine if the project would adversely affect:

- (1) The primary constituent elements identified when a species is listed as threatened or endangered,
- (2) Essential Fish Habitat designated by the National Marine Fisheries Service,
- (3) Fish and wildlife habitat conservation areas,
- (4) Vegetation communities and habitat structures,
- (5) Water quality,
- (6) Water quantity, including flood and low flow depths, volumes and velocities,
- (7) The channel's natural planform pattern and migration processes,
- (8) Spawning substrate, if applicable, and/or
- (9) Floodplain refugia, if applicable.

(d) The following activities do not require completion a floodplain habitat assessment:

- (1) Repair of existing building in its existing footprint, including damages by fire or other casualties;
- (2) Removal of noxious weeds;
- (3) Replacement of non-native vegetation with native vegetation;
- (4) Ongoing activities such as lawn and garden maintenance;
- (5) Removal of hazard trees;
- (6) Normal maintenance of public utilities and facilities;
- (7) Restoration or enhancement of floodplains, riparian areas and streams that meets Federal and State standards.

#### **20.14.700 FISH AND WILDLIFE HABITAT CONSERVATION AREAS.**

BMC [20.14.700](#) through [20.14.760](#) pertain to fish and wildlife habitat conservation areas.

#### **20.14.710 DESCRIPTION AND PURPOSE.**

The intent of these regulations is to avoid impacts to streams, riparian habitat, anadromous fish, and wildlife conservation areas where such avoidance is feasible and reasonable. This section of the City Code contains standards, guidelines, criteria and requirements intended to identify, evaluate and mitigate potential impacts to habitat conservation areas within the City and to enhance degraded habitat and streams in appropriate cases. In appropriate circumstances, impacts resulting from regulated activities may be minimized, rectified, reduced and/or compensated for, consistent with this chapter. The regulations are to manage land so as to maintain fish and wildlife species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created and achieve no net loss in fish or wildlife habitat or stream functions.

#### **20.14.720 CLASSIFICATION AND DESIGNATION OF FISH AND WILDLIFE HABITAT CONSERVATION AREAS.**

Classification and designation of fish and wildlife habitat conservation areas is an ongoing process; while not all of the following critical habitat conservation areas are known to exist in the City, their designation here allows for future categorization for protection. The following categories shall be used for relevant development standards of BMC [20.14.730](#).

(a) Streams and River Shorelines. All streams and river shorelines which meet the criteria for Type S, F, Np or Ns waters as set forth in WAC [222-16-030](#) of the Department of Natural Resources Water Typing System.

- (1) Type S water means all waters, within their bankfull width, as inventoried as "shorelines of the state" under Chapter [90.58](#) RCW and the rules promulgated pursuant to Chapter [90.58](#) RCW including periodically inundated areas of their associated wetlands.
- (2) Type F water means segments of natural waters other than Type S waters, which are within the bankfull widths of defined channels and periodically inundated areas of their associated wetlands, or within lakes, ponds, or impoundments having a surface area of one-half (1/2) acre or

greater at seasonal low water and which in any case contain fish habitat or are described by one (1) of the following four (4) categories:

(i) Waters, which are diverted for domestic use by more than ten (10) residential or camping units or by a public accommodation facility licensed to serve more than ten (10) persons, where such diversion is determined by the Department to be a valid appropriation of water and the only practical water source for such users. Such waters shall be considered to be Type F water upstream from the point of such diversion for one thousand five hundred (1,500) feet or until the drainage area is reduced by fifty (50) percent, whichever is less;

(ii) Waters, which are diverted for use by federal, State, tribal or private fish hatcheries. Such waters shall be considered Type F water upstream from the point of diversion for one thousand five hundred (1,500) feet, including tributaries if highly significant for protection of downstream water quality. The Department may allow additional harvest beyond the requirements of Type F water designation, provided the Department determines after a landowner-requested on-site assessment by the Department of Fish and Wildlife, Department of Ecology, the affected tribes and interested parties that:

a. The management practices proposed by the landowner will adequately protect water quality for the fish hatchery; and

b. Such additional harvest meets the requirements of the water type designation that would apply in the absence of the hatchery;

(iii) Waters, which are within a federal, State, local, or private campground having more than ten (10) camping units; provided, that the water shall not be considered to enter a campground until it reaches the boundary of the park lands available for public use and comes within one hundred (100) feet of a camping unit, trail or other park improvement;

(iv) Riverine ponds, wall-based channels, and other channel features that are used by fish for off-channel habitat. These areas are critical to the maintenance of optimum survival of fish.

This habitat shall be identified based on the following criteria:

a. The site must be connected to a fish habitat stream and accessible during some period of the year; and

b. The off-channel water must be accessible to fish.

(3) Type Np water means all segments of natural waters within the bankfull width of defined channels that are perennial nonfish habitat streams. Perennial streams are waters that do not dry any time of a year of normal rainfall. However, for the purpose of water typing, Type Np waters include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow. If the uppermost point of perennial flow cannot be identified with simple, nontechnical observations (see board manual, section 23), then Type Np waters begin at a point along the channel where the contributing basin area is:

- (i) At least thirteen (13) acres in the Western Washington coastal zone (which corresponds to the Sitka spruce zone defined in Franklin and Dyrness, 1973);
  - (ii) At least fifty-two (52) acres in other locations in Western Washington; or
  - (iii) At least three hundred (300) acres in Eastern Washington.
- (4) Type Ns water means all segments of natural waters within the bankfull width of the defined channels that are not Type S, F, or Np waters. These are seasonal, nonfish habitat streams in which surface flow is not present for at least some portion of a year of normal rainfall and are not located downstream from any stream reach that is a Type Np water. Type Ns waters must be physically connected by an above-ground channel system to Type S, F, or Np waters.
- (b) Saltwater Shorelines, ~~and~~ Lakes Twenty (20) Acres and Greater in Surface Area. Those saltwater shorelines and lakes defined as shorelines of the State in the Shoreline Management Act of 1971 and the Bremerton Shoreline Master Program as amended. Shorelines include: Type S waters as set forth in WAC [222-16-030](#) (DNR Water Typing System) as amended; commercial and recreational shellfish areas; kelp and eelgrass beds; and forage fish spawning areas (i.e., herring, smelt, and sand lance).
- (c) Lakes Less than Twenty (20) Acres in Surface Area. Those lakes which meet the criteria for Type F, Np, and Ns waters as set forth in WAC [222-16-030](#) as amended. This includes lakes and ponds less than twenty (20) acres in surface area and their submerged aquatic beds, lakes, and ponds planted with game fish by a governmental or tribal authority.
- (d) Class I Fish and Wildlife Conservation Areas.
- (1) Habitats and species recognized by federal or State agencies for federal and/or State-listed endangered, threatened and sensitive species that have primary association documented in maps or databases available to the City and that, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term.
  - ~~(2) Areas targeted for preservation by the federal, State, and/or local government which provide fish and wildlife habitat benefits, such as the shared strategy process for Puget Sound; and areas of primary association for anadromous fish and important waterfowl areas identified by the U.S. Fish and Wildlife Service.~~
  - (32) Areas that contain habitats and species of local importance. These areas are identified by the City, including but not limited to those habitats and species that, due to their population status or sensitivity to habitat manipulation, warrant protection. Habitats may include a seasonal range or habitat element with which a species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. Habitats of local importance can include attributes such as comparatively high wildlife density, high wildlife species richness, significant wildlife breeding habitat, seasonal ranges or movement corridors of limited availability and/or high vulnerability. These habitats may include cliffs, meadows, old-growth/mature forests, snag-rich areas, and urban natural open spaces.

- (e) Class II Fish and Wildlife Conservation Areas.
- (1) Habitats for State-listed candidate and monitored species documented in maps or databases available to the City, which if altered, may reduce the likelihood that the species will maintain and reproduce over the long term.
  - (2) Habitats that have been identified through maps, databases, reports, or studies that include attributes such as comparatively high wildlife density, high wildlife species richness, significant wildlife breeding habitat, seasonal ranges or movement corridors of limited availability and/or high vulnerability. These habitats may include caves, cliffs, meadows, old-growth/mature forests, snag-rich areas, talus slopes, and urban natural open space.
- (f) Habitats and Species of Local Importance. The City should accept and consider nominations for habitat areas and species to be designated as locally important.
- (1) Habitats and species to be designated shall exhibit the following characteristics:
    - (i) Local populations of native species are in danger of extirpation based on existing trends;
    - (ii) Local populations of native species that are likely to become endangered; or
    - (iii) Local populations of native species that are vulnerable or declining.
  - (2) The species or habitat has recreation, commercial, game, tribal, or other special value.
  - (3) Long-term persistence of a species locally is dependent on the protection, maintenance, and/or restoration of the nominated habitat.
  - (4) Protection by other county, State, or federal policies, laws, regulations, or nonregulatory tools is not adequate to prevent degradation of the species or habitat in the City.
  - (5) Without protection, there is likelihood that the species or habitat will be diminished locally over the long term.
  - (6) Areas nominated to protect a particular habitat or species must represent either high-quality native habitat or habitat that has a high potential to recover to a suitable condition and which is of limited availability, highly vulnerable to alteration, or provides landscape connectivity which contributes to the integrity of the surrounding landscape.
  - (7) Habitats and species may be nominated for designation by any person.
  - (8) The nomination should indicate whether specific habitat features are to be protected (for example, nest sites, breeding areas, and nurseries), or whether the habitat or ecosystem is being nominated in its entirety.
  - (9) The nomination may include management strategies for the species or habitats. Management strategies must be supported by the best available science, and where restoration of habitat is proposed, a specific plan for restoration must be provided prior to nomination.
  - (10) The Director shall determine whether the nomination proposal is complete and, if complete, shall evaluate it according to the characteristics enumerated in subsection (f)(1) of this section and make a recommendation to the Planning Commission based on those findings.

(11) The Planning Commission shall hold a public hearing for proposals found to be complete and make a recommendation to the City Council based on the characteristics enumerated in subsection (f)(1) of this section.

(12) Following the recommendation of the Planning Commission, the City Council shall decide whether to designate a habitat or species of local importance by resolution.

(13) Establishment of Specific Rules for Protection. Within one hundred twenty (120) days of the effective date of an ordinance designating a species or habitat of local importance, the Director shall develop an administrative rule addressing protection in compliance with this section.

(14) Development Standards. Regulated uses in designated fish and wildlife habitat conservation areas and/or buffers shall comply with the performance standards outlined in this section.

#### **20.14.730 DEVELOPMENT STANDARDS.**

For the purposes of this title, a designated fish and wildlife habitat conservation area with its buffer is a critical area. Those regulated uses identified below within designated fish and wildlife habitat conservation areas shall comply with the performance standards outlined in this chapter. A habitat management plan (HMP) is a site investigation to evaluate the potential presence or absence of a regulated fish or wildlife species or habitat affecting a subject property and proposed development.

(a) Endangered, Threatened, and Sensitive Species.

(1) No development shall be allowed within a habitat conservation area or buffer with which State or federally endangered, threatened, or sensitive species have a primary association, except that which is provided for by a habitat management plan (HMP) ~~established by the Washington Department of Fish and Wildlife or applicable State or federal agency.~~

(2) Whenever activities are proposed adjacent to a habitat conservation area with which State or federally endangered, threatened, or sensitive species have a primary association, such area shall be protected through the application of protection measures in accordance with an HMP prepared by a qualified professional and approved by the City. Approval for alteration of land adjacent to the habitat conservation area or its buffer shall not occur prior to consultation with the Washington Department of Fish and Wildlife for animal species, the Washington State Department of Natural Resources for plant species, and other appropriate federal or State agencies.

~~(3) Bald eagle habitat shall be protected pursuant to the Washington State Bald Eagle Protection Rules (WAC 232-12-292). Whenever activities are proposed adjacent to a verified nest, territory, or communal roost and, activities that are adjacent to bald eagle sites within eight hundred (800) feet or within one half (1/2) mile (two thousand six hundred forty (2,640) feet) and in a shoreline foraging area shall require an approved HMP. The City shall verify the location of eagle management areas for each proposed activity. Approval of the activity shall not occur prior to approval of the HMP by the Washington Department of Fish and Wildlife.~~

(b) Anadromous Fish.

(1) All activities, uses, and alterations proposed to be located in water bodies used by anadromous fish or in areas that affect such water bodies shall give special consideration to the preservation and enhancement of anadromous fish habitat, including, but not limited to, adhering to the following standards:

- (i) Activities shall be timed to occur only during the allowable work window as designated by the Washington Department of Fish and Wildlife for the applicable species;
- (ii) If alternative alignment or location for the activity is not feasible, then activities shall be designed so that it will not degrade the functions or values of the fish habitat or other critical areas;
- (iii) Shoreline erosion control measures shall be designed to use bioengineering methods or soft armoring techniques, according to an approved critical area report; and
- (iv) Any impacts to the functions or values of the habitat conservation area are mitigated in accordance with an approved habitat management plan.

(2) Structures that prevent the migration of salmonids shall not be allowed in the portion of water bodies currently or historically used by anadromous fish. Fish bypass facilities shall be provided that allow the upstream migration of adult fish and shall prevent fry and juveniles migrating downstream from being trapped or harmed.

(3) Fills, when authorized by the Shoreline Master Program, shall not adversely impact anadromous fish or their habitat or shall mitigate any unavoidable impacts and shall only be allowed for a water-dependent use.

(c) Wetland Habitats. All proposed activities within or adjacent to habitat conservation areas containing wetlands shall conform to the wetland development performance standards set forth in BMC [20.14.300](#). If nonwetlands habitat and wetlands are present at the same location, the provisions of this chapter or the wetlands chapter, whichever provides greater protection to the habitat, apply.

(d) Buffers and Associated Building Setback Areas. The distance shall be measured from the ordinary high water mark (OHM) or from the top of the bank where the OHM cannot be identified. Buffers shall remain undisturbed natural beach or vegetation areas except where the buffer can be enhanced to improve its functional attributes, as approved by the Department. Buffers shall be maintained along the perimeter of fish and wildlife habitat conservation areas, as listed below in Table 1 of this section. Refuse shall not be placed in buffers. Alteration of buffer areas and building setbacks may be allowed for water-dependent and water-related activities and for other development authorized by an HMP, reasonable use exceptions, general exemptions, standards for existing (nonconforming) development, and variances in general exemptions, BMC [20.14.140](#).

<b>20.14.730 Table 1: Water Type Buffer Standards</b>			
<b><u>Water Types</u></b>	<b><u>Attributes</u></b>	<b><u>Minimum Building Setback</u></b>	<b><u>Buffer Width Standard</u></b>

<u>S</u> <u>Saltwater &amp; Freshwater</u>	<u>See Shoreline Master Program for buffer and minimum building setback per Ordinance 5229, or as hereinafter amended</u>		
<u>F</u>	<u>Fish Habitat Waters</u>	<u>15 feet beyond buffer</u>	<u>150 feet</u>
<u>Np</u>	<u>Year-Round, Nonfish Habitat</u>	<u>15 feet beyond buffer</u>	<u>50 feet</u>
<u>Ns</u>	<u>Seasonal, Nonfish Habitat</u>	<u>15 feet beyond buffer</u>	<u>35 feet</u>

<b>20.14.730 Table 1: Water Type Buffer Standards</b>			
<b>Water Types</b>	<b>Attributes</b>	<b>Minimum Building Setback</b>	<b>Buffer Width Standard</b>
<del>S</del>	<del>Urban Commercial/Industrial/ Downtown Waterfront</del>	<del>15 feet beyond buffer</del>	<del>25 feet</del>
<del>-</del>	<del>Urban Residential</del>	<del>15 feet beyond buffer</del>	<del>35 feet</del>
<del>-</del>	<del>Urban Conservancy</del>	<del>15 feet beyond buffer</del>	<del>175 feet</del>
<del>S</del>	<del>Freshwater Shorelines of the State</del>	<del>15 feet beyond buffer</del>	<del>175 feet</del>
<del>F</del>	<del>Fish Habitat Waters</del>	<del>15 feet beyond buffer</del>	<del>150 feet</del>
<del>Np</del>	<del>Year-Round, Nonfish Habitat</del>	<del>15 feet beyond buffer</del>	<del>50 feet</del>
<del>Ns</del>	<del>Seasonal, Nonfish Habitat</del>	<del>15 feet beyond buffer</del>	<del>35 feet</del>

(1) Buffers. Where existing buffer area plantings provide minimal vegetative cover and cannot provide the City's water quality standards or habitat functions (per the requirements of the Department of Ecology and Fish and Wildlife), buffer enhancement shall be required. Where buffer enhancement is required, a plan shall be prepared that includes plant densities that are not less than three (3) feet on center for shrubs and eight (8) feet on center for trees. Monitoring and maintenance of plants shall be required in accordance with BMC [20.14.760](#), Monitoring and Contingency Plan. Existing buffer vegetation is considered "inadequate" and will require enhancement through additional native plantings and removal of nonnative plants when:

- (i) Nonnative or invasive plant species provide the dominant cover;

- (ii) Vegetation is lacking due to disturbance and marine, stream, or habitat resources could be adversely affected; or
  - (iii) Enhancement plantings in the buffer could significantly improve buffer functions.
- (2) "Minimum building setback" is the required horizontal distance between the finished exterior wall of a structure and the edge of the buffer of the lot on which the structure is located. All portions of a structure must be located away from the buffer a distance equal to or greater than the minimum setback. Uses not requiring a permit defined in the City Building Code as set forth in Chapter [17.04](#) BMC may be permitted in the setback if the Department determines that such intrusions will not adversely impact the fish and wildlife habitat conservation area.
- (3) Stream Buffer Measurement. Streams shall be classified according to the stream type system as provided in WAC [222-16-031](#), Interim water typing system. Stream buffer areas are defined by these classifications, as shown in Table 1 of this section. Buffers shall be measured from the ordinary high water mark (OHM) or from the top of the bank where the OHM cannot be identified. The buffer width shall be increased to include streamside wetlands which provide overflow storage for storm waters, feed water back to the stream during low flows or provide shelter and food for fish. In braided channels, the OHM or top of bank shall be defined so as to include the entire stream feature.
- (4) Buffer Averaging. [For buffering averaging for areas within the areas of shoreline jurisdiction, please refer to the Shoreline Master Program 7.010\(c\)\(5\). For all other areas, B](#)buffer widths may be modified by averaging buffer widths as long as the total area contained within the buffer after averaging is no less than the required buffer prior to averaging, and as set forth below. A buffer enhancement plan shall be required for any request for buffer averaging. The enhancement plan shall be similar to a mitigation plan, and include provisions for mitigation monitoring and contingency plans. Buffer width averaging shall be allowed only where the applicant demonstrates through a report prepared by a qualified biologist or habitat specialist with five (5) years' experience that:
- (i) Buffer averaging is necessary to avoid a hardship caused by circumstances to the property;
  - (ii) The habitat contains variations in sensitivity due to existing physical characteristics, or the buffer varies in characteristics and it would benefit from a wider buffer in places and would not be adversely impacted by a narrower buffer in other places;
  - (iii) Lower intensity land uses would be located adjacent to areas where the buffer width is reduced;
  - (iv) The widest portion of the buffer shall be the area where the habitat is most sensitive;
  - (v) Buffer width averaging will not adversely impact fish and wildlife habitat conservation areas;

- (vi) The buffer width may be reduced by thirty-five (35) percent of the standard buffer, but not less than thirty-five (35) feet unless provided for by a habitat management plan.
- (5) Buffer Reduction. Buffers and associated building setbacks may be reduced where the applicant demonstrates through an approved HMP relying on best available science and prepared by a qualified specialist with five (5) years' experience that through buffer enhancement the smaller buffer would provide equal or better protection than the larger buffer, but shall not be reduced by more than thirty-five (35) percent. Enhancement techniques can include, but are not limited to:
- (i) Planting of native trees or shrubs, increasing the diversity of plant cover types, replacing exotic species with native species, or reestablishing fish areas adjacent to a marine shoreline or stream where one (1) currently does not exist will result in improved function of the fish habitat;
  - (ii) Fish barrier removal to restore accessibility to resident or anadromous fish;
  - (iii) Fish habitat enhancement using log structures incorporated as part of a fish habitat enhancement plan;
  - (iv) Stream and/or retention/detention pond improvements:
    - a. Removal or modification of existing stream culverts (such as at road crossings) to improve fish passage and flow capabilities, or
    - b. Upgrade of retention/detention facilities or other drainage facilities beyond required levels to provide a more naturalized habitat;
  - (v) Removal of existing bulkheads to improve fish spawning and habitat areas;
  - (vi) Daylighting a stream that was previously culverted or piped, or daylighting box culverts or trestles.
- (6) Stormwater Management Facilities. Stormwater management facilities, limited to stormwater dispersion outfalls and bioswales, may be allowed within the outer twenty-five (25) percent of the buffer; provided, that:
- (i) No other location is feasible; and
  - (ii) The buffer is over 100 feet in width; and
  - (iii) The location of such facilities will not degrade the functions or values of the stream and/or habitat area shown through an approved HMP.
- (7) Low-Impact Development (LID) Facilities. LID facilities, may be allowed within stream buffers; provided that:
- (i) No other location is feasible; and
  - (ii) The buffer is over 100 feet in width; and
  - (iii) The location of such facilities will not degrade the functions or values of the stream and/or habitat area shown through an approved HMP.

(8) Habitat Conservation Area Buffers. For Type F, Type Np, and Type Ns waters only, hHabitat conservation area buffers shall be shown on the development site plans or final plat maps along with the notation requirements identified in BMC [20.58.080](#).

(i) If an existing property has a previously delineated and approved fish and wildlife habitat conservation area and associated buffer by the City, the approved conservation area and buffer may remain in effect. Redevelopment, and/or additions outside of the existing footprint shall be subject to the previously approved buffer; however, a buffer enhancement plan may be required in accordance if the habitat buffer area has become degraded or is currently not functioning or if the habitat area and/or buffer may be negatively affected by proposed new development. If, according to the buffer enhancement plan, additional buffer mitigation is not sufficient to protect the habitat, the City may require larger buffers where it is necessary to protect habitat functions based on site-specific characteristics.

(e) Class I Fish and Wildlife Conservation Areas. All development as described within this chapter or within two hundred (200) feet of designated Class I wildlife conservation areas shall adhere to the following standards:

(1) All sites with known locations of Class I fish and wildlife conservation areas or sites within two hundred (200) feet, or the applicable distance identified by Washington Department of Fish and Wildlife management recommendations, whichever is greater, to known locations of Class I fish and wildlife conservation areas will require, for all development permits, the submittal and approval of a habitat management plan (HMP) as specified in BMC [20.14.750](#). ~~In the case of bald eagles, an approved bald eagle management plan by the Washington State Department of Fish and Wildlife, meeting the requirements and guidelines of the bald eagle protection rules (WAC 232-12-292), as now or hereafter amended shall satisfy the requirements for an HMP.~~ The requirement for an HMP shall be determined during the SEPA/critical areas review on the project.

(2) All new development within two hundred (200) feet of habitat elements with which Class I fish and wildlife have a critical habitat, or the applicable distance identified by Washington Department of Fish and Wildlife management recommendations, whichever is greater, may require the submittal of an HMP as specified in BMC [20.14.750](#). The requirement for an HMP shall be determined during the SEPA/critical areas review on the project.

**20.14.730 Table 2: Wildlife Habitat Conservation Areas**

Class I	All developments within 200 ft. <u>or applicable distance by WDFW management recommendations</u> of a designated Class I wildlife habitat conservation area shall have buffer widths determined by a mandatory habitat management plan.
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Class II All development within a Class II wildlife habitat conservation area shall have the buffer widths be determined by the SEPA/critical area review on the project and may require a habitat management plan.

(f) Class II Fish and Wildlife Conservation Area. All new development within Class II fish and wildlife conservation areas may require the submittal of an HMP. An HMP shall consider measures to retain and protect the wildlife habitat and shall consider effects of land use intensity, buffers, setbacks, impervious surfaces, erosion control and retention of native vegetation. The requirement for an HMP shall be determined during the SEPA/critical areas review on the project.

(g) Stream Crossings. Any private or public road expansion or new construction which is allowed and must cross streams classified within this chapter shall comply with the following minimum development standards:

- (1) Bridges or bottomless culverts shall be required for all fish-bearing streams. Other alternatives may be allowed upon submittal of a habitat management plan which demonstrates that other alternatives would not result in significant impacts to the fish and wildlife conservation area, as determined appropriate through the Washington State Department of Fish and Wildlife, hydraulics project approval process. The plan must demonstrate that salmon habitat will be replaced on a 1:1 ratio;
- (2) Crossings shall not occur in salmonid spawning areas unless no other feasible crossing site exists. For new development proposals, if existing crossings are determined to adversely impact salmon spawning or passage areas, new or upgraded crossings shall be located as determined necessary through coordination with the Washington State Department of Fish and Wildlife;
- (3) Bridge piers or abutments shall not be placed in either the floodway or between the ordinary, high water marks unless no other feasible alternative placement exists;
- (4) Crossings shall not diminish flood carrying capacity;
- (5) Crossings shall serve multiple properties whenever possible; and
- (6) Where there is no reasonable alternative to providing a conventional culvert, the culvert shall be the minimum length necessary to accommodate the permitted activity (guidance for these projects can be found in the Washington Department of Fish and Wildlife "Fish Passage Design at Road Culverts" design manual 1999, and the National Marine Fisheries Service "Guidelines for Salmonid Passage at Stream Crossings" 2000).

(h) Stream Relocations. Stream relocations for the purpose of flood protection and/or fisheries restoration shall only be permitted when adhering to the following minimum performance standards and when consistent with Washington State Department of Fish and Wildlife hydraulic project approval:

- (1) The channel, bank and buffer areas should be replanted with native vegetation in undisturbed riparian condition;

- (2) For those shorelands and waters designated as frequently flooded areas, a professional engineer licensed in the State of Washington shall provide information demonstrating that the equivalent base flood storage volume and function will be maintained; and
- (3) Relocated stream channels shall be designed to meet or exceed the functions and values of the stream to be relocated.
- (i) Pesticides, Fertilizers and Herbicides. No pesticides, herbicides or fertilizers may be used in fish and wildlife conservation areas or their buffers, except those approved by the EPA and approved under a DOE water quality modification permit for use in fish and wildlife habitat conservation area environments. Where approved, herbicides must be applied by a licensed applicator in accordance with the safe application practices on the label.
- (j) Land Divisions and Land User Permits. All proposed divisions of land and land uses (subdivisions, short subdivisions, residential cluster developments, conditional use permits, site plan reviews, and binding site plans) which include fish and wildlife habitat conservation areas shall comply with the following procedures and development standards:
- (1) The open water area of lakes, streams, and tidal lands shall not be permitted for use in calculating minimum lot area;
  - (2) Land division approvals shall be conditioned so that all required buffers are dedicated as open space tracts or an easement or covenant encumbering the buffer. Such dedication, easement or covenant shall be recorded together with the land division and represented on the final plat, short plat or binding site plan;
  - (3) In order to avoid the creation of nonconforming lots, each new lot shall contain at least one (1) building site that meets the requirements of this chapter, including buffer requirements for habitat conservation areas. This site must also have access and a sewage disposal system location that are suitable for development and does not adversely impact the fish and wildlife conservation area;
  - (4) After preliminary approval and prior to final land division approval, the Department may require the common boundary between a required buffer and the adjacent lands be identified using permanent signs. In lieu of signs, alternative methods of buffer identification may be approved when such methods are determined by the Department to provide adequate protection to the aquatic buffer.
- (k) Trails and Trail-Related Facilities. Construction of public and private trails and trail-related facilities, such as benches, interpretive centers, and viewing platforms, may be allowed in fish and wildlife habitat conservation areas or their buffers pursuant to the following standards:
- (1) Trails and related facilities shall, to the extent feasible, be placed on existing road grades, utility corridors, or other such previously disturbed areas;
  - (2) Trails and related facilities shall be planned to minimize removal of trees, shrubs, snags and important wildlife habitat;

- (3) Viewing platforms, interpretive centers, benches and access to them shall be designed and located to minimize disturbance of wildlife habitat and/or critical characteristics of the affected conservation area;
  - (4) Trails, in general, shall be set back from streams so that there will be no or minimal impact to the stream from trail use or maintenance. Trails shall be constructed with pervious surfaces when feasible;
  - (5) Trails shall be generally limited to pedestrian use unless other more intensive uses, such as bike or horse trails, have been specifically allowed and mitigation has been provided. Trail width shall not exceed five (5) feet unless there is demonstrated need, subject to review and approval by the Department. Trails shall be constructed with pervious materials unless otherwise approved by the Department;
  - (6) Trails shall not be allowed to fully enclose a habitat area or buffer; and
  - (7) The Department may require closure of trails during critical spawning, migration or breeding time periods of the species present.
- (l) Utilities. Placement of utilities within designated fish and wildlife habitat conservation areas may be allowed pursuant to the following standards:
- (1) Utilities maintenance activities involving no material change in size or function shall be allowed within designated fish and wildlife habitat conservation areas, subject to best management practices;
  - (2) Construction of utilities may be permitted in fish and wildlife habitat conservation areas or their buffers, only when no feasible or reasonable alternative location is available and the utility corridor meets the requirements for installation, replacement of vegetation and maintenance outlined below, and as required in the filing and approval of an HMP which may be required by this chapter;
  - (3) Construction of sewer lines or on-site sewage systems may be permitted in fish and wildlife habitat conservation areas or their buffers when the applicant demonstrates it is necessary to meet State and/or local health code requirements, there are no other feasible alternatives available, and construction meets the requirements of this section. Joint use of the sewer utility corridor by other utilities may be allowed;
  - (4) New utility corridors shall not be allowed in fish and wildlife habitat conservation areas with known locations of federal or State-listed endangered, threatened or sensitive species, heron rookeries or nesting sites of raptors which are listed as State candidate except in those circumstances where an approved HMP indicates that the utility corridor will not significantly impact the conservation area;
  - (5) New utility corridor construction and maintenance shall protect the environment of fish and wildlife habitat conservation areas and their buffers by the following:

- (i) New utility facilities, improvements, or upgrades to existing utility facilities should take place within existing improved rights-of-way or existing impervious surfaces so that they do not increase the amount of impervious surfaces within the habitat area;
  - (ii) New utility corridors shall be aligned when possible to avoid cutting or root damage to trees greater than twelve (12) inches in diameter at breast height (four (4) and one-half (1/2) feet) measured on the uphill side;
  - (iii) New utility corridors shall be revegetated with appropriate native or equivalent vegetation at not less than preconstruction vegetation densities or greater, immediately upon completion of construction or as soon thereafter as possible due to seasonal growing constraints. The utility shall ensure that such vegetation survives;
  - (iv) Any additional corridor access for maintenance shall be provided wherever possible at specific points rather than by parallel roads. If parallel roads are necessary, they shall be of a minimum width but no greater than fifteen (15) feet and shall be contiguous to the location of the utility corridor on the side away from the conservation area;
- (6) Utility corridor maintenance shall include the following measures to protect the environment of regulated fish and wildlife habitat conservation areas:
- (i) Utility towers should be painted with brush, pad or roller and should not be sandblasted or spray-painted, nor should lead-based paints be used;
  - (ii) Pesticides, Fertilizers and Herbicides. No pesticides or fertilizers may be used in fish and wildlife conservation areas or their buffers, except those herbicides approved by a licensed applicator in accordance with the safe application practices on the label.
- (m) Bank Stabilization. A stream channel and bank may be stabilized when naturally occurring earth movement threatens existing structures (defined as requiring a building permit pursuant to the applicable building code), public improvements, unique natural resources, public health, safety or welfare, or the only feasible access to property, and, in the case of streams and marine shorelines, when such stabilization results in maintenance of fish and wildlife habitat, flood control and improved water quality. Where bank stabilization is determined to be necessary, bioengineering or other nonstructural methods should be the first option for protection. Bulkheads and retaining walls may only be utilized as an engineering solution where it can be demonstrated that an existing residential structure cannot be safely maintained or set back without such measures, and that the resulting retaining wall is the minimum length necessary to provide a stable building area for the structure. A variance pursuant to BMC [20.58.030](#) must be obtained in all other cases. The Department may require that bank stabilization be designed by a professional engineer and geologist licensed in the State of Washington with demonstrated expertise in hydraulic actions of shorelines. Bank stabilization projects may also require a City grading permit and hydraulic project approval from the Washington Department of Fish and Wildlife. Nonstructural marine shoreline and stream bank protective techniques are preferred to bulkheads or other types of marine

shoreline and stream bank armoring. Nonstructural techniques include but are not limited to vegetation plantings and bioengineering. Guidance for these projects can be found in the Washington Department of Fish and Wildlife's "Integrated Streambank Protection Guidelines Manual" for determining when, why, where, and what projects need to be completed to protect an eroding bank.

(n) Fencing and Signs. Prior to approval or issuance of permits for land divisions and new development, the Department may require the common boundary between a required buffer and the adjacent lands be identified using fencing or permanent signs. In lieu of fencing or signs, alternative methods of buffer identification may be approved when such methods are determined by the Department to provide adequate protection to the buffer.

(o) Road/Street Repair and Construction. Any private or public road or street expansion or construction which is allowed in a fish and wildlife habitat conservation area or its buffer shall comply with the following minimum development standards:

- (1) No other reasonable or feasible alternative exists and the road or street crossing serves multiple properties whenever possible;
- (2) Expansion or construction of any private or public road shall only be allowed when adverse impacts cannot be avoided;
- (3) Public and private roads should provide for other purposes, such as utility crossings, pedestrian or bicycle easements, viewing points, etc.;
- (4) The road or street construction is the minimum necessary, as required by the Department of Public Works, and shall comply with the Department of Public Works and Utilities' standards; and
- (5) Construction time limits shall be determined in consultation with the Washington Department of Fish and Wildlife in order to ensure habitat protection.

(p) Other Allowed Uses in Fish and Wildlife Conservation Areas. Other activities may be allowed using the standard for a Category II wetland buffer as identified by BMC 20.14.330(d).

#### **20.14.740 SPECIAL REPORTS.**

Habitat Management Plan Requirements.

(a) General. If the City determines that impacts to habitats may occur as a result of a development project, a habitat management plan (HMP) shall be required. The applicant may choose to complete an HMP for a site-specific analysis to better determine the impact to habitat and to determine the appropriate buffer width and associated building setbacks for their project based on the site-specific analysis. The preparation and submission of this report is the responsibility of the applicant. The report shall rely on best available science as defined in WAC [365-195-900](#) through [365-195-925](#) and shall be prepared by a qualified professional who is a biologist with five (5) years of experience preparing reports for the relevant type of habitat. The City may retain a qualified consultant at the applicant's expense to review and confirm the applicant's reports, studies and plans. The HMP shall clearly demonstrate that greater protection of the functions and values of critical areas can be achieved through the HMP than could be achieved

through providing the prescribed habitat buffers and building setbacks. An applicant may propose to implement an HMP as a means to protect habitat buffers associated with streams and/or fish and wildlife conservation areas. Approval for an HMP shall not occur prior to the consultation with the appropriate federal or State agencies.

(b) Intent. HMPs are primarily intended as a means to restore or improve buffers that have been degraded by past activity, and should preserve, and not reduce, existing high-quality habitat buffers. While not primarily intended as a means to reduce buffers, the HMP may propose a reduction of the habitat buffer width where it is shown that the HMP will comply with the other requirements of this section.

(c) Effect of Buffers. An HMP shall provide habitat functions and values that are greater than would be provided by the prescribed habitat buffers. When habitat buffers are a component of an HMP, they shall be at least the minimum size necessary to accomplish the objectives of the HMP. The HMP may propose, but the City shall not require, a habitat buffer containing a greater area than is required by the prescribed habitat buffer.

(d) Impact Mitigation. The HMP shall encompass an area large enough to provide mitigation for buffer reduction below the standard required buffers, and shall identify how the development impacts resulting from the proposed project will be mitigated as defined in BMC [20.14.750](#). The developer of the plan shall use the best available science in all facets of the analyses. The Washington Department of Fish and Wildlife priority habitat and species management recommendations, and/or bald eagle protection rules outlined in WAC [232-12-292](#), as amended, may serve as guidance for this report.

(e) The assessment of habitats for the site and project shall at a minimum include the following information:

- (1) A map prepared at an easily readable scale, showing:
  - (i) The location of the proposed development site;
  - (ii) Property boundaries;
  - (iii) The relationship of the site to surrounding topographic, water, and cultural features;
  - (iv) Proposed building locations and arrangements;
  - (v) A legend which includes a complete legal description, acreage of the parcel, scale, north arrow, and date of map revision;
- (2) Detailed description of vegetation on and adjacent to the project area and its associated buffer;
- (3) Identification of any species of local importance, ~~priority species~~, or endangered, threatened, sensitive, or candidate species that have a primary association with habitat on or adjacent to the project area, and assessment of potential project impacts to the use of the site by the species;
- (4) A discussion of any federal, State, or local special management recommendations, including Washington Department of Fish and Wildlife habitat management recommendations, that have been developed for species or habitats located on or adjacent to the project area;

- (5) A detailed discussion of the direct and indirect potential impacts on habitat by the project, including potential impacts to water quality;
  - (6) Enhancement of existing degraded buffer area and replanting of the disturbed buffer area with native vegetation;
  - (7) The use of alternative on-site wastewater systems in order to minimize site clearing;
  - (8) Retention of existing native vegetation on other portions of the site in order to offset habitat loss from buffer reduction;
  - (9) The need for fencing and signage along the buffer edge;
  - (10) A discussion of measures, including avoidance, minimization, and mitigation, proposed to preserve existing habitats and restore any habitat that was degraded prior to the current proposed land use activity and to be conducted in accordance with the mitigation sequencing required by this chapter; and
  - (11) A discussion of ongoing management practices that will protect habitat after the project site has been developed, including proposed monitoring, maintenance, and enforcement programs.
- (f) When appropriate due to the type of habitat or species present or the project conditions, the Director may also require the habitat management plan to include:
- (1) An evaluation by an independent qualified professional regarding the applicant's analysis and the effectiveness of any proposed mitigating measures or programs, to include any recommendations as appropriate;
  - (2) A request for consultation with the Washington Department of Fish and Wildlife or the local Native American Indian tribe or other appropriate agency; and
  - (3) Detailed surface and subsurface hydrologic features both on and adjacent to the site.
- (g) Mitigation Measures. Possible mitigation measures to be included in the report, or required by the Director, could include, but are not limited to:
- (1) Establishment of buffer zones;
  - (2) Preservation of critically important plants and trees;
  - (3) Limitation of access to habitat areas;
  - (4) Seasonal restriction of construction activities;
  - (5) Establishing phased development requirements; and
  - (6) Monitoring plan for a period necessary to establish that performance standards have been met. Generally this will be for a period of seven (7) to ten (10) years.
- (h) HMP Adequacy. The HMP shall demonstrate to the satisfaction of the City that the habitat functions and values are improved by implementation of the HMP. If there is a disagreement between the City and the applicant as to the adequacy of the HMP, the issue of plan adequacy shall be resolved by consulting with the appropriate federal or State agency. If the federal or State agencies are not available in a timely manner, the applicant may choose to have the City refer the HMPs to a third-party consultant at the

expense of the applicant. After consultation with such State departments or third-party consultant, the Director shall make a final decision on the adequacy of the HMP.

(i) Timing. An HMP must be developed and approved either prior to preliminary plat approval or issuance of the building permit, as applicable, and must be implemented before the City grants either final plat approval or an occupancy permit, as applicable.

# Proposed Zoning Code Amendments

## Bremerton Municipal Code (BMC) 20.54 Nonconforming Provisions

The sections that have proposed Zoning Code Amendments are **highlighted below** and are included in this packet (as shown in **legislative markups**). The other portions of the code that have no proposed changes have been removed from this review. The complete BMC 20.54 Nonconforming Provisions can be seen: <http://www.ci.bremerton.wa.us/399/Zoning-Code-Map>. Please note that the Staff Report describes the proposed revisions.

Sections (click links below for electronic versions):

[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, STRUCTURES, AND LOTS.](#)

## Chapter 20.54 NONCONFORMING PROVISIONS

Sections:

[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, AND LOTS.](#)

### 20.54.040 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, or other requirements of the zone in which it is located, but was lawfully created prior to the effective date of the zone or subsequent amendments thereto.

(b) Nonconforming Use. Any activity, development or condition that by the zone in which it is located 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 zone 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 zone in which it is located, but was lawfully constructed prior to the effective date of the zone or subsequent amendments thereto and was continually maintained as defined in this chapter. This term does not apply to any substandard condition that was legally granted a variance.

~~(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 ~~seventy five (75) percent of the replacement cost of the entire building, excluding the foundations. The replacement cost shall be derived from the market value of the structure or the value as defined by the City's building code, whichever is greater.~~~~

(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.

(2) For accessory structures which are typically not assessed (such as decks, sheds, garages, and retaining walls) and the value cannot be determined, substantial destruction will occur at the point that seventy five percent (75%) or more of the structure is replaced.

### 20.54.050 NONCONFORMING LOTS.

The following provisions shall apply to all lots meeting the definition in BMC [20.54.040](#)(a):

(a) Continuation and Development. A nonconforming lot may be developed for any use allowed by the zone, provided the development meets, through design or by an approved variance, the requirements of the zone in which it is located.

- (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, or other~~ requirements of the zone in which it is located.
  - (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.

#### **20.54.060 NONCONFORMING USES.**

The following provisions shall apply to all uses meeting the definition in BMC [20.54.040](#)(b):

- (a) Continuation. Any legally established nonconforming use may be continued until such time that it is discontinued as prescribed in subsection (d) or (e) 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 zone; or
  - (2) Another nonconforming use; provided, that:
    - (i) A conditional use permit is approved pursuant to BMC [20.58.020](#);
    - (ii) The existing nonconforming use was not discontinued as prescribed in subsection (d) or (e) of this section;
    - (iii) The new use is clearly a reduction in the nonconformity and intensity of the existing nonconforming use; and
    - (iv) The applicant demonstrates that there is a demand for the use in the neighborhood that provides a public benefit.
- (c) Expansion. A nonconforming use may not be expanded or enlarged, except under one (1) of following circumstances:
- (1) Alterations are permitted, provided it is within the existing physical space of the building or use.
  - (2) Residential dwellings may have the building area expanded if the number of dwelling units is not increased above or below the requirements of the zone in which it is located, there is no decrease in the number of off-street parking spaces below the minimum requirements and the addition complies with all zoning requirements.
  - (3) The acquisition of additional accessory off-street parking is not an expansion of a nonconforming use.
- (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 the requirements of the zone. 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;
  - (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 or tenant and a complete building permit application is filed within one (1) year of such fire or other casualty.
  - ~~(2) The use is a detached or attached single family dwelling located anywhere in the City.~~
  - ~~(2)~~ (3) A conditional use permit was approved pursuant to BMC [20.54.090](#).
- (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.

**20.54.070 NONCONFORMING STRUCTURES.**

The following provisions shall apply to all structures and buildings meeting the definition in BMC [20.54.040\(c\)](#):

- (a) Continuation. Any legally established nonconforming structure may be continued until such time that it is discontinued as prescribed in subsection (c) of this section.
- (b) Expansion. Buildings may be expanded, provided:
  - (1) A nonconforming structure may be enlarged, extended or structurally altered, provided the enlargement or alteration complies with the setback, height, lot coverage, and other site development requirements of the zone in which the structure is located.
  - (2) Structures not conforming to the setback may be expanded by up to twenty (20) percent of the gross floor area and to the building line, provided the enlargements do not further violate setback requirements.
- (c) Damage or Destruction. A nonconforming structure experiencing substantial destruction shall be considered discontinued and have its nonconforming status terminated. Any subsequent repair or reconstruction of the structure shall comply with the requirements of the zone, with the following exception:-
  - (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.
- (d) Partial Damage or Destruction. A nonconforming structure suffering from less than substantial destruction may have its nonconforming status suspended for a time period determined by the Director and be considered conforming for the purpose of improvements and repair, if:
  - (1) The structure is damaged by fire or other casualty not intentionally caused by the owner or tenant and a complete building permit application is filed within one (1) year of such fire or other casualty; or
  - (2) A building permit application is submitted prior to partial destruction. The building permit must remain active and if it is allowed to expire, the legal nonconforming status shall terminate and subsequent repairs and improvements shall comply with the requirements of the zone.
  - (3) In no case shall the nonconformity be allowed to expand.
- (e) Repair and Maintenance. Normal repair and maintenance work on a nonconforming structure may be performed that maintains continued safe and sanitary conditions.

**20.54.110 UNLAWFUL USES, ~~AND STRUCTURES,~~ AND LOTS.**

- (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, ~~and/or lot~~.
- (b) Any use, structure or lot which did not comply with the zoning code requirements at the time it was established or constructed and does not comply with the current zoning code is illegal and shall be brought into compliance with the provisions of BMC Title [20](#), Division III.

# Proposed Zoning Code Amendments

## Shoreline Master Program (Ordinance 5229)

The sections that have proposed Zoning Code Amendments are **highlighted below** and are included in this packet (as shown in [legislative markups](#)). The other portions of the code that have no proposed changes have been removed from this review. The complete Shoreline Master Program (SMP) can be seen: <http://www.ci.bremerton.wa.us/315/Shoreline-Master-Program> Please note that **Attachment III** contains professional evaluation of the adopted Shoreline Master Program and the recommended changes.

### **CHAPTER 1 - INTRODUCTION, AUTHORITY AND PURPOSE:**

### **CHAPTER 2 – INTENT & GOALS**

### **CHAPTER 3 - DEFINITIONS:**

### **CHAPTER 4 – SHORELINE MAPS AND DESIGNATIONS**

#### 4.010 INTENT:

#### **4.020 MAPS:**

#### 4.040 SHORELINES OF STATEWIDE SIGNIFICANCE:

### **CHAPTER 5 - PERMIT ADMINISTRATION**

#### **5.010 APPLICABILITY:**

#### 5.020 PERMIT APPLICATION TYPES

#### 5.030 NOTICING REQUIREMENTS

#### 5.040 CRITERIA OF APPROVAL

#### 5.050 APPEALS

#### 5.060 TIME PERIODS

#### 5.070 VIOLATIONS AND PENALTIES

#### 5.080 SHORELINE MORATORIUM

#### 5.090 RESTORATION PROJECT RELOCATION OF ORDINARY HIGH WATER MARK

### **CHAPTER 6 - NONCONFORMING PROVISIONS**

### **CHAPTER 7 - GENERAL STANDARDS AND REGULATIONS**

#### **7.010 BUFFERS AND SETBACKS**

#### 7.020 VEGETATION CONSERVATION

#### 7.030 MITIGATION SEQUENCING FOR NO NET LOSS OF ECOLOGICAL FUNCTIONS

#### 7.040 PUBLIC ACCESS

#### 7.050 WATER QUALITY, STORMWATER, AND NON-POINT POLLUTION

#### 7.060 ARCHAEOLOGICALLY SENSITIVE AREAS

#### 7.070 LIGHTING

#### 7.080 PARKING

#### **7.090 USE MATRIX AND HEIGHT TABLE**

#### FIGURE 7.090 (B) HEIGHT RESTRICTIONS

### **CHAPTER 8 – SHORELINE USE REGULATIONS**

### **CHAPTER 9 – SHORELINE MODIFICATIONS**

**BREMERTON**  
**SHORELINE MASTER**  
**PROGRAM**

Approved Dec. 4, 2013 by Ordinance  
Number 5229

Approved Amendments on \_\_\_\_\_, 2016  
by Ordinance Number \_\_\_\_\_

## Chapter 4 – Shoreline Maps and Designations

4.010 – Intent

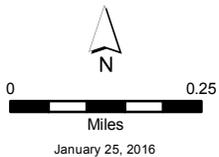
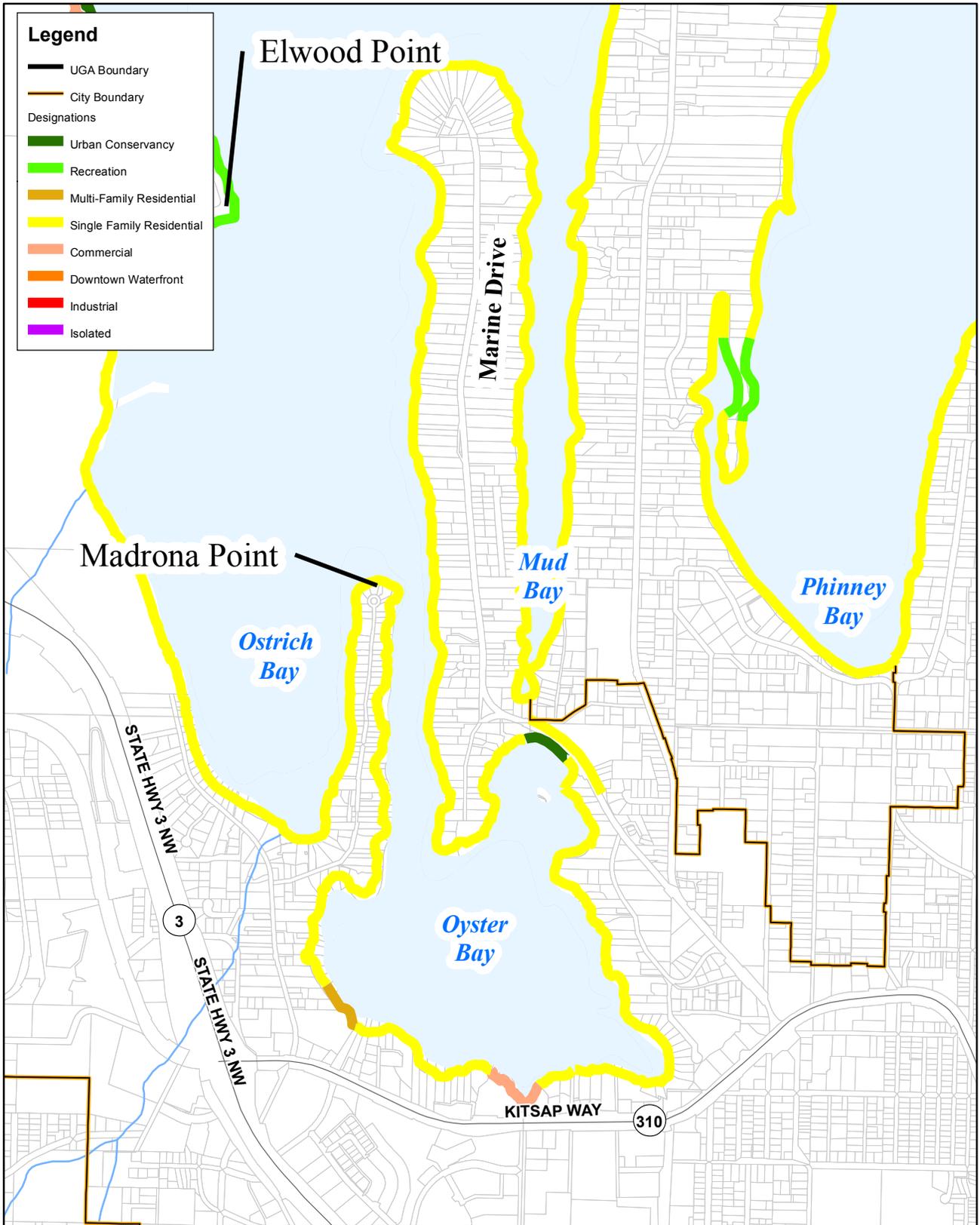
4.020 – Maps

4.030 – Designations

4.040 – Shorelines of Statewide Significance

### **4.020 Maps:**

The following maps are the official maps of the Shoreline Master Program. (The maps have been revised for consistency with the Planning Commission recommended Comprehensive Plan Land Use map updates. Specific map changes are proposed only to Maps B and C to include Multifamily Designations in specific areas that are already developed with multifamily structures.)

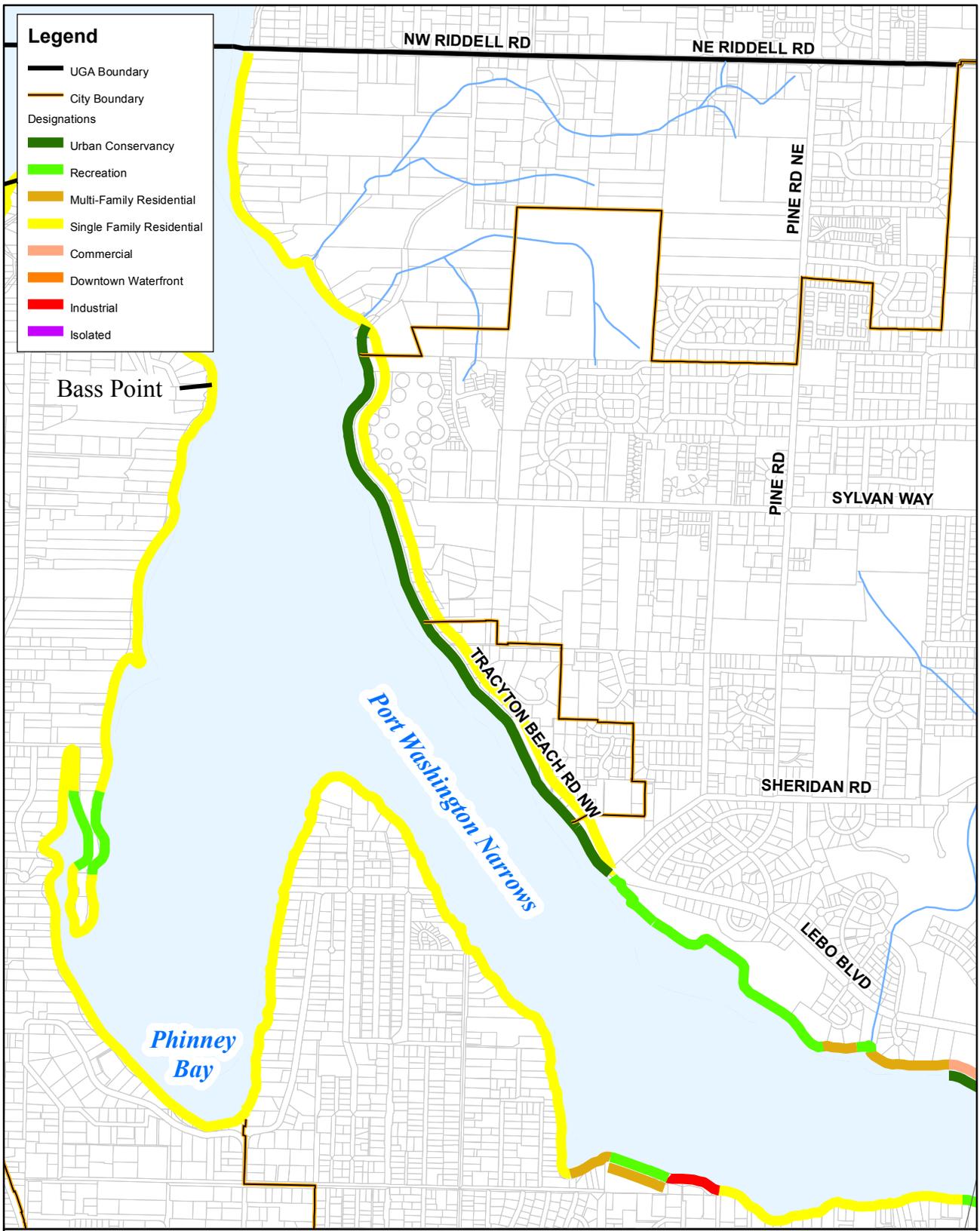


Data Sources: Kitsap County, City of Bremerton, Parametrix, Washington Department of Ecology, Washington Department of Natural Resources, Washington Department of Fish and Wildlife (WDFW) National Wetlands Inventory (NWI)

Note: Shoreline jurisdiction boundaries depicted on this map are approximate and are intended for planning purposes only. Additional site-specific evaluation may be needed to confirm/verify information shown on this map.

**Bremerton Shoreline Master Program**

**Map B**



- Legend**
- UGA Boundary
  - City Boundary
- Designations
- Urban Conservancy
  - Recreation
  - Multi-Family Residential
  - Single Family Residential
  - Commercial
  - Downtown Waterfront
  - Industrial
  - Isolated

Bass Point

Phinney Bay

Port Washington Narrows

NW RIDDELL RD

NE RIDDELL RD

PINE RD NE

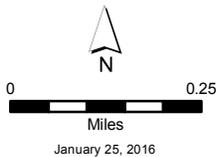
PINE RD

SYLVAN WAY

TRACYTON BEACH RD NW

SHERIDAN RD

LEBO BLVD



Data Sources: Kitsap County, City of Bremerton, Parametrix, Washington Department of Ecology, Washington Department of Natural Resources, Washington Department of Fish and Wildlife (WDFW) National Wetlands Inventory (NWI)

Note: Shoreline jurisdiction boundaries depicted on this map are approximate and are intended for planning purposes only. Additional site-specific evaluation may be needed to confirm/verify information shown on this map.

**Bremerton Shoreline Master Program**

**Map C**

## Chapter 5 - Permit Administration

- 5.010 – Applicability
- 5.020 – Permit Application Types
- 5.030 – Noticing Requirements
- 5.040 – Criteria of Approval
- 5.050 – Appeals
- 5.060 – Time Periods
- 5.070– Violations and Penalties
- 5.080 – Shoreline Moratorium
- 5.090 – Restoration Project Relocation of OHWM

### 5.010 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:**
  - (1) For all development within shoreline jurisdiction, the responsible official shall not issue a development or construction permit or an exemption 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.
  - (2) Critical Areas in the shoreline jurisdiction are regulated by the Critical Areas Regulations, (Ordinance 4965 2008), codified under BMC 20.14 which is herein incorporated into this SMP however, the following sections of the Critical Area Ordinance do not apply:
    - (i) BMC 20.14.145(d) Exemptions for Forest Practices;
    - (ii) BMC 20.14.145(f) Exemptions for activities within improved Right-of-Way; and
    - (iii) BMC 20.14.155 Reasonable Use Exception.;
    - ~~(iv) BMC 20.14.200 Definition of “Wetlands”;~~
    - ~~(v) BMC 20.14.330(f)(1) Standard Wetland Buffer Widths;~~
    - ~~(vi) BMC 20.14.340(f) & (g) Mitigation Replacement and enhancement Ratios;~~
    - ~~(vii) BMC 20.14.730(d) Table 1: Water Type Buffer Standard.~~

~~(viii) BMC 20.14.730(d)(5) Buffer Reduction;~~

~~(ix) BMC 20.14.730 (d)(8) Habitat Conservation Area Buffers;~~

- (d) **Constitutional limitations:** Regulation of private property to implement any Program goals, such as public access and protection of ecological functions, must be consistent with all relevant constitutional and other legal limitations. These include, but are not limited to, property rights guaranteed by the United States Constitution and the Washington State Constitution, applicable federal and state case law, and state statutes, such as RCW 34.05.328 and 43.21C.060.
- (e) **Agency coordination:** The city will coordinate on issues relating to ecological conditions, functions and processes and on wetland and ordinary high water delineations with the Department of Ecology, the Department of Natural Resources, the Department of Fish and Wildlife, Suquamish Tribe, as well as other agencies with permit authority over a project to the extent that agencies are timely in their response and coordination does not interfere with meeting timelines for permit review.
- (f) **Compliance with other regulatory requirements:** Compliance with the provisions of this chapter does not constitute compliance with other federal, state, and local regulations and permit requirements that may be required (for example, , Hydraulic Permit Act (HPA) permits, U.S. Army Corps of Engineers Section 404 permits, Washington State Department of Ecology Water Quality Certification (Section 401) National Pollution Discharge Elimination System permits). The applicant is responsible for complying with these requirements, apart from the process established in this chapter. (Ord. 1164 § 4, 2004).
- (g) **Permit Revisions:** An application for a permit revision is required whenever the applicant proposes substantive changes to the design, terms, or conditions of a project that has an approved permit. The City may approve a revision, rather than requiring a separate shoreline permit provided the revision is within the scope and intent of the original permit, and is consistent with all applicable standards within the SMP and SMA. Should the revision be found to be within the scope and intent of the original permit the City may approve the revision and submit it to the Department of Ecology. Pursuant to WAC 173-27-100 “Within the scope and intent of the original permit” means all of the following:
- (1) No additional overwater construction is involved except that pier, dock or float construction may be increased by five hundred square feet or ten percent (10%) from the provisions of the original permit, whichever is less;
  - (2) Ground area coverage and height may be increased a maximum of ten percent (10%) from the provisions of the original permit;
  - (3) The revised permit does not authorize development to exceed height, lot coverage, setback, or any other requirements of the SMP except as authorized under a variance granted as the original permit or a part thereof;
  - (4) Additional or revised landscaping is consistent with any conditions attached to the original permit and with the SMP;
  - (5) The use authorized pursuant to the original permit is not changed; and

(6) No adverse environmental impacts will be caused by the project revision.

(h) **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 City issues exemptions for all work that does not meet the threshold for a shoreline permit to be required. 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; or

(ii) In fresh waters the fair market value of the dock does not exceed ten thousand dollars, but if subsequent construction having a fair market value exceeding two thousand five hundred dollars 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 stream reach, 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 in-stream 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, re-creation, 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: Elimination of human-made fish passage barriers, including culvert repair and replacement; or restoration of an eroded or unstable stream bank 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 Placement of woody debris or other in-stream 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. 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.

(C)(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.

## Chapter 7 - GENERAL STANDARDS AND REGULATIONS

- 7.010 – Buffers and Setbacks
- 7.20 – Vegetation Conservation
- 7.030 – Mitigation Sequencing for No Net Loss of Habitat Function
- 7.040 – Public Access
- 7.050 – Water Quality, Stormwater, and Non-Point Pollution
- 7.060 – Archaeologically Sensitive Areas
- 7.070 – Lighting Requirements
- 7.080 – Parking Requirements
- 7.090 – Use Matrix and Height Table

### 7.010 Buffers and Setbacks:

Upland areas adjacent to the shoreline perform essential functions necessary to sustain habitat and ecological processes. It is for this reason that development must be set back from the water's edge and that natural buffers must be created and or preserved. The City currently regulates such areas through the Critical Areas Ordinance (Ordinance 4965 codified in BMC 20.14), however in areas regulated by this document within the shoreline jurisdiction, the following policies and regulations will supersede those within the Critical Area Regulations:

#### Policies:

- (a) The critical areas that are within the shoreline jurisdiction are to be protected and managed in such a manner that the result of any use, activity, or development is no net loss of shoreline ecological functions.
- (b) The City should protect critical areas and their existing shoreline ecological functions so they continue to contribute to existing ecosystem wide processes.
- (c) The City should promote uses and values that are compatible with other objectives of this section, such as public access and native vegetation management, provided there is no significant adverse impact to shoreline ecological functions.

#### Regulations:

- (a) **Critical Area Ordinance Applicability:** Critical Areas that are within the shoreline jurisdiction are regulated by the Critical Areas Regulations, (Ordinance 4965 2008), codified under BMC 20.14 which is herein incorporated into this SMP however, the following sections of the Critical Area Ordinance do not apply:
  - BMC 20.14.145(d) Exemptions for Forest Practices;
  - BMC 20.14.145(f) Exemptions for activities within improved Right-of-Way;
  - BMC 20.14.155 Reasonable Use Exception;
  - ~~BMC 20.14.200 Definition of "Wetlands";~~
  - ~~BMC 20.14.330(f)(1) Standard Wetland Buffer Widths;~~
  - ~~BMC 20.14.340(f) & (g) Mitigation Replacement and enhancement Ratios;~~
  - ~~BMC 20.14.730(d) Table 1: Water Type Buffer Standard.~~

- ~~BMC 20.14.730(d)(5) Buffer Reduction;~~
- ~~BMC 20.14.730 (d)(8) Habitat Conservation Area Buffers;~~

~~(b) **Wetland Buffers:** For wetlands within the shoreline jurisdiction the following provisions supersede those established within the Critical Areas Ordinance specifically relating to buffers as follows:~~

Wetland Category	Standard Buffer Width	Moderate Wildlife Function (21-25 Points)	Moderate-High Wildlife Function (26-29 points)	High Function (30-36 wildlife points)
Category I: Based on Score	75 <sup>2</sup>	105 <sup>2</sup>	165 <sup>2</sup>	225 <sup>2</sup>
Category I: Coastal Lagoons	150 <sup>2</sup>	N/A	165 <sup>2</sup>	225 <sup>2</sup>
Category I: Forested	75 <sup>2</sup>	105 <sup>2</sup>	165 <sup>2</sup>	225 <sup>2</sup>
Category I: Estuarine	150 <sup>2</sup>	N/A	N/A	N/A
Category II: All	75 <sup>2</sup>	105 <sup>2</sup>	165 <sup>2</sup>	225 <sup>2</sup>
Category III: All	60 <sup>2</sup>	105 <sup>2</sup>	165 <sup>2</sup>	N/A
Category IV: All	40 <sup>2</sup>	N/A	N/A	N/A

~~(c) **Wetland Mitigation:** For wetlands within the Shoreline Jurisdiction the following mitigation standards shall supersede those established in the Critical Area Ordinance (BMC 20.14.340(f & g)):~~

Wetland Category	Wetland Mitigation Type and Replacement Ratio*			
	Creation	Re-establishment	Rehabilitation	Enhancement Only
Category I	6:1	6:1	12:1	Not allowed
Category II	3:1	3:1	6:1	12:1
Category III	2:1	2:1	4:1	8:1
Category IV	1.5:1	1.5:1	3:1	6:1

~~(1) **Wetland Mitigation Ratios:** These apply to creation or restoration that is in kind, is onsite, is the same category, is timed prior to or concurrent with alteration, and has a high probability of success. These ratios do not apply to remedial actions resulting from unauthorized alterations; greater ratios will apply in those cases. These ratios do not apply to the use or credits from state certified wetland mitigation banks. When credits from a certified bank are used, replacement ratios should be consistent with the requirements of the bank's certification.~~

~~(2) Within the shoreline jurisdiction, compensation for wetland buffer impacts shall occur at a minimum 1:1 ratio. Compensatory mitigation for buffer impacts shall include enhancement of degraded buffers by planting native species, removing structures and impervious surfaces within buffers.~~

~~(d)(b)~~ **Shoreline Buffers and Setbacks:**

(1) The following table defines required buffers and setbacks for Type S waters. Buffers and setbacks for all other non-shoreline waters (Type F, Type Np, and Type Ns) are defined in BMC 20.14.730(d), Table 1, supersedes the buffers and setbacks established for Fish and Wildlife Habitat Conservation Areas in (BMC 20.14.730(d)) as follows:

<b>DESIGNATION</b>	<b>Minimum Building Setback</b>	<b>Buffer Width Standard</b>
<u>URBAN CONSERVANCY</u>	15 feet beyond buffer	175 feet
<u>SINGLE FAMILY &amp; MULTI FAMILY RESIDENTIAL</u>		
Lot depth less than 125'	5 feet beyond buffer	20% of lot depth
Lot depth 125' to 199' <sup>2</sup>	10 feet beyond buffer	20% of lot depth
Lot depth greater than 200'	15 feet beyond buffer	30% of lot depth (Maximum of 100')
<u>RECREATIONAL</u>	15 feet beyond buffer	100 feet
<u>COMMERCIAL / INDUSTRIAL / DOWNTOWN WATERFRONT</u>	15 feet beyond buffer	50 feet
<u>ISOLATED</u>	None	None
1. Please note: For all designations, setbacks and buffers listed above the following shall apply: <ol style="list-style-type: none"> <li>a. Where lot depth is less than 150 feet on Commercial or Recreational lots, the buffers listed above may be reduced to 20% of the lot depth.</li> <li>b. In no case shall a buffer be less than 10' or greater than 100' in the Shoreline Residential Designation.</li> <li>c. Buffers are measured from the Ordinary High Water Mark.</li> </ol>		

(2) **Buffers and Associated Building Setback Areas:** The distance of the buffer shall be measured from the Ordinary High Water Mark (OHWM). Buffers shall remain undisturbed natural beach or vegetation areas except where the buffer can be enhanced to improve its functional attributes, as approved by the Department. Buffers shall be maintained along the perimeter of Fish and Wildlife Habitat Conservation Areas, as outlined in the table above. Refuse, garbage, or debris shall not be placed in the buffers or on the beach.

- (3) **Determining Lot Depth:** Areas inundated with water are not included in the calculation for lot depth, therefore the measurement may be taken from the OHWM. For lots with varying lot depth, the average depth may be used.
- (4) **Habitat Management Plans:** The provisions of the Critical Area Ordinance (BMC 20.14.740) relating to Habitat Management Plans may reduce the width of a shoreline buffer to no less than ten (10) feet provided enhancement features are installed that will provide a greater habitat function than the prescribed buffer would.
- (5) **Setback and Buffer Averaging:** The Director may grant modifications to the Fish and Wildlife Habitat Conservation Area buffer and setbacks required provided:
- (i) Sixty (60%) percent or more of like structures along the shoreline within the same numbered block as the subject property are setback less than the required buffer/setback required by the SMP. The average of the like structures may be used as a modified buffer for the proposal; and
  - (ii) In addition to the buffer, a minimum of a 5' setback shall be required for the structure; and
  - (iii) No new structure may have a buffer of less than ten (10') feet.
- (6) **Fences:** Fences are allowed to be erected in the side yard abutting the fish and wildlife conservation area buffer, but are prohibited within the buffer. Fences may also be erected upland of the buffer including within the shoreline setback area. General development standards for fences are located in BMC 20.44.020. Guardrails may be erected in association with pedestrian access areas provided they do not function as a fence and comply with the International Building Code.

~~(e) **Stormwater:** The provisions of the Critical Area Ordinance (BMC 20.14.730(d)(6)) relating to Stormwater Management shall apply within shoreline jurisdiction only to buffers of 100 feet or greater width.~~

- (d) **Exemptions:** The following development activities are not subject to fish and wildlife habitat area buffers and setbacks, provided they are constructed and maintained in a manner that minimizes adverse impacts on shoreline ecological functions, and further provided that they comply with all the applicable regulations in BMC Title 20 and this Program:
- (1) Those portions of an approved water-oriented development that require a location waterward of the ordinary high water mark, and/or within their associated buffers and setbacks;
  - (2) Development activities on lots that are physically and functionally separated from shoreline by an improved paved public or private road or railroad or similar facility and/or by one or more existing developed lots under separate ownership such that the ecological functions provided by buffers do not occur. This provision shall not apply to such a facility within a development proposal or contiguous ownership that can be feasibly relocated to accommodate buffers.
  - (3) Underground utilities;

- (4) Modifications to existing development that are necessary to comply with environmental requirements of any agency when otherwise consistent with this Program, provided that the City determines that:
  - (i) The facility cannot meet the dimensional standard and accomplish the purpose for which it is intended; and
  - (ii) The facility is located, designed, and constructed to meet specified dimensional standards to the maximum extent feasible; and
  - (iii) The modification is in conformance with the provisions for non-conforming development and uses.
- (5) Roads, railways, and other essential public facilities that must cross shorelines and are necessary to access approved water-dependent development uses are subject to development standards in Chapter 8, section 090.
- (6) Stairs, ADA ramps, and walkways not greater than 5 feet in width or 18 inches in height above grade, not including railings.
- (7) Shared moorages shall not be subject to side yard setbacks when located on or adjacent to a property line shared in common by the project proponents and where appropriate easements or other legal instruments have been executed providing for ingress and egress to the facility

#### **7.090 Use Matrix and Height Table:**

- (a) Use Matrix: The table determines which shoreline modifications and shoreline uses are allowed or prohibited in each Shoreline Designation.
  - (1) Except for the land uses prohibited in this table, land uses allowed in the underlying zoning are allowed in the Master Program, subject to the preference for water-oriented uses and subject to specific criteria for uses included in these regulations. This chart is not exhaustive of all uses addressed in the zoning code. When referring to unlisted uses, the code is referring neither to uses listed here nor in the zoning code. If a use is prohibited in the underlying zoning district, it is also prohibited within the shoreline.
  - (2) Aquatic Uses are determined by the adjacent Designation and are limited to water-dependent uses and public access.
  - (3) Land uses in the underlying zoning that require a Conditional Use Permit, require a Shoreline Conditional Use Permit.
  - (4) Land uses are defined in BMC 20.42 the definitions section of the zoning code. Shoreline activities are defined in the definitions section of this code.
  - (5) A use located within the “Isolated” designation shall not be governed by the performance standards within SMP Chapter 7, General Standards and Regulations; Chapter 8, Shoreline Use Regulations, or Chapter 9 Shoreline Modifications, however the Director may determine the proposed development or use is clearly contrary to the intent of this program, and relevant elements of this program may be applied. Development and land use within this designation shall be governed by all other regulations of BMC Title 20 Land Use. The mandatory permit and procedural requirements of this program contained in Chapter 5, Permit Administration, shall apply to said development or uses.

<b>KEY:</b> X= Prohibited P= Permitted CU= Conditional Use	Urban Conservancy	Single Family Residential	Multi-Family Residential	Recreation	Commercial	Downtown Waterfront	Industrial
Unlisted Uses:	CU	CU	CU	CU	CU	CU	CU
<b>UPLAND USES</b>							
Boat Sales, Storage and Repair	X	X	X	CU	P	P	P
Commercial uses such as but not limited to: general retail, general office, clinics, restaurants, drinking places, personal services, athletic fields, restaurants, community facilities, and entertainment uses. (See Zoning Code for specific allowed uses by zone)	X	X	X	X	P	P	P
Community, Cultural, Educational Facilities	CU	P	P	P	P	P	X
Golf Courses	X	CU	CU	X	X	X	X
Hotels and Lodging	X	X	X	X	P	P	X
Industrial	X	X	X	X	X	X	P
Worship and Religious Facilities	X	CU	P	CU	P	P	X
<b>PARKING &amp; UTILITIES</b>							
Parking Serving Primary Use Within the Shoreline Jurisdiction	P	P	P	P	P	P	P
Parking Not Serving Primary Use Within the Shoreline Jurisdiction	X	X	X	X	CU	CU	CU
Transportation facilities that serve uses within the shoreline	P	P	P	P	P	P	P
Utilities that serve uses within the shoreline	P	P	P	P	P	P	P
<b>RESIDENTIAL</b>							
Adult Family Homes, Daycare, & Bed and Breakfasts	CU	P	P	X	P	P	X
Commercial/Residential mixed	X	X	X	X	P	P	X
Multi-Family Residential	X	X	P	X	P	P	X
Single Family Residential	P	P	P	<del>XP</del>	<del>XP</del>	P	X
<b>SHORELINE MODIFICATIONS (All uses must meet applicable code criteria see Ch. 9)</b>							
Boat Launch	CU	CU	CU	CU	CU	CU	CU
Aquaculture (including commercial, non-commercial, and geoduck)	CU	X	X	CU	CU	CU	CU
Ecological Restoration / Enhancement	P	P	P	P	P	P	P
Docks, Piers and Other In-Water Structures	P	P	P	P	P	P	P
Dredging	P	P	P	P	P	P	P

<b>KEY:</b> X= Prohibited P= Permitted CU= Conditional Use	Urban Conservancy	Single Family Residential	Multi-Family Residential	Recreation	Commercial	Downtown Waterfront	Industrial
	Flood Hazard Reduction	P	P	P	P	P	P
	Mooring Buoys	P	P	P	P	P	P
	Marinas	CU	CU	CU	CU	CU	CU
	Stabilization - New and Replacement	P	P	P	P	P	P
Stormwater Management Facilities	P	P	P	P	P	P	
<b>RECREATION AND PUBLIC ACCESS</b>							
Recreation, Non-Water-Oriented	CU	CU	CU	CU	CU	CU	CU
Recreation, Water-Oriented	P	P	P	P	P	P	P
Trails, public pedestrian and bicycle not including overwater trails	P	P	P	P	P	P	P
<b>OUTRIGHTLY PROHIBITED USES</b>							
Adult Entertainment	X	X	X	X	X	X	X
Agriculture	X	X	X	X	X	X	X
Automobile Sales Service & Repair	X	X	X	X	X	X	X

**Figure 7.090 (b) Height Restrictions:**

Table 7.090(b)	
ENVIRONMENT DESIGNATION	HEIGHT
Commercial	35 feet
Downtown Waterfront	175 feet
Industrial	35 feet
Multi-Family Residential	40 feet
Over-Water Structures (All Designations)	15 feet
Recreation	35 feet
Single Family Residential	30 -35' feet
Urban Conservancy	25 feet
Table Notes: The height limit is restricted to that portion of the building physically located within the shoreline jurisdiction.	

This table establishes the allowable height in each designation based on the type of use. All the applicable City standards still apply. In the event the provisions of this Program conflict with provisions of other regulations, the more restrictive shall prevail. Height measurement is defined in Chapter 3.

- (a) Heights in the commercial & industrial districts may be increased to the zoning district height limit through a Conditional Use Permit provided:

- (1) The increase does not substantially block views from upland residential properties;
  - (2) Greater height is demonstrated to be needed for an essential element of an allowed use.
  - (3) The project may be required to include compensating elements that substantially enhance the visual and physical public access to the shoreline.
  - (4) It is demonstrated that No Net Loss of habitat function will be achieved.
- (b) Single Family Residential heights may be increased to 35' with the employment of a pitched roof when:
- (1) The pitch of the roof is not less than 6:12
  - (2) The pitched roof is oriented perpendicular to the shoreline. Minor gables or other roof features parallel to the shoreline may be permitted on a case by case basis provided such features do not extend past the pitched roof where views are intended to be preserved.
  - (3) The pitched roof covers the entire structure.



## MEMORANDUM

**DATE:** February 2, 2016

**TO:** Allison Satter, Senior Planner, City of Bremerton

**FROM:** Lisa Grueter, Manager, BERK Consulting

**RE:** State Environmental Policy Act Rules and Proposed Amendments

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### Purpose

The City of Bremerton is updating its Growth Management Act Comprehensive Plan and development regulations by June 30, 2016. Part of the City's development regulations address proposals subject to the State Environmental Policy Act (SEPA).

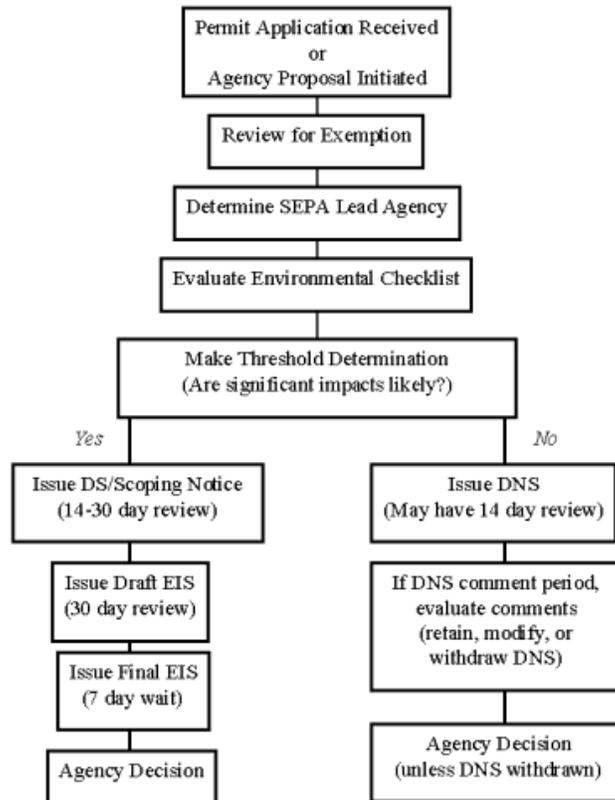
SEPA provides a review process to consider the potential physical impacts to the natural and built environment as a result of projects and future development allowed by plans and policies (non-project actions). The process allows the City to identify potential impacts and mitigation measures and to solicit agency and public review and comment on the proposals before actions are taken (e.g. approval of permits or ordinances).

Most proposals are exempt or only need Determination of Non-Significance, which involves a shorter review process and comment period than an environmental impact statement (EIS). Some proposals require an EIS to explore alternatives and potential mitigation measures.

The typical review process is illustrated in Exhibit 1. SEPA Review Process. Not shown in the chart is an appeal process because a local appeal process is voluntary.

The City of Bremerton's environmental review procedures are consistent with the requirements of RCW 43.21C (SEPA) and implementing rules (WAC 197-11). However, there are some unclear procedures for the review and potential appeal of environmental determinations. This is particularly the case for legislative proposals (plans, codes, zoning of newly annexed land, area-wide rezones) that are considered by the Planning Commission and City Council. On the other hand, project permits (e.g. building permits, site development permits, subdivisions, conditional uses, shoreline substantial development permits, site-specific rezones authorized by the Comprehensive Plan, etc.) are handled by City staff and the Hearing Examiner. Currently the City regulations would require that a SEPA appeal be heard by the Hearing Examiner. However this is awkward for legislative proposals that are ultimately approved by the City Council after Planning Commission recommendations. Clarifying the SEPA review and appeal requirements would be beneficial for future legislative approvals.

**Exhibit 1. SEPA Review Process**



Source: Ecology Handbook, 2003

This memo provides the following sections:

- Administrative Appeal Requirements and Options
- Recommended Amendments

**Administrative Appeal Requirements and Options**

Local governments such as the City of Bremerton offer administrative appeals to allow other agencies, property owners, and interested residents to appeal determinations regarding environmental review under SEPA. Appeals may be about the conditions applied to a project under SEPA, denial of a project under SEPA, the procedures the City followed in issuing SEPA determinations, and the adequacy of final SEPA documents. The City is not required to offer administrative appeals, and may offer some administrative appeal opportunities and not others. Judicial appeal is an avenue in any case. The bullet list below summarizes state allowances and requirements for offering SEPA appeals. More detail is found in the Attachment.

**Summary of State Allowances and Requirements**

- Lead agencies may offer an administrative (internal) appeal of SEPA procedural or substantive actions. However, the appeal procedures need to be specified by ordinance, resolution, or rules. Most agencies do so in their SEPA rules. Lead agencies may also choose to not offer administrative appeals, but must specify that in rules.
- Appeal procedures may allow some kinds of appeals but not all types.

- Per the SEPA Handbook<sup>1</sup> final threshold determinations and substantive decisions (conditions, denial on the basis of SEPA) are appealable locally: *The only decisions that may be appealed at the agency level are a final threshold determination or EIS (including a final supplemental EIS), and SEPA substantive decisions. Other decisions, for example the applicability of categorical exemptions, may only be appealed to the courts.*
- SEPA appeals must be consolidated with a hearing or appeal on the underlying action (e.g. permit application), except for:
  - An appeal of a **determination of significance**;
  - **An agency proposal** – An appeal of a procedural determination made by an agency when the agency is a project proponent, or is funding a project, and chooses to conduct its review under SEPA, including any appeals of its procedural determinations, prior to submitting an application for a project permit. Subsequent appeals of substantive determinations by an agency with jurisdiction over the proposed project shall be allowed under the SEPA appeal procedures of the agency with jurisdiction.
  - An appeal of a procedural determination made by an agency on a **nonproject action**; and
  - Appeal of a **substantive decision** to local legislative bodies: An appeal to the local legislative authority under RCW 43.21C.060 [Conditioning or denial of governmental action] or other applicable state statutes.
- The SEPA handbook includes the following guidance on who should hear the appeal of SEPA prior to the decision on the action – the ultimate decision maker: *Procedural and substantive SEPA appeals in most instances must be combined with a hearing or appeal on the underlying governmental action (such as the approval or denial of a permit). If a SEPA appeal is held prior to the agency making a decision on the underlying action, it must be heard at a proceeding where the person(s) deciding the appeal will also be considering what action to take on the underlying action.*
- A decision maker in SEPA is defined as: "Decision maker" means the agency official or officials who make the agency's decision on a proposal. The decision maker and responsible official are not necessarily synonymous, depending on the agency and its SEPA procedures (WAC 197-11-906 and 197-11-910). (WAC 197-11-730)

### **Options**

Many agencies allow administrative appeals for substantive determinations (conditions, denial) or procedures (determination of significance, determination of nonsignificance, and Final EIS).

Some send all appeals to a Hearing Examiner where a record is created, and others distinguish appeals of SEPA associated with legislative items as going to the City Council or Board of County Commissioners (e.g. Clark County, City of Covington). Some allow administrative appeals of SEPA determinations and procedures only for project permits and not for legislative items (e.g. City of Kenmore). Some allow no administrative appeals, and instead appellants may use the judicial process (e.g. City of Sumner).

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<sup>1</sup> <http://www.ecy.wa.gov/programs/sea/sepa/handbk/hbch11.html#11.1>

### **Recommended Amendments**

The proposed amendments, as seen in Attachment I of the Planning Commission's February packet, address editorial items such as correcting references to State laws and rules, and clarifying the appeal process for project permits and legislative proposals. Two appeal options are under consideration: Specify administrative SEPA appeals for legislative items are reviewed by the City Council, and allow no administrative SEPA appeals for legislative items (the Clark County versus Kenmore examples). In any case project permit SEPA appeals would continue to go to the Hearing Examiner.

**Attachment A:** WAC 197-11-680 Appeals.

## Attachment A: WAC 197-11-680 Appeals.

(1) **Introduction.** Appeals provisions in SEPA are found in RCW [43.21C.060](#), [43.21C.075](#) and [43.21C.080](#). These rules attempt to construe and interpret the statutory provisions. In the event a court determines that these rules are inconsistent with statutory provisions, or with the framework and policy of SEPA, the statute will control. Persons considering either administrative or judicial appeal of any decision which involves SEPA at all are advised to read the statutory sections cited above.

(2) **Appeal to local legislative body.** RCW [43.21C.060](#) allows an appeal to a local legislative body of any decision by a local nonelected official conditioning or denying a proposal under authority of SEPA. Agencies may establish procedures for such an appeal, or may eliminate such appeals altogether, by rule, ordinance or resolution. Such appeals are subject to the restrictions in RCW [36.70B.050](#) and [36.70B.060](#) that local governments provide no more than one open record hearing and one closed record appeal for permit decisions.

(3) Agency administrative appeal procedures.

(a) Agencies may provide for an administrative appeal of determinations relating to SEPA in their agency SEPA procedures. If so, the procedures must comply with the following:

(i) The agency must specify by rule, ordinance, or resolution that the appeals procedure is available.

(ii) Appeal of the intermediate steps under SEPA (e.g., lead agency determination, scoping, draft EIS adequacy) shall not be allowed.

(iii) Appeals on SEPA procedures shall be limited to review of a final threshold determination and final EIS. These appeals may occur prior to an agency's final decision on a proposed action.

(iv) An agency shall provide for only one administrative appeal of a threshold determination or of the adequacy of an EIS; successive administrative appeals on these issues within the same agency are not allowed. This limitation does not apply to administrative appeals before another agency.

(v) Except as provided in (a)(vi) of this subsection, the appeal shall consolidate any allowed appeals of procedural and substantive determinations under SEPA with a hearing or appeal on the underlying governmental action in a single simultaneous hearing before one hearing officer or body. The hearing or appeal shall be one at which the hearing officer or body will consider either the agency's decision or a recommendation on the proposed underlying governmental action. For example, an appeal of the adequacy of an EIS must be consolidated with a hearing or appeal on the agency's decision or recommendation on the proposed action, if both proceedings are allowed in agency procedures. If an agency does not provide for a hearing or appeal on the underlying governmental action (either a hearing on the agency's recommendation or an agency appeal hearing after the decision is made), the agency may not hold a SEPA administrative appeal, except as allowed under (a)(vi) of this subsection.

(vi) The following appeals of SEPA procedural or substantive determinations need not be consolidated with a hearing or appeal on the underlying governmental action:

(A) An appeal of a determination of significance;

(B) An appeal of a procedural determination made by an agency when the agency is a project proponent, or is funding a project, and chooses to conduct its review under SEPA, including any appeals of its procedural determinations, prior to submitting an application for a project permit. Subsequent appeals of substantive

determinations by an agency with jurisdiction over the proposed project shall be allowed under the SEPA appeal procedures of the agency with jurisdiction;

(C) An appeal of a procedural determination made by an agency on a nonproject action; and

(D) An appeal to the local legislative authority under RCW [43.21C.060](#) or other applicable state statutes.

(vii) If a county/city to which RCW [36.70B.110](#) applies provides for an administrative appeal, any such appeal of a procedural or substantive determination under SEPA issued at the same time as the decision on a project action shall be filed within fourteen days after a notice of decision under RCW [36.70B.130](#) or after other notice that the decision has been made and is appealable. In order to allow public comment on a DNS prior to requiring an administrative appeal to be filed, this appeal period shall be extended for an additional seven days if the appeal is of a DNS for which public comment is required under this chapter or under county/city rules adopted under SEPA. For threshold determinations issued prior to a decision on a project action, any administrative appeal allowed by a county/city shall be filed within fourteen days after notice that the determination has been made and is appealable. Nothing in this subsection alters the requirements of (a)(v) and (vi) of this subsection.

(viii) Agencies shall provide that procedural determinations made by the responsible official shall be entitled to substantial weight.

(b) Agencies providing for administrative appeals shall provide for a record as required by RCW [43.21C.075](#) (3)(c).

(c) If an agency provides an administrative appeal procedure, that procedure must be used before anyone may initiate judicial review of any SEPA issue that could have been reviewed under the agency procedures.

(4) Judicial appeals.

(a) SEPA authorizes judicial appeals of both procedural and substantive compliance with SEPA.

(b) When SEPA applies to a decision, any judicial appeal of that decision potentially involves both those issues pertaining to SEPA (SEPA issues) and those which do not (non-SEPA issues). RCW [43.21C.075](#) establishes time limits for raising SEPA issues, but says that existing statutes of limitations control the appeal of non-SEPA issues. The statute contemplates a single lawsuit.

(c) If there is a time limit established by statute or ordinance for appealing the underlying governmental action, then appeals (or portions thereof) raising SEPA issues must be filed within such time period.

(d) The notice of action procedures of RCW [43.21C.080](#) may still be used. If this procedure is used, then the time limits for judicial appeal specified in RCW [43.21C.080](#) shall apply, unless there is a time limit established by statute or ordinance for appealing the underlying governmental action. If so, the time limit for appeal of SEPA issues shall be the time limit in the statute or ordinance for the underlying governmental action. If the proposal requires more than one governmental decision that will be supported by the same SEPA documents, then RCW [43.21C.080](#) still only allows one judicial appeal of procedural compliance with SEPA, which must be commenced within the applicable time to appeal the first governmental decision.

(e) If the time limit established by statute or ordinance for appealing the underlying governmental action is less than fifteen days, then the notice of action in RCW [43.21C.080](#)(1) may be given by publishing once within that shorter time period, in a newspaper of general circulation in the area where the property that is the subject of the action is located, and meeting the other requirements of RCW [43.21C.080](#).

(f) If there is no time limit established by statute or ordinance for appeal, and the notice of action provisions are not used, then SEPA provides no time limit for judicial appeals. Appeal times may still be limited, however, by general statutes of limitation or the common law.

(g) For the purposes of this subsection, "a time limit established by statute or ordinance" does not include time limits established by the general statutes of limitation in chapter [4.16 RCW](#).

(5) Official notice of the date and place for commencing a judicial appeal.

(a) Official notice of the date and place for commencing an appeal must be given if there is a time limit established by statute or ordinance for commencing an appeal of the underlying governmental action. The notice shall include:

(i) The time limit for commencing appeal of the underlying governmental action and SEPA issues, and the statute or ordinance establishing the time limit; and

(ii) Where an appeal may be filed.

(b) Notice is given by:

(i) Delivery of written notice to the applicant, all parties to any administrative appeal, and all persons who have requested notice of decisions with respect to the particular proposal in question; and

(ii) Following the agency's normal methods of notice for the type of governmental action taken.

(c) Written notice containing the information required by subsection (5)(a) of this section may be appended to the permit, decision documents, or SEPA compliance documents or may be printed separately.

(d) Official notices required by this subparagraph shall not be given prior to final agency action.

**TECHNICAL MEMORANDUM**

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Date: July 14, 2015  
To: Allison Satter  
From: Tess Brandon, Sarah Sandstrom, Stephen Stanley, and Dan Nickel  
Project Number: 150414  
Project Name: City of Bremerton Comprehensive Plan Update 2016

**Subject: City of Bremerton Critical Areas Ordinance: Gap Analysis**

The Growth Management Act (GMA) mandates that cities develop policies and regulations to designate and protect critical areas, including wetlands, areas with a critical recharging effect on aquifers used for potable water, frequently flooded areas, geologically hazardous areas, and fish and wildlife habitat conservation areas (Revised Code of Washington [RCW] 36.70A.030(5)).

The GMA further requires that cities periodically review and evaluate their adopted critical areas policies and regulations, and that this review and update process consider and include best available science (BAS). Any deviations from science-based recommendations should be identified, assessed, and explained (Washington Administrative Code [WAC] 365-195-915).

In accordance with the GMA, the City of Bremerton (City) last completed a comprehensive update of its critical areas policies and regulations in 2006. The City's critical areas regulations are codified in Title 20, Land Use, of Bremerton Municipal Code (BMC Chapter 20.14). This code section includes the text from the adopted Critical Areas Ordinance (CAO), Ordinance No. 4965.

The purpose of this memorandum is to provide a review of the City's current CAO, noting gaps where existing regulations may not be consistent with BAS, the GMA, and/or its implementing rules. This document does not attempt to identify every instance where the existing CAO might be amended, but instead focuses on identifying more significant potential amendments. The primary intention of this gap analysis is to help guide the update of the City's CAO.

A secondary purpose of this memorandum is to compare the CAO with relevant sections of the City's Shoreline Master Program (SMP) in order to bring the two regulatory documents into alignment with each other and with BAS. The SMP includes policies and regulations for critical areas located within shoreline jurisdiction. The City completed a comprehensive review and update of its SMP in 2013. The updated

shoreline critical areas regulations adopt BMC 20.14 by reference, with the exception of certain sections which do not apply and/or which are covered by specific provisions in the SMP. Following adoption of the updated CAO, the City will need to pursue a limited amendment of its SMP to capture the changes made to the CAO.

The following five sections of this memorandum provide a summary of the review and recommended changes to the five main sections of the City's CAO. The sixth section of this memorandum provides recommendations for general provisions which should be revised or added. For those critical areas also addressed in the City's SMP, including wetlands and fish and wildlife habitat conservation areas, we provide a comparison between the relevant CAO and SMP provisions.

## Wetlands

To better incorporate BAS into the wetlands code section, several code revisions are recommended (Table 1).

Table 1. Wetlands review summary.

Code Section	Title	Review Comment / Recommendations*
20.14.200 and 20.14.310	Description and Purpose	<ul style="list-style-type: none"> <li>Remove reference to state delineation manual</li> <li>Replace with identification and delineation language from WAC 173-22-035 and SMP.</li> </ul>
20.14.320	Classification and Designation.	<ul style="list-style-type: none"> <li>Reference latest version of rating system</li> </ul>
20.14.330	Development Standards - Wetlands	<ul style="list-style-type: none"> <li>Consider listing regulated activities</li> <li>Provide exemptions for small, isolated Category III and IV wetlands and certain activities</li> <li>Update buffer width requirements</li> </ul>
20.14.340	Mitigation Requirements - Wetlands	<ul style="list-style-type: none"> <li>Update mitigation ratios to reflect BAS</li> </ul>

\* See discussion of comments/recommendations in the subsections below this table.

### Definition, Description and Purpose (BMC 20.14.200 and 20.14.310)

BMC 20.14.310(a) and 20.14.200 both refer to the Washington State Wetland Identification and Delineation Manual (1997). Both sections should be updated to include the language from WAC 173-22-035, which states that "Identification of wetlands and delineation of their boundaries... shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements." This wording is consistent with the wetlands definition in the City's SMP.

The Washington State Department of Ecology (Ecology) model wetlands chapter (Ecology 2012) also recommends the following language: "Wetland delineations are

valid for five years; after such date the City shall determine whether a revision or additional assessment is necessary.”

### **Classification and Designation (BMC 20.14.320)**

BMC 20.14.320 refers to the “Washington State Wetland Rating System for Western Washington (Department of Ecology Publication #04-06-025).” Ecology updated this rating system in June of 2014. The current BAS-based wetland rating system is the *Washington State Wetland Rating System for Western Washington* (Hruby 2014, Ecology publication No. 14-06-029). Using reference wetlands, Ecology calibrated the updated 2014 wetland rating system to maintain roughly the same distribution of wetland categories that were present under the prior 2004 rating system. A comparison sample of the distribution of wetland categories under the old and new rating systems is provided below (Hruby 2014).

Table 2. Number of Sampled Wetlands in Each Category Based on their Score for Functions.

<b>Category</b>	<b>2004 Rating System</b>	<b>Updated Rating System</b>
I	13	11
II	52	44
III	39	49
IV	7	7

The substantive changes to the wetland rating system are: 1) a High, Medium, or Low ranking for each function instead of numeric scores; and 2) the opportunity section was replaced with two new sections: landscape potential and value. The shift to a High, Medium, Low ranking scheme was prompted by a statistical analysis of wetland rating data, which indicated that the rapid-assessment wetland rating tool is not scientifically accurate beyond a qualitative ranking. As a result of this change, the total point range changed from 0-100 to 9-27 (Hruby 2014), with nine possible points each for water quality, hydrologic, and habitat functions.

### **Development Standards – Wetlands (BMC 20.14.330)**

BMC 20.14.330(a) through (e) requires that uses in wetlands or wetland buffers demonstrate that the use will not degrade the functions of the wetland. The provisions allow applicants to demonstrate that no feasible alternative locations exist. By not explicitly listing regulated activities, the City puts itself in the position of potentially having to deliberate and argue over each proposed use. We recommend providing a list of regulated activities, and including a caveat that uses not included in the list are subject to an administrative decision as to whether or not critical area review is required. Ecology’s model wetlands chapter provides an example list (Ecology 2012):

*B. The following activities are regulated if they occur in a regulated wetland or its buffer:*

1. *The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind.*
2. *The dumping of, discharging of, or filling with any material.*
3. *The draining, flooding, or disturbing of the water level or water table.*
4. *Pile driving.*
5. *The placing of obstructions.*
6. *The construction, reconstruction, demolition, or expansion of any structure.*
7. *The destruction or alteration of wetland vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a regulated wetland.*
8. *“Class IV – General Forest Practices” under the authority of the “1992 Washington State Forest Practices Act Rules and Regulations,” WAC 222-12-030, or as thereafter amended.*
9. *Activities that result in:*
  - a. *A significant change of water temperature.*
  - b. *A significant change of physical or chemical characteristics of the sources of water to the wetland.*
  - c. *A significant change in the quantity, timing, or duration of the water entering the wetland.*
  - d. *The introduction of pollutants.*

We also recommend providing a list of exempt activities specific to wetlands. BMC 20.14.330(c) exempts only those activities covered under the CAO’s public agency, utility, or reasonable use exceptions. Ecology recommends exempting all isolated Category III and IV wetlands less than 1,000 square feet that are not associated with riparian areas or buffers, are not part of a wetland mosaic, and do not contain habitat identified by WDFW as essential for local populations of priority species. Additional exempt activities in wetlands could include conservation activities, harvesting of wild crops, drilling for utility corridors, enhancement activities, education and research, and normal and routine maintenance (Ecology 2012). Listed exemptions would provide flexibility and administrative relief for City staff, while clarifying requirements for applicants.

Finally, BMC 20.14.330(f)(1) defines standard buffer widths by wetland category (Table 3). Current BAS includes buffer provisions that vary based on land use intensity and/or habitat score in addition to wetland category. The City’s SMP (Section 7.010) adopts standard buffer widths based on habitat score for wetlands in shoreline jurisdiction, but refers to the older wetland rating system (see above). Ecology updated its recommended standard buffer widths to the new rating system in June of 2015. Table 4 shows these BAS-based buffers, which vary according to wetland type (e.g. estuarine) and/or habitat score (on a range of 3 to 9, with 9 representing high habitat function).

Table 3. Standard wetland buffers in current City code.

Wetland Category	Standard Buffer (feet)
I	200
II	100
III	75
IV	50

Table 4. BAS-based standard buffer widths (Ecology 2015).

Wetland Category and Type	Buffer width (in feet) based on habitat score			
	3-4	5	6-7	8-9
I: Estuarine wetlands	200			
I: All others	100	140	220	300
II: Estuarine wetlands	150			
II: All	100	140	220	300
III: All	80	140	220	300
IV: All	50			

The standard buffer widths in Table 4 were developed based on BAS for use in small cities, where land use intensity, and associated wetland impacts, are generally moderate to high. For those projects that can mitigate the impacts and disturbances associated with surrounding land use, required buffer widths may be reduced. Table 5 lists impact-minimization measures which, when implemented where applicable, may allow an applicant to reduce the standard buffer widths in Table 4 by up to 33 percent (Ecology 2012). This approach provides flexibility for applicants while resulting in higher-functioning buffers that are sensitive to existing wetland function. We recommend that the City update its buffer provisions to adopt the new BAS-based buffer widths in Table 4 together with the optional impact-minimization measures in Table 5.

Table 5. Measures to minimize impacts to wetlands (Ecology 2012).

Disturbance	Required Measures to Minimize Impacts
Lights	<ul style="list-style-type: none"> <li>• Direct lights away from wetland</li> </ul>
Noise	<ul style="list-style-type: none"> <li>• Locate activity that generates noise away from wetland</li> <li>• If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source</li> <li>• For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10' heavily vegetated buffer strip immediately adjacent to the outer wetland buffer</li> </ul>
Toxic runoff	<ul style="list-style-type: none"> <li>• Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered</li> <li>• Establish covenants limiting use of pesticides within 150 ft of wetland</li> <li>• Apply integrated pest management</li> </ul>

<b>Disturbance</b>	<b>Required Measures to Minimize Impacts</b>
Stormwater runoff	<ul style="list-style-type: none"> <li>• Retrofit stormwater detention and treatment for roads and existing adjacent development</li> <li>• Prevent channelized flow from lawns that directly enters the buffer</li> <li>• Use Low Intensity Development techniques where appropriate (per PSAT publication on LID techniques)</li> </ul>
Change in water regime	<ul style="list-style-type: none"> <li>• Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns</li> </ul>
Pets and human disturbance	<ul style="list-style-type: none"> <li>• Use privacy fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion</li> <li>• Place wetland and its buffer in a separate tract or protect with a conservation easement</li> </ul>
Dust	<ul style="list-style-type: none"> <li>• Use best management practices to control dust</li> </ul>
Disruption of corridors or connections	<ul style="list-style-type: none"> <li>• Maintain connections to offsite areas that are undisturbed</li> <li>• Restore corridors or connections to offsite habitats by replanting</li> </ul>

### **Mitigation Requirements – Wetlands (BMC 20.14.340)**

BMC 20.14.340(f) defines required mitigation ratios for “creation or restoration that is in-kind, is on-site, in the same category, is timed prior to or concurrent with alteration, and has a high probability of success.” BMC 20.14.340(g) defines larger ratios for enhancement as mitigation. The ratios in these sections align closely with BAS where they are clearly defined. For added clarity, we recommend presenting the mitigation ratios in a table. Table 6 below is taken from the City’s SMP, and contains ratios recommended by Ecology in its 2012 *Wetlands Guidance for Small Cities: Western Washington Version*.

Table 6. Mitigation ratios for wetlands.

<b>Wetland Category</b>	<b>Wetland Mitigation Type and Replacement Ratio</b>			
	<b>Creation</b>	<b>Re-establishment</b>	<b>Rehabilitation</b>	<b>Enhancement Only</b>
Category I	6:1	6:1	12:1	Not allowed
Category II	3:1	3:1	6:1	12:1
Category III	2:1	2:1	4:1	8:1
Category IV	1.5:1	1.5:1	3:1	6:1

### **Comparison to SMP**

The City’s SMP includes provisions for wetland buffers and mitigation ratios for wetlands in shoreline jurisdiction. These provisions were updated in 2013, and in many cases provide a source of BAS-based language that can be applied in the CAO. Table 7 presents a comparison between the CAO and the SMP and includes recommendations for improving consistency and coordination between the two sets of regulations.

Table 7. Comparison of CAO and SMP provisions for wetlands and recommendations for improving consistency.

<b>2006 CAO Section</b>	<b>2013 SMP</b>	<b>Recommended Change to CAO</b>	<b>Recommended Change to SMP</b>
BMC 20.14.200 and .310 - definition of "Wetlands"	SMP Chapter 3, Definitions – refers to approved federal manual and applicable regional supplements.	Update CAO to be consistent with SMP language.	None
BMC 20.14.320 - wetland rating	SMP 7.010 Regulations (a) adopts CAO section by reference	Update CAO to adopt new wetland rating system.	None
BMC 20.14.330(f) – wetland buffers	SMP 7.010 Regulations (b) establishes standard buffer widths based on 2012 Ecology guidance.	Update CAO to be consistent with SMP buffer widths but using the 2015 rating system (see Table 3 above).	Remove exclusion of 20.14.330(f)(1) from 7.010(a); remove 7.010(b) Wetland Buffers
BMC 20.14.340(f) – mitigation ratios BMC 20.14.340(g) – wetlands enhancement as mitigation	SMP 7.010 Regulations (c) establishes mitigation ratios for creation, reestablishment, rehabilitation, and enhancement that align with BAS.	Update CAO to be consistent with SMP numbers and approach (table format), but maintain provisions that enable the Director to increase ratios under certain circumstances (20.14.340(f)(2)).	None

## Critical Aquifer Recharge Areas

Provisions that protect the functions and values of critical aquifer recharge areas (CARAs) in the City of Bremerton are contained in BMC Sections 20.14.400 through 20.14.450. BAS-based protection measures include identifying and categorizing CARAs, identifying potential sources of contamination, assessing vulnerability of water resources, imposing protections, and managing CARA withdrawals (The Watershed Company 2014). Current management of CARAs in the City is in step with BAS recommendations, and no changes are recommended.

## Frequently Flooded Areas

Table 8 summarizes recommended changes to the CAO to better incorporate BAS related to frequently flooded areas.

Table 8. Frequently Flooded Areas review summary.

Code Section	Title	Review Comment / Recommendations*
20.14.510	Description and Purpose	<ul style="list-style-type: none"> <li>Revise to incorporate protection of functions and values</li> </ul>
20.14.520	Classification and Designation	<ul style="list-style-type: none"> <li>Consider referring to BMC 17.60 for consistent definition of special flood hazard areas</li> </ul>
20.14.530	Development Standards	<ul style="list-style-type: none"> <li>Require a habitat assessment for development in the floodway or floodplain</li> </ul>

\* See discussion of comments/recommendations in the subsections below this table.

### **Description and Purpose (BMC 20.14.510)**

BMC 20.14.510 defines the purpose of the City’s frequently flooded areas regulations to “promote public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas caused by flooding.” Under the GMA, regulations of frequently flooded areas exist not only to reduce flood risk, but also to protect the functions and values of floodplains. We recommend revising the existing purpose statement to reflect this dual purpose.

### **Classification and Designation (BMC 20.14.520)**

BMC 20.14.520 defines flood hazard areas as those areas designated as 100-year floodplain by the Federal Emergency Management Agency (FEMA) and the National Flood Insurance Program (NFIP). The rest of the frequently flooded areas section in the CAO refers to BMC Chapter 17.60, Floodplain Management, for regulation of development in frequently flooded areas. BMC 17.60.070 provides a more thorough definition of special flood hazard areas. For consistency between the two code sections and to avoid confusion, we recommend referring to this definition for designation of frequently flooded areas in BMC 20.14.520.

### **Development Standards (BMC 20.14.530)**

In 2008, the National Marine Fisheries Service (NMFS) found that implementation of the National Flood Insurance Program in the Puget Sound region jeopardizes the continued existence of federally threatened salmonids and resident killer whales. As a result, in its 2008 Biological Opinion (FEMA BiOp), NMFS established Reasonable and Prudent Alternatives to ensure that development within the Special Flood Hazard Area (100-year floodplain), floodway, channel migration zone, and riparian buffer zone do not adversely affect water quality, water quantity, flood volumes, flood velocities, spawning substrate, or floodplain refugia for listed salmonids. Local governments must adhere to the FEMA BiOp in their protection of channel and floodplain habitat by either developing specific floodplain regulations or requiring habitat assessments for

development in the floodway and floodplain. Habitat assessments must evaluate impacts to stormwater, floodplain capacity, and vegetative habitat.

In accordance with the expanded purpose of frequently flooded areas regulations, as described above, the City should consider expanding BMC 20.14.530 to include provisions that protect the functions and values of frequently flooded areas. Specifically, to comply with the 2008 FEMA BiOp, the City should require a habitat assessment for development in the floodplain.

## Geologically Hazardous Areas

Careful planning and engineering are key to preventing and reducing the potential magnitude of geologic hazards, such as landslides and seismic hazards (The Watershed Company 2014). Provisions that protect human life and property from potential risks related to development on or near geologically hazardous areas in the City of Bremerton are contained in BMC Sections 20.14.600 through 20.14.660. The code as written reasonably safeguards against potential hazards by emphasizing avoidance and requiring buffers and rigorous professional design standards. This code section is in agreement with BAS, and no changes are recommended.

## Fish and Wildlife Habitat Conservation Areas

To better incorporate BAS into the fish and wildlife habitat conservation areas (FWHCAs) code section, several code revisions are recommended (Table 9).

Table 9. Fish and wildlife habitat conservation areas review summary.

Code Section	Title	Review Comment / Recommendations*
20.14.200 and 20.14.720	Classification and Designation of Fish and Wildlife Habitat Conservation Areas.	<ul style="list-style-type: none"> <li>WAC reference in definition of “fish and wildlife habitat conservation areas” should be updated.</li> <li>Improve clarity and consistency in whether Priority Habitats and Species are included in FWHCAs.</li> <li>Update reference to Shared Strategy Process for Puget Sound</li> </ul>
20.14.730	Development Standards.	<ul style="list-style-type: none"> <li>Amend BMC 20.14.730 for consistency with Section 7.010 of the Bremerton SMP</li> <li>Remove references to Bald Eagle Protection Rules.</li> <li>Consider amending the threshold for developing a HMP to include buffer distances for Class II Fish and Wildlife Areas and incorporating recommended buffer distances into the threshold.</li> </ul>

\* See discussion of comments/recommendations in the subsections below this table.

### **Fish and wildlife habitat conservation areas – Definition, Classification and Designation (BMC 20.14.200 and 20.14.720)**

The WAC reference in the definition of FWHCAs should be corrected to reflect the more detailed GMA description of “fish and wildlife habitat conservation areas” in WAC 365-190-130.

The City’s existing definition of FWHCAs includes “(b) Priority Habitat Species and species of local importance, including but not limited to areas designated as priority habitat by the Washington Department of Fish and Wildlife.” State-designated Priority Habitats and Species include a broader suite of species and habitats than are required by the WAC or addressed in BMC 20.14.720, Classification and Designation of Fish and Wildlife Habitat Conservation Areas. In order to improve the clarity of the applicability of FWHCA standards, we recommend revising the definition to exclude reference to Priority Habitat Species.

BMC 20.14.720(d) and (e) define Class I and II Fish and Wildlife Conservation Areas to include federal and/or state listed endangered, threatened, and sensitive species (Class I) and habitats for state listed candidate and monitor species (Class II). These designations are subject to change, and the City relies on qualified fisheries and wildlife biologists to provide lists of designated species on a project basis. Table 10 below provides a list of those species and habitats currently identified as Class I and Class II Fish and Wildlife Conservation Areas.

Table 10. List of Endangered, Threatened, Sensitive, Candidate, and Monitor species for consideration in Class I and II Fish and Wildlife Conservation Areas.

	<b>Common Name</b>	<b>State Status</b>	<b>Federal Status</b>
Federal- and/or State-listed Endangered, Threatened and Sensitive species (subject to change) – Class I Fish and Wildlife Conservation Areas			
Fish	Bocaccio Rockfish	Candidate	Endangered
	Bull Trout/ Dolly Varden	Candidate	Threatened
	Canary Rockfish	Candidate	Threatened
	Chinook Salmon	Candidate	Threatened
	Chum Salmon	Candidate	Threatened
	Eulachon	Candidate	Threatened
	Green Sturgeon		Threatened
	Steelhead	Candidate	Threatened
	Yelloweye Rockfish	Candidate	Threatened
Birds	Bald Eagle	Sensitive	Species of Concern
	Common Loon	Sensitive	

	Common Name	State Status	Federal Status
	Marbled Murrelet	Threatened	Threatened
	Peregrine Falcon	Sensitive	Species of Concern
	Northern Spotted Owl	Endangered	Threatened
	Yellow-billed Cuckoo		Threatened
Mammals	Blue Whale	Endangered	Endangered
	Gray Whale	Sensitive	
	Humpback Whale	Endangered	Endangered
	Southern Resident Killer Whale	Endangered	Endangered
	Steller Sea Lion	Threatened	Threatened
State-listed Candidate and Monitor Species List (subject to change) – Class II Fish and Wildlife Conservation Areas			
	Black Rockfish	Candidate	
	Brown Rockfish	Candidate	Species of Concern
	China Rockfish	Candidate	
	Copper Rockfish	Candidate	Species of Concern
	Greenstriped Rockfish	Candidate	
	Pacific Cod	Candidate	Species of Concern
	Pacific Hake	Candidate	Species of Concern
	Quillback Rockfish	Candidate	Species of Concern
	Redstripe Rockfish	Candidate	
	Sockeye Salmon	Candidate	
	Tiger Rockfish	Candidate	
	Walleye Pollock	Candidate	Species of Concern
	Widow Rockfish	Candidate	
	Yellowtail Rockfish	Candidate	
Amphibians	Dunn's Salamander	Candidate	
	Western Toad	Candidate	Species of Concern
	Van Dyke's Salamander	Candidate	Species of Concern
Birds	Brandt's Cormorant	Candidate	
	Common Murre	Candidate	
	Golden Eagle	Candidate	
	Northern Goshawk	Candidate	Species of Concern
	Pileated Woodpecker	Candidate	
	Purple Martin	Candidate	
	Vaux's Swift	Candidate	
	Western grebe	Candidate	
	Black Swift	Monitor	
	Caspian Tern	Monitor	
	Great Blue Heron	Monitor	
	Great Egret	Monitor	

	Common Name	State Status	Federal Status
	Green Heron	Monitor	
	Horned Grebe	Monitor	
	Osprey	Monitor	
	Snowy Owl	Monitor	
Mammals	Pacific Harbor Porpoise	Candidate	
	Townsend's Big-eared Bat	Candidate	Species of Concern
	Dall's porpoise	Monitor	
	Harbor Seal	Monitor	
Invertebrates	Olympia Oyster	Candidate	
	Queen Charlotte's Copper (formerly Makah Copper)	Candidate	Species of Concern

Finally, BMC 20.14.720(d)(2) refers to the Shared Strategy Process for Puget Sound, which is no longer an active organization. The provision designates “areas targeted for preservation by the federal, state, and/or local government which provide fish and wildlife habitat benefits” as Class I Fish and Wildlife Conservation Areas. This goes beyond the minimum requirements for designation as FWHCAs under the WAC. Additionally, the provision may be difficult to administer, particularly where “areas targeted” are not specific, clear, or consistent with the City of Bremerton’s planning objectives. Instead, we recommend removing this provision and addressing regional and local restoration planning efforts through policy language in the City’s Comprehensive Plan.

### **Development Standards (BMC 20.14.730)**

The existing CAO establishes buffer and setback widths and buffer standards for waterbodies and watercourses. Based on existing BAS, these buffer widths are expected to maintain functions along the City’s waterbodies and watercourses (The Watershed Company and Parametrix 2014). Section 7.010(d) of the Bremerton SMP includes buffer and setback standards for shoreline areas that supersede and/or amend the buffer and setback standards applicable to Shorelines of the State. Accordingly, BMC 20.14.730(d) Table 1 should be amended to refer to the SMP for buffer and setback standards applicable to all Shorelines of the State.

BMC 20.14.730(a)(3) discusses the Bald Eagle Protection Rules. These rules have been amended, and now apply only if bald eagles are listed as threatened or endangered by Washington State. Presently, bald eagles are listed as a state sensitive species; therefore, the Bald Eagle Protection Rules do not apply. Additionally, BMC 20.14.730(e)(1) requires approval of a Bald Eagle Management Plan by WDFW; this requirement also no longer applies. We suggest removing all provisions related to the Bald Eagle Protection Rules and Bald Eagle Management Plans. It may be worthwhile to note that although there is no longer a state Bald Eagle Management Plan requirement, landowners must still

comply with standards for Class I Fish and Wildlife Areas and the federal Bald and Golden Eagle Protection Act.

In the current CAO, a habitat management plan (HMP) is required when a Class I Fish and Wildlife Conservation Area is on-site or within 200 feet of a development, or when a development is within a Class II Fish and Wildlife Conservation Area. The recommended nest-site buffers for a number of the Class I and Class II species (e.g. bald eagle, great blue heron, peregrine falcon, pileated woodpecker) exceed 200 feet; therefore, the HMP criteria may not be adequate to protect those species. We recommend that a threshold distance be applied to the trigger for both Class I and Class II HMPs. That threshold could be 200 feet or the applicable distance recommended by WDFW management recommendations (Larsen et al. 2004), whichever is greater.

Finally, BMC 20.14.730(p), Other Allowed Uses in Fish and Wildlife Conservation Areas, states that “other activities may be allowed using the standard for a category II wetland buffer.” This reference is confusing because there is not a specific reference to allowed use standards for a category II wetland buffer elsewhere in the code. It seems that the intent of the provisions may have been to reference BMC 20.14.330(d), which describes allowed uses in category II and III wetlands, but not specifically in the wetland buffers. A specific code section should be referenced and text amended to improve the clarity of this code provision.

### Comparison to SMP

As described above, the SMP includes buffer and setback standards for shoreline areas that should be referred to in the CAO. Other recommendations for improving consistency and coordination between the CAO and the SMP are provided in Table 11.

Table 11. Comparison of CAO and SMP provisions for FWHCAs and recommendations for improving consistency.

2006 CAO Section	2013 SMP	Recommended Change to CAO	Recommended Change to SMP
BMC 20.14.730(d), Table 1, Water Type Buffer Standards	SMP 7.010(d)(1) establishes distinct shoreline buffers and setbacks	Reference the SMP for buffer and setback widths for all Shorelines of the State.	None
BMC 20.14.730(d)(4), Buffer Averaging	SMP 7.010(d)(5) allows for buffer averaging dependent on adjacent development	Reference additional buffer averaging criteria on Shorelines of the State.	None
BMC 20.14.730(d)(5), Buffer Reduction	SMP 7.010(a) excludes this CAO provision from application	Establish a minimum buffer width of 10 feet after buffer reduction (in addition to a net	Remove exclusion of 20.14.730(d)(5) from 7.010(a).

2006 CAO Section	2013 SMP	Recommended Change to CAO	Recommended Change to SMP
	in the SMP. SMP 7.010(d)(4) establishes a minimum 10-foot buffer provided HMP demonstrates a net improvement.	improvement in functions).	
BMC 20.14.730(d)(6 &7), Stormwater Management Facilities and Low Impact Development Facilities	SMP 7.010(f) specifies that stormwater facility provisions only apply to buffers wider than 100 feet.	Incorporate language from the SMP into the CAO that only allows for stormwater facilities in the outer portion of buffers that are over 100 feet in width. Apply the same standard for low impact development facilities.	Remove 7.010(f).
BMC 20.14.730 (d)(8) Habitat Conservation Area Buffers	SMP 7.010(a) excludes this CAO provision from application in the SMP.	Specify that this provision applies only to Type F, Np, and NS streams.	Remove exclusion of 20.14.730(d)(8) from 7.010(a).

## General Provisions

BMC 20.14.630(e) and (f) include provisions for the elimination of hazard trees and for vegetation thinning, respectively. Outside of buffer provisions, these are the only vegetation management provisions in the CAO. However, they apply only to geologically hazardous areas. We recommend moving these sections into a new general provisions section (20.14.1XX) in order to apply them to all critical areas in the City.

The City's SMP contains more rigorous vegetation management provisions that define removal conditions and replacement ratios for trees and other vegetation in shoreline jurisdiction (SMP Section 7.020 Regulations). We recommend that the City modify these regulations to apply to all critical areas in the City and incorporate them into the new general provisions section described above.

## References

- Ecology (Washington State Department of Ecology). 2012. Wetlands & CAO Updates: Guidance for Small Cities. Ecology Publication No. 10-06-002.
- Ecology (Washington State Department of Ecology). 2015. Guidance to Local Governments on Frequently Flooded Area Updates in CAOs. (Online at: <http://www.ecy.wa.gov/programs/sea/floods/FloodedAreaGuidance.html>)
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- Larsen, E., J. Azerrad, and N. Nordstrom. 2004. Management recommendations for Washington's priority species, Volume IV: Birds.
- NMFS (National Marine Fisheries Service). 2008. FEMA Biological Opinion, Puget Sound. [http://www.fema.gov/media-library-data/20130726-1900-25045-9907/nfip\\_biological\\_opinion\\_puget\\_sound.pdf](http://www.fema.gov/media-library-data/20130726-1900-25045-9907/nfip_biological_opinion_puget_sound.pdf)
- The Watershed Company. October 2011. City of Burien Comprehensive Plan Update, Best Available Science Review.
- The Watershed Company. June 2012. Gap Analysis of City of Burien Critical Areas Ordinance.
- The Watershed Company. June 2014. City of Woodinville Comprehensive Plan Update, Best Available Science Review.
- The Watershed Company, and Parametrix. 2014. Best Available Science and Existing Conditions Report for Island County's Fish and Wildlife Habitat Conservation Areas.

COMMENTS RECEIVED FOR COMPREHENSIVE PLAN UPDATE						
	Commenter	Date	Address	City	Comment Summary	Staff Response Regarding Comprehensive Plan Update
1	Dan Webster	9/8/2014	1350 N Callow Ave	Bremerton	Strongly object to rezone property in District 6 (casino proposal)	Staff has proposed within District 6 Profile to not support rezoning of this area due to: (1) established neighborhood and (2) the findings in the Update Land Capacity Analysis, indicates that the City has ample land zoned to accommodate Residential and Commercial uses for the City's Growth targets.
2	Cary Clayton	9/12/2014	PO Box 15 B	Newport Beach, CA	Own properties at: 1350 N. Wycoff, 2712 15th Street, and 2720 15th Street. Does not agree with rezone of property for casino proposal	Staff has proposed within District 6 Profile to not support rezoning of this area due to: (1) established neighborhood and (2) the findings in the Update Land Capacity Analysis, indicates that the City has ample land zoned to accommodate Residential and Commercial uses for the City's Growth targets.
3	Tiffany Gay	9/14/2014	1309 N. Montgomery Ave	Bremerton	Interested in hearing all sides of proposal in regards to the casino.	Staff has proposed recommendations within the Work Program to maintain residential zoning in this area, however applications from the property owners for the Plan Update are accepted from January 5, 2015 to April 1, 2015. All complete applications will come before Planning Commission Public Hearing for deliberation.
4	Leigh LeMar	9/15/2014	1333 N. Montgomery Ave	Bremerton	Object to rezoning property at 1333 N. Montgomery Ave for casino but recommend area near freeway	Staff has proposed within District 6 Profile to not support rezoning of this area due to: (1) established neighborhood and (2) the findings in the Update Land Capacity Analysis, indicates that the City has ample land zoned to accommodate Residential and Commercial uses for the City's Growth targets. The City has zoning districts established by the freeway where casino uses are allowed.
5	Robert Reiher	9/20/2014	1715 N Wycoff Ave	Bremerton	Crime is already a concern in neighborhood, the Casino will increase the crime. Please keep neighborhood safe	Staff has proposed within District 6 Profile to not support rezoning of this area due to: (1) established neighborhood and (2) the findings in the Update Land Capacity Analysis, indicates that the City has ample land zoned to accommodate Residential and Commercial uses for the City's Growth targets.
6	Robert Ragge	9/23/2014	1324 N. Liberty Lake Rd. #273	Liberty Lake, WA	In support of casino proposal on Callow Avenue	An application for Comprehensive Plan Amendment will be accepted from January 5, 2015 to April 1, 2015. Applications must be made by property owners or their authorized representatives.
7	Douglas Whittle	10/9/2014	3238 Ridgeview Drive	Bremerton	Owens property at 1305 N. Callow Ave. Supports rezoning parcel to commercial for casino proposal. States that City should provide opportunity for additional commercial development.	Staff has proposed within District 6 Profile to not support rezoning of this area due to: (1) established neighborhood and (2) the findings in the Update Land Capacity Analysis, indicates that the City has ample land zoned to accommodate Residential and Commercial uses for the City's Growth targets.
8	Shane Trepasso	10/10/2014	1320 N, Callow Ave	Bremerton	Owens property at 1320 N. Callow Ave. Supports rezoning parcel to commercial for casino proposal. States that City should provide opportunity for additional commercial development.	Staff has proposed within District 6 Profile to not support rezoning of this area due to: (1) established neighborhood and (2) the findings in the Update Land Capacity Analysis, indicates that the City has ample land zoned to accommodate Residential and Commercial uses for the City's Growth targets.
9	Greg & Michelle Dawson	10/10/2014	1424 Lindberg Place	Bremerton	Owens property at 1330 and 1326 N. Callow Ave. Supports rezoning parcel to commercial for casino proposal. States that City should provide opportunity for additional commercial development.	Staff has proposed within District 6 Profile to not support rezoning of this area due to: (1) established neighborhood and (2) the findings in the Update Land Capacity Analysis, indicates that the City has ample land zoned to accommodate Residential and Commercial uses for the City's Growth targets.
10	Priscilla Bailey	10/10/2014	4171 Wheaton Way	Bremerton	Owens commercial property on Wheaton Way, and supports recent change to commercial zoning within the Wheaton Way District Center. Concern about property between Hanford and Broad St, and should support Senior Housing and small commercial in area. Supports adding housing to East Bremerton and encouraging small businesses.	The current Work Program supports Wheaton Way District Center as currently designated. The area between Hanford and Board Street currently allows for a Senior Housing Complex and small commercial business, no changes are proposed with this process. East Bremerton consists of many designations, but they do include residential and commercial uses to support her recommendations.
11	Billy Kay	10/10/2014	Kitsap Lake Area	Bremerton	Visiting musician first impressions of Bremerton: too many police patrols/red-light cameras, too many taxes on controlled substances (cigarettes), but the people are wonderful.	Comment has been noted and forwarded to the Police Department regarding Police enforcement.
12	Kono Enterprises	10/14/2014	3512 141th Street	Gig Harbor	Owens property at 1338 & 1519 N. Wycoff Ave. Supports rezoning parcel to commercial for casino proposal. States that City should provide opportunity for additional commercial development.	Staff has proposed within District 6 Profile to not support rezoning of this area due to: (1) established neighborhood and (2) the findings in the Update Land Capacity Analysis, indicates that the City has ample land zoned to accommodate Residential and Commercial uses for the City's Growth targets.

	Commenter	Date	Address	City	Comment Summary	Staff Response Regarding Comprehensive Plan Update
13	Ron Ragge	10/14/2014	1324 N. Liberty Lake Rd. #273	Liberty Lake	Bremerton has an opportunity to host a casino which would greatly benefit the City with employment and bringing additional businesses. Please consider allowing 18 parcels within the Callow Area to be considered to be rezoned commercial. Additional discussions regarding Fireworks sales, and encouraging City Council to hear proposal of Casino.	An application for Comprehensive Plan Amendment will be accepted from January 5, 2015 to April 1, 2015. Applications must be made by property owners or their authorized representatives.
14	Dan Grimbley	10/14/2014	1333 Ford Ave	Bremerton	Supports rezoning parcel to commercial for casino proposal. States that City should provide opportunity for additional commercial development.	Staff has proposed within District 6 Profile to not support rezoning of this area due to: (1) established neighborhood and (2) the findings in the Update Land Capacity Analysis, indicates that the City has ample land zoned to accommodate Residential and Commercial uses for the City's Growth targets.
15	Tiffany Gay	10/16/2014	1309 Montgomery Ave	Bremerton	Supports rezoning parcel to commercial for casino proposal. States that City should provide opportunity for additional commercial development.	Staff has proposed within District 6 Profile to not support rezoning of this area due to: (1) established neighborhood and (2) the findings in the Update Land Capacity Analysis, indicates that the City has ample land zoned to accommodate Residential and Commercial uses for the City's Growth targets.
16	Dan & Jean Webster	10/20/2014	1350 N Callow Ave	Bremerton	Against rezoning parcels for casino proposal due to traffic concerns and criminal activity.	Staff has proposed within District 6 Profile to not support rezoning of this area due to: (1) established neighborhood and (2) the findings in the Update Land Capacity Analysis, indicates that the City has ample land zoned to accommodate Residential and Commercial uses for the City's Growth targets.
17	Vic Caba (assumed)	10/20/2014	1301 N Callow Ave	Bremerton	Supports rezoning parcel to commercial for casino proposal. States that City should provide opportunity for additional commercial development. No signature or identification was provided on formed letter. Pre-addressed envelope was to Vic Caba so staff assumed was the originator of letter, but origin can not be confirmed.	Staff has proposed within District 6 Profile to not support rezoning of this area due to: (1) established neighborhood and (2) the findings in the Update Land Capacity Analysis, indicates that the City has ample land zoned to accommodate Residential and Commercial uses for the City's Growth targets.
18	John Hogan	10/21/2014	N/A	N/A	Owens Milan Apartments at 1019 Burwell Street which is currently designated as Limited Commercial. Supports redesignating this area to be included into Downtown Regional Center as this block includes multifamily buildings and the nonconforming provisions hinders potential improvements to the site.	Staff has proposed this change within the District 3 Profile. Proposal is to considering expanding Downtown Regional Center to areas that predominately consist of nonconforming buildings in this area.
19	Phil Hamlin	10/21/2014	N/A	N/A	Does not support rezoning of area for casino in any part of the City.	Staff has proposed within District 6 Profile to not support rezoning of this area due to: (1) established neighborhood and (2) the findings in the Update Land Capacity Analysis, indicates that the City has ample land zoned to accommodate Residential and Commercial uses for the City's Growth targets. However, there are existing areas within the City that allow for Casinos, such as the Freeway Corridor.
20	Adam Simon	10/29/2014	1107 N. Callow Ave	Bremerton	Supports a expedited process to utilized existing buildings (or portions of buildings) that have been classified as nonconforming uses since the 2004 adoption and cannot reasonably be used for a use permitted by the current zone.	Staff has proposed within Work Program Summary #28 to evaluate options for reuse of existing nonconforming commercial structures.
21	Larry Taylor	10/30/2014	N/A	Bremerton	Supports Staff proposal to rezone property on 13th as identified in the Work Summary #15 only if 13th Street no longer connects to Kitsap Way. He is the owner of the proposed property to be redesignated from CC to LDR.	Staff will consider the comments when revising the Land Use Map and review with the Public Works Department regarding the road closure.
22	Donna Nielson	11/4/2014	7986 Diane Ct. NE	Bremerton	Supports rezoning the area north of St. Vincent's from Residential to Commercial. Major road connection, and this is an great economic	Staff has proposed within District 6 Profile to not support rezoning of this area due to: (1) established neighborhood and (2) the findings in the Update Land Capacity Analysis, indicates that the City has ample land zoned to accommodate Residential and Commercial uses for the City's Growth targets.

	Commenter	Date	Address	City	Comment Summary	Staff Response Regarding Comprehensive Plan Update
23	Donna Nielson	11/5/2014	7986 Diane Ct. NE	Bremerton	Would like commercial zoning on her property at 1333 N. Callow Avenue.	Staff has proposed within District 6 Profile to not support rezoning of this area due to: (1) established neighborhood and (2) the findings in the Update Land Capacity Analysis, indicates that the City has ample land zoned to accommodate Residential and Commercial uses for the City's Growth targets.
24	Greg Dawson	11/6/2014	1424 Lindberg Place	Bremerton	Please redesignated my properties south of 15th Street and north of 11th Street on Callow Ave to commercial.	Staff has proposed within District 6 Profile to not support rezoning of this area due to: (1) established neighborhood and (2) the findings in the Update Land Capacity Analysis, indicates that the City has ample land zoned to accommodate Residential and Commercial uses for the City's Growth targets.
25	Greg Dawson	11/6/2014	1424 Lindberg Place	Bremerton	Same request as Comment #26.	Staff has proposed within District 6 Profile to not support rezoning of this area due to: (1) established neighborhood and (2) the findings in the Update Land Capacity Analysis, indicates that the City has ample land zoned to accommodate Residential and Commercial uses for the City's Growth targets.
26	Unknown	11/7/2014	Unknown	Unknown	Postcard with no identification. Supports casino as it will boost the economy.	Staff has proposed within District 6 Profile to not support rezoning of this area due to: (1) established neighborhood and (2) the findings in the Update Land Capacity Analysis, indicates that the City has ample land zoned to accommodate Residential and Commercial uses for the City's Growth targets.
27	Unknown	11/7/2014	Unknown	Unknown	Postcard with no identification. Supports casino as all neighbors want commercial zoning.	Staff has proposed within District 6 Profile to not support rezoning of this area due to: (1) established neighborhood and (2) the findings in the Update Land Capacity Analysis, indicates that the City has ample land zoned to accommodate Residential and Commercial uses for the City's Growth targets.
28	Kelly Hudson	11/10/2014	Unknown	Unknown	Postcard. "The majority of our neighborhoods want commercial"	Staff is uncertain of address or way of contacting individual. Uncertain which parcels she supports for rezoning.
29	Unknown	11/12/2014	Unknown	Unknown	Postcard with no identification. "Would like to zoned commercial at 1304 Callow Avenue.	Staff has proposed within District 6 Profile to not support rezoning of this area due to: (1) established neighborhood and (2) the findings in the Update Land Capacity Analysis, indicates that the City has ample land zoned to accommodate Residential and Commercial uses for the City's Growth targets.
30	J Ross	11/12/2014	Unknown	Bremerton	Postcard. "Neighboring homes are between commercial zones and the majority of neighbors want commercial zoning",	Staff assumes this is in regards to the casino proposal. Staff has proposed within District 6 Profile to not support rezoning of this area due to: (1) established neighborhood and (2) the findings in the Update Land Capacity Analysis, indicates that the City has ample land zoned to accommodate Residential and Commercial uses for the City's Growth targets.
31	Chad Mountjoy	11/13/2014	Callow Avenue	Bremerton	Postcard. "Keep this area residential. No casino please."	Staff has proposed within District 6 Profile to not support rezoning of this area due to: (1) established neighborhood and (2) the findings in the Update Land Capacity Analysis, indicates that the City has ample land zoned to accommodate Residential and Commercial uses for the City's Growth targets.
32	HRF	11/13/2014	Unknown	Unknown	Postcard. "My home town has not changed in over 60 years. It is time for a change. Make it happen before I get too old to appreciate it."	Comments noted.
33	Unknown	11/13/2014	Unknown	Unknown	Postcard. "The neighboring homes are between two commercial areas."	Staff assumes this is in regards to the casino proposal. Staff has proposed within District 6 Profile to not support rezoning of this area due to: (1) established neighborhood and (2) the findings in the Update Land Capacity Analysis, indicates that the City has ample land zoned to accommodate Residential and Commercial uses for the City's Growth targets.
34	Shane Trepasso	11/17/2014	1320 N, Callow Ave	Bremerton	Postcard. Owns 1320 N. Callow Ave and would like property rezoned to commercial	Staff has proposed within District 6 Profile to not support rezoning of this area due to: (1) established neighborhood and (2) the findings in the Update Land Capacity Analysis, indicates that the City has ample land zoned to accommodate Residential and Commercial uses for the City's Growth targets.
35	Douglas Whittle	11/17/2014	3238 Ridgeview Drive	Bremerton	Postcard. Would like to see area of his property between 13th and Callow Avenue rezoned to commercial	Staff has proposed within District 6 Profile to not support rezoning of this area due to: (1) established neighborhood and (2) the findings in the Update Land Capacity Analysis, indicates that the City has ample land zoned to accommodate Residential and Commercial uses for the City's Growth targets.
36	Larry Taylor	11/20/2014	N/A	Bremerton	Email: Would only support re-designating my property of 3131 13th Street from Commercial Corridor to Low Density Residential is if 13th Street was closed to through traffic. It is unsafe to have this intersection, and should be discontinued.	Noted the request to not redesignated his property from Commercial Corridor to Low Density Residential unless closing 13th Street. Following initial conversations with Public Works, uncertain if 13th Street can be closed at this time, thus this property will remain as commercial, but will remain as part of the discussion.

	Commenter	Date	Address	City	Comment Summary	Staff Response Regarding Comprehensive Plan Update
37	Unknown	11/20/2014	Unknown	Unknown	Postcard: "It would provide employment to many people. Bring business a boost. Attracts new vigor and activity to the community."	Staff assumes this is in regards to the casino proposal. Staff has proposed within District 6 Profile to not support rezoning of this area due to: (1) established neighborhood and (2) the findings in the Update Land Capacity Analysis, indicates that the City has ample land zoned to accommodate Residential and Commercial uses for the City's Growth targets.
38	John Hogan	1/15/2015	1119 Burwell Ave	Bremerton	Supports Draft Land Use Map in regards to expanding the Downtown Regional Center to include the 1100 block of Burwell. "Bringing the boundary from Warren further west to Chester Ave as the draft shows is a welcome site in that this location transitions as a "gateway entrance" into the City while traveling eastbound on Burwell".	It is correct that the Staff proposed Draft Land Use Maps re-designated this area to be included in the Downtown Regional Center. Mr. Hogan is a owner of the Milan Apartment on Burwell Avenue which, under current designation of Low Density Residential, makes his multifamily complex a nonconforming use. This revision would make his property conforming.
39	Bill Broughton	1/16/2015	Washington Ave	Silverdale	Supports staff draft map, but would like mini storage to be considered in commercial designations	The Zoning Code is developed after the Comprehensive Plan Update. Your comment is noted and will be considered in the zoning code update.
40	Deirdre McKeel	1/18/2015	Unknown	Bremerton	Concerned with creating an industrial area near the hospital, and would like to see high density residential and shops. Also concerned with District Center designation around the Youth Center and the strenuous permitting process.	Reponses to commenter was that the Harrison Employment Center will continue to support higher density residential and retail, but will be renamed "Eastside Employment Center". In addition, great efforts have been made and are continuing to be made to simplify the permitting process. The Bremerton School District and Youth Wellness Campus has been supportive of the District Center Designation.
41	Bob Reiher	1/22/2015	1715 Wycoff Avenue	Bremerton	In response to the January Planning Commission Special Meeting, a citizen requested 13th Street to be vacated at the "5-way intersection." If this happens please consider removing access route to Ford Avenue through NAPA/West Bay Auto Store parking lot.	The City of Bremerton Public Work's Department is participating with the Comprehensive Plan Update and a formal proposal to vacate 13th Street has not been proposed or accepted. As the citizen claimed, this road is well utilized and as such additional analysis is required if this street is proposed for vacation. At this time, Staff is not proposing to vacate 13th Street, but your comment has been passed to the Public Works Department for their consideration.
42	Michael Mjelde	1/21/2015	Unknown	Bremerton	Supports redesignating the area at 11th and Warren (former tennis courts) to Higher Education designation. This provides additional oportunites for the community.	Staff is proposing to redesignate the area south of the current Olympic College to Higher Education, which allows multifamily structures such as dormitories which would provide greater opportunity for students and the community.
43	Paul Dutky	1/29/2015	Dockside	Bremerton	Surports mutlimodal transportation options including a trail around Kitsap Lake. Include infromation from the Bremerton's Non-Motorized Transportation Plan (2007). Additional note from Mr. Dukty was for staff to consider additional bike lanes on 6th Street from the Downtown to Kitsap Way to connect to the Sharrows	The Comprehensive Plan contains the big picture concepts, which has many goals and policies for multimodal transportation options, including suporting bike and pedestrain paths. The Comprehensive Plan references many more specific implementation plans that would better address and analysis specific trails. The City of Bremerton Non-motorized Transporation Plan (NMTP) identifies trails throughout Bremerton and connects to the County. The City of Bremerton Parks, Recreation, and Open Space Plan (PROS) addresses trails that are located with the parks. This comment has been forward to the Public Work's Department for their consideration when updating the NMTP. The NMTP & PROS will be incorporatated as "functional plans" with the Comprehensive Plan.
44	Cherl & Robert Reiher	1/29/2015	1715 Wycoff Avenue	Bremerton	In regards to area between N. Wycoff Avenue and N. Callow Avenue, and 13th Street and 15th Street, citizen is concerned that by designating the northern portion of the block as Neighborhood Commercial, this may open the door for rezoning the whole block for potential commercial.	This area has been discussed at the previous Planning Commssion Workshops in regards the potential casino proposal. This area is currently desingated as Neighborhood Commercial and remains in the new Plan. The northern portion of this block contains an old gas station site and the parking lot for Hi-Los Restuarant. Staff has proposed reducing the Neighborhood Center Designation in the vicinity due (1) established neighborhood and (2) the findings in the Update Land Capacity Analysis, indicates that the City has ample land zoned to accommodate Residential and Commercial uses for the City's Growth targets. Staff believes that the proposed land use changes in the vicinity address the concerns raised by the commenter.
45	Mike Mauren	2/4/2015	Unknown	Unknown	Supports Mineral Resource Overlay for the Low Density Residential in specific areas of West Bremerton. Encourages Zoning Code update to further support this overlay to follow.	Staff has proposed a Mineral Resource Overlay on large undeveloped parcels in west Bremerton. Part of the Mineral Resource Overlay approval will be to reclaim the site (inlcuding grading) at the end of the process for residential development.
46	Jack Stanfill	1/20/2015	Unknown	Bremerton	Document provided: Port Blakely Kitsap Lake JPA from May 12, 1999.	Staff received this document at the Open House and it provided for Planning Commission's consideration.

	Commenter	Date	Address	City	Comment Summary	Staff Response Regarding Comprehensive Plan Update
47	Steve Guiberson	2/14/2015	Unknown	Gig Harbor	Supportive of General Commercial designation along Wheaton Way, however he owns a car dealership there and cannot expand. Please consider allowing car dealerships not just in auto center but along the main corridors. Currently there seems to be a monopoly out near Auto Center Way for car dealerships.	In 2004, the Comprehensive Plan the zoning only allowed auto dealerships in the Freeway Corridor. Revisions to the Zoning Code will be considered following the Comprehensive Plan Update, which will have specific details on what land uses are allowed in specific zones. Planning Commission will consider appropriate uses in this detail during this Zoning Code update.
48	Lesley Kabelac	2/16/2015	3021 W State Hwy 16	Bremerton	Property north of her property is being proposed as General Commercial. Concern as she has access easements that may make this property hard to develop and access.	The subject property to the west is adjacent to State Hwy 16 (across from the Mattress Ranch). Staff is proposing General Commercial for this area and the Land Use designation line follows the topography of the site (the area that is relatively flat could be developed with General Commercial activities). The current designation is Low Density Residential. As for the easements, if this property is to be developed, the developer will need to comply with the easements (or revise them accordingly with the property owner) at the point of permit applications. Staff is not suggesting any further changes to the map to address the easement locations.
49	Jack Stanfill	2/17/2015	PO Box 4773	Bremerton	Provided the following documentation to be considered during the environmental review: Partial Transcription to Ueland Tree Farm Final Environmental Appeal Hearing (Dec 2009); pages 32 and 36 of Port Blakely Subarea Plan; Preliminary Scope for the Project page 5; Infiltration Map of the area; and a Mineral Resource Development Wetland Review.	These materials are excerpts from an Environmental Impact Statement for a project that is outside the City limits (Kitsap County jurisdiction). Documentation will be reviewed in conjunction to the Comprehensive Plan Update Environmental Review.
50	Judy Friedberg-Nerf	2/23/2015	Madrona Point	Bremerton	Had general inquires on the Draft Land Use Plan including the following: (1) Where is the development regulations for each designation (2) Why bring back the Multifamily Residential Designation (more information); (3) Council Districts should not separate existing neighborhoods; (4) express kudos to the District Profiles.	(1) The General Development parameters are addressed in the proposed Comprehensive Plan in the Draft Land Use Chapter at a higher level (generally what kind of development and what character should it have). The specifics will be addressed in the Zoning Code Update that will come after the Comprehensive Plan Update. (2) Staff is trying to reduce the nonconforming uses throughout the City, currently areas throughout the City that are primarily developed with multifamily structures, are being proposed to be redesignated from Low Density Residential (which allows one house, per one lot) to a more appropriate designation. (3) Council Districts were re-mapped a few years ago based on population, and unfortunately this did separate some cohesive neighborhoods. (4) Appreciate the kind words on the District Profiles. Staff created those in-house with the support of City Council.
51	Laura Gardner	2/24/2015	1027 Walnut Street	Bremerton	Represents the owner at 1027 Walnut Street who supports the redesignation of Medium Density.	Staff proposed to redesignated this area as it is primarily developed with duplex type structures to reduce nonconforming uses within City of Bremerton.
52	John Stieber	3/6/2015	Unknown	Unknown	Feels the direction the Comprehensive Plan is heading in is generally good. Wants to make sure that consideration is coming downtown and having access for those that may not be able to get around easy (such as the senior citizens). Wants more sidewalks like the Manette Bridge	Appreciate the comments, and the Comprehensive Plan Update is strongly encouraging multi-modal options including wide sidewalks throughout the City. The Downtown area has additional criteria to support pedestrians of all types, including the those of a vulnerable population. This information is discussed in the Draft Land Use Chapter and will be further discussed in the Transportation element.
53	Bruce Riveland (Olympic College)	3/11/2015	1600 Chester Ave	Bremerton	The Olympic College supports Staff's proposal for the Higher Education desingation as proposed.	The Staff's proposed Higher Education desingation can be seen on Draft Land Use #2.
54	Vic Ulsh	3/20/2015	400 Warren Ave	Bremerton	Writing to ensure property at 800 11th Street maintains the current Neighborhood Business overlay in the Downtown subarea plan.	Staff does not foresee removal of the existing Neighborhood Business overlay in the Downtown Subarea Plan.
55	Dan Nelson	3/31/2015	Unknown	Unknown	Encourages the City to make literature available to the public which provides tips on submitting a complete permit application. Acknowledges this information may exist, but needs to be made more readily available.	The draft Economic Development chapter, policy ED4(A), seeks a permitting process which advocates for development by providing predictable requirements and timelines. This comment was forwarded to the Building Official for her consideration to implement into the City informational handouts and method of dissemination.

	Commenter	Date	Address	City	Comment Summary	Staff Response Regarding Comprehensive Plan Update
56	Mark Kulman	4/6/2015	3141 W State HWY 16	Bremerton	Seeks to enlarge portions of parcel 322401-4-113-2005 designated as commercial on the Comprehensive Plan draft land use map to follow natural contours/slopes of the land (provided geotechnical report supporting claim).	Based off of the provided geotechnical report, the City will reevaluate the commercial boundary for parcel 322401-4-113-2005. Any changes will be presented to Planning Commission with an update Land Use Map.
57	Jim McDonald	4/25/2015	Marlow	Bremerton	Requesting the City to consider allowing duplexes in the area near Lions Park. The Low Density Residential designation limits the potential for this area.	Staff is proposing to redesignate the area north of Lions Park as Medium Density Residential designation which would allow duplexes.
58	Sherill D. Rose	5/7/2015	3628 "E" Street	Bremerton	Provided Staff her poem on Bremerton. First version was developed in 1996 and it was revised in 2004 to account for new development in the City.	Staff appreciates her passion for Bremerton.
59	John Bierly	6/16/2015	1032/1035 Hanford Ave	Bremerton	Two existing duplexes on Hanford, currently zoned R-10. Would prefer their lots and the adjacent lots be included in proposed GC zone.	The property owner missed their opportunity to apply for a Comprehensive Plan Map Amendment to proposed re-designate of his property from Low Density Residential to a Commercial designation (window ended on April 1, 2015). To re-designate these parcels, Planning Commission would need to direct Staff to begin reviewing the proposal. Staff initial concerns are the additional potential for commercial access and activity to Hanford Avenue (which is currently a residential street). Staff would need to verify whether the owner of the adjacent vacant lot would want it to be commercially zoned.
60	Jack Stanfill	7/22/2015	PO Box 4773	Bremerton	Provided the following documentation: Ueland Tree Farm Habitat Management Plan and Wetland Report Third Party Review which identifies additional considerations for the Ueland Tree Farms, LLC mineral mining application (dated March 3, 2015).	As Ueland Tree Farm is adjacent to City limits, this comment has been added into the Comprehensive Plan for consideration. However, the Ueland Tree mineral mining project is within Kitsap County jurisdiction and has been processed by that entity.
61	Dora Bressler	7/22/2015	105 Naval Ave	Bremerton	Request that Planning Commission re-designate her property at 105 Naval Avenue from the current Low Density Residential to a commercial designation due to her close proximity to the Naval Avenue Naval Base Kitsap Gate.	To consider this proposal, this request should have been received during the open Comprehensive Plan Amendment window (January through April 2015) and the owner has been notified for the next opportunity to apply. There are also concerns about further support in the neighborhood (as there are many single family homes in that neighborhood) as the City cannot support spot zoning. In addition, Naval Base Kitsap has requested that further consideration for areas around the base to not be up-zoned due to the potential impacts.
62	Priscilla Bailey	8/11/2015		Bremerton	Property owner of two East Bremerton commercial buildings (Wheaton Way at Hollis Street) requesting road improvements in that area, behind East Towne Center.	The areas in question are on private property, thus will not be addressed within Comprehensive Plan Update. As development occurs in the East Towne Plaza and surrounding area, the City may require improvements to the driveways and access roads. Encouraged her to work with her neighboring property owners.
63	Unknown	8/18/2015		Bremerton	Supports including Non Motorized Transportation review in city planning.	Received at the Planning Commission Open House. Staff appreciates the support for non motorized transportation as an element of the Comprehensive Plan.
64	KAPO John Taylor	8/5/2015	P.O. Box 1861 Poulsbo, WA 98370	Poulsbo	Request at City Council: Supports the City's plan to expand boundaries, however requested more information.	City Council responded to request with a letter dated August 12, from City Council president with links to Annexation Fiscal Analysis Studies, Comprehensive Plan Update, Countywide Planning Policies documents, and the Kitsap County Buildable Lands Report.
65	Nathan Mann	9/1/2015	1016 NE Forest Rock LN #125	Poulsbo	Owner of property: 1105 E. 31st Street (0.23 acres). Currently is zoned Commercial Corridor, and Staff is proposing to redesignate the property as Low Density Residential. Owner is planning on having business in location and would like to see it remain as commercial designation.	Staff is proposing to redesignate three parcels from commercial designation to residential designation that abut Eagle Avenue. Eagle Avenue is a residential street in nature, and commercial businesses may bring additional traffic to a relatively quiet residential street. At the time of proposal, this property is developed with a single family residence.
66	Anonymous	10/5/2015	Unknown	Unknown	Poem sent in via Postcard.	Provided to Planning Commission for their consideration.
67	Paul McConkey	10/15/2015	1723 Pennsylvania Avenue	Bremerton	Zoning Code request: please consider off-premise signage for directional traffic. As people cannot find a business (like Penn Plaza), the additional signage would help businesses.	Planning Commission will deliberate on zoning code (Bremerton Municipal Code Chapter 20) changes in the beginning of 2016 as part of the Comprehensive Plan Update (to ensure compliance with updated Comprehensive Plan and the zoning code). In 2005, off-premise signs became prohibited, largely based on prohibiting billboards throughout the City.

	Commenter	Date	Address	City	Comment Summary	Staff Response Regarding Comprehensive Plan Update
68	Priscilla Bailey	10/14/2015	Unknown	Bremerton	Supportive of City Service policy for underground utilities. Would like to see that happen on Wheaton Way.	Commented noted and passed to Public Work for any future proposals. Informed commenter that underground utility work would come when development happens on Wheaton Way, so no proposals currently, but will be considered when development comes.
69	Jared Kono	10/27/2015	Unknown	Gig Harbor	Interested in buying lot on Oyster Bay if it allows self service car washes.	Proposed to designated General Commercial. It will be part of the Planning Commission's next task to update the Zoning Code. It is likely that this use may be permittable within that designation.
70	Joe Zukauskas	11/12/2015	2312 E. 11th St	Bremerton	Having issues with neighbor at 1100 Perry Avenue (Der Blokken) including noise, and parking. Would like property undesignated as commercial.	Staff is not supportive of the redesignating a commercial property with an existing business to a non-commercial designation. If redesignation was supported, this business would become a nonconforming use, and would be able to continue until such time that its nonconforming status was terminated (such as ceasing business operations for more than a year). Provided general information about noise and parking but not a specific topic for this Comprehensive Plan Update.
71	Pamela Sparks	11/17/2015	1800 Ohio Ave	Bremerton	Challenged environmental threshold determination and adoption of existing environmental documentation.	Staff provided response to provide clarification to questions about the environmental review, and determined no additional addendum was required. Staff's Response Letter is attached to Comment #71.
72	Doug Skrobut	11/20/2015	Unknown	Port Orchard	To assist in achieving the goals of the Land Use Chapter, the City should consider Transfer of Development Rights program.	The Draft Comprehensive Plan has supporting goals and policies that could support a Transfer of Development Rights (TDR) program. The City currently does not have a TDR program.
73	Scott Daniels	11/17/2015	345 6th Street, Suite 300	Bremerton	Appreciate of the continued coordination of the Kitsap Public Health District and the City of Bremerton on working on the Comprehensive Plan Update.	Staff appreciates the work that Kitsap Public Health District has provided. Their contributions can be seen in the in policies in the Land Use, Economic Development and Environmental Element and in the technical analysis provided in the Land Use Appendix.
74	Erine Perez	12/3/2015	Unknown	Unknown	TIK Village Complex would like to subdivide their property and are hopeful that the update will be beneficial especially with higher density.	The Draft 2016 Comprehensive Plan document identifies this area as being redesignated from Low Density Residential to Multifamily Residential. Provided all development regulations can be met, including density, it is possible to subdivide (he is working with Staff on details).
75	Suquamish Tribe	12/8/2015	PO Box 496	Suquamish	Provided feedback on suggested policy revisions, concerns with any Urban Growth Area enlargements, and wanted more information on Shoreline Update	Policy revisions will be made to the Comprehensive Plan (for City Council's draft version) per Suquamish's request and anticipated Shoreline Master Program update has been provided for the Tribe to consider (relatively minor in nature). As for the Urban Growth Area (UGA) enlargements, the City of Bremerton is coordinating with Kitsap County about relocation of some UGA area to address existing sewer infrastructure. It is not an enlargement as the City will be reducing other UGAs to compensate for the needed area. Coordination with the Tribe will continue.
76	WSDOT	12/21/2015	PO Box 47440	Olympia	Provided feedback on suggested policy revisions for Transportation policies, discussed Level of Service on a State Route, and clarification on tables	Will continue to coordinate with Washington State Department of Transportation. Policies and tables will be revised and Staff is working with WSDOT to determine appropriate Level of Service of State Routes.
77	Sherill D. Rose	1/19/2016	3628 "E" Street	Bremerton	Is supportive of the City's Center approach with higher density and job opportunity within the Downtown area. Ms. Rose has many ideas that are supported by the Comprehensive Plan.	Appreciate the comments and identifying potential projects, however the Comprehensive Plan is the foundation document with high level goals, policies and direction for City Development. Specific developer projects will not be addressed within the Comprehensive Plan.
78	Jim McDonald	1/26/2016	Marlow	Bremerton	Concerned with current code that requires commercial on the first floor in mixed use buildings when Bremerton has an abundance of vacant commercial spaces including recent built buildings. In addition, current financing is available for multifamily residential, but not commercial spaces, so we are missing opportunities.	It has been in the Comprehensive Plan work program to encourage reuse of existing commercial spaces and reduce vacant buildings (while being compatible with surrounding neighborhoods). Policies have been added into the Comprehensive Plan, and Staff is working on the Zoning Code to address this concern.

**COMMENT #78****Allison Satter**

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**From:** Jim McDonald <mazama90@msn.com>  
**Sent:** Tuesday, January 26, 2016 3:53 PM  
**To:** Allison Satter  
**Subject:** Comp plan question/comment

Allison,

What part of the current comp plan requires that certain apartment complexes have commercial/retail space on the ground floor and do you anticipate that requirement will continue with the new comp plan?

I was at the Evergreen Park walk on Saturday with Josh Farley and one of the developers of the Evergreen Pointe Apartments was there and was describing the project with commercial space on the ground floor. As of yet...there were no commercial tenants...and the ones they were after....sounded problematic.

I believe the proposed project at sixth and Washington has the same requirement. However, I don't see it on Spy Glass Apartments.

My concern with the requirement is that it doesn't always fit with the market conditions. Why it is nice to have those kind of shops at the ground level, if the market doesn't support it, we are creating negative image for the properties and the city with a bunch of empty office fronts ( I know the plan is a twenty-year plan).

To me, the better approach would be to allow that as a flexible option for the developer to decide. If market conditions don't warrant the additional commercial space at this time, why not let them add a couple of additional residential units? They can more easily convert the space if there is demand for it. Look how long the lower space at the Hampton Inn has been vacant. Does that really help the City to have it that way? And the requirement to have that commercial space might cause a project to reach the "no go" decision. At the least....the vacant space must be made up by the rental charges of the remaining units.

Is there a chance to still comment on this regarding the current planning process? Flexibility seems to be in order!

Thanks! r, Jim McDonald