

## **(DRAFT) AGENDA**

**Virtual Meeting – Bremerton Planning Commission  
(Subject to PC approval)  
October 19, 2020  
5:30 P.M.**

**Join Zoom Meeting**

<https://us02web.zoom.us/j/81413138701?pwd=MFhKck94OERjeXhmSUlcWw4bnhpUT09>

**Webinar ID:** 814 1313 8701

**Password:** 898358

**One tap mobile:**

+1 253 215 8782,81413138701#  
US (Tacoma)

**Dial by your location:**

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### **I. CALL TO ORDER**

### **II. CLERK CONFIRMATION OF QUORUM**

### **III. CHAIR CALL FOR MODIFICATIONS TO AGENDA**

### **IV. APPROVAL OF MINUTES: September 21, 2020 meeting**

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## **V. PUBLIC MEETING**

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

**B. Public Hearing:**

1. Zoning Code Amendments for Accessory Dwelling Units (BMC 20.46.010)

**C. Workshop:**

1. Discussion of amendments for the Shoreline Master Program (SMP) Periodic Update

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## **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 Monday, November 16, 2020**

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

# DRAFT

Subject October 19, 2020 Approval

## CITY OF BREMERTON

### PLANNING COMMISSION MINUTES OF VIRTUAL MEETING September 21, 2020

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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 Tift  
Commissioner Coughlin  
Commissioner Mosiman  
Commissioner Pedersen

##### Staff Present

Andrea Spencer, Director, Department of Community Development  
Allison Satter, Senior Planner, Department of Community Development  
Garrett Jackson, Senior Planner, Department of Community Development  
Isaac Gloor, Planner, Department of Community Development  
Jon Rauch, Bremerton Kitsap Access Television (BKAT) Staff  
Sarah Lynam, DCD Project Assistant, Department of Community Development

##### Commissioners Excused

Commissioner Rich

##### Quorum Certified

##### Others Present

Dan Nickel, Watershed Company  
Alex Capron, Watershed Company

#### APPROVAL OF AGENDA

THE AGENDA WAS APPROVED UNANIMOUSLY.

#### APPROVAL OF MINUTES

VICE CHAIR TIFT MOVED TO APPROVE THE MINUTES OF JULY 20, 2020, AS PRESENTED. COMMISSIONER COUGHLIN SECONDED THE MOTION, WHICH CARRIED UNANIMOUSLY, WITH COMMISSIONER PEDERSEN ABSTAINING.

#### PUBLIC MEETING

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

**Chair Wofford** asked if there were any comments from citizens.

**Roy Runyon, Bremerton**, advised that Bremerton is a 1<sup>st</sup> Class City, which means that citizens retain the right of initiative and can create legislation if the City Council is unable or unwilling to act. He reported that he recently drafted a new initiative related to accessory dwelling units (ADUs). He recalled that the City Council did not adopt the changes recommended by the Planning Commission to make the ADU regulations less restrictive, and he doesn't think it is appropriate to wait any longer.

He referred to the Comprehensive Plan amendments that will be the subject of the Commission's public hearing, which talk about the availability of affordable housing and changing the density. He stressed that the changes won't be meaningful without also amending the ADU ordinance to make it less restrictive. He outlined the items included in his proposed initiative as follows:

- Eliminate all of the design criteria for ADUs. He questioned why there should be a more restrictive standard for ADUs compared to single-family residential construction.
- Allow more than one ADU per lot. There should be a formula that allows people with large lots to develop multiple ADUs with a minimum square foot requirement. For example, an additional ADU could be allowed for each 4,350 square feet of property, keeping in mind the setback requirements, etc.

**Mr. Runyon** said he will closely monitor the Planning Commission and City Council discussions and actions related to ADUs going forward, and will modify his initiative accordingly. He said he is prepared to take the proposal to the people for a vote. It is time to make the appropriate code changes to get more affordable housing in the City. Currently, there are only two new ADUs created each year in the City. With the initiative, he is hopeful there will be 20 new ADUs per year. Talking about affordable housing is only effective if appropriate code changes are made to enable private property owners to develop ADUs on their properties.

**Chair Wofford** closed the public portion of the meeting.

#### **Public Hearing: Comprehensive Plan Amendments for the 2020 Docket, Related to Establishing a Minimum Density Threshold**

**Ms. Satter** advised that the Planning Commission is being asked to hold a public hearing and provide a recommendation to the City Council. She reviewed that the Commission held a workshop in January to discuss the amendments. Since that time, staff has conducted the environmental review and completed agency and public outreach. Following the Planning Commission's recommendation, the City Council will conduct a public hearing (tentatively scheduled for October 21<sup>st</sup>) and make the final decision.

**Ms. Satter** advised that the proposal before the Commission includes both a Comprehensive Plan amendment and an associated Zoning Code amendment to implement the Comprehensive Plan amendment. She explained that the Comprehensive Plan is a blueprint document that establishes the vision, goals and policies for how the City will grow in the next 20+ years. With the exception of subarea plans, the Comprehensive Plan can only be amended once a year. The Zoning Code implements the vision, goals and policies of the Comprehensive Plan through the development standards and design guidelines in Bremerton Municipal Code (BMC) Title 20. It addresses standards such as height, setbacks, lot coverage, etc. There is no limit on how often the Zoning Code can be amended.

**Ms. Satter** reminded the Commissioners of the approval criteria that must be considered when reviewing Comprehensive Plan amendments:

- Is it compliant with the Washington State Growth Management Act (GMA) and other City plans and documents?
- Is it compatible with the existing and planned development patterns?
- Will it not negatively affect the City's ability to provide urban services?
- Will the proposed changes bear a reasonable relationship to benefiting the public health, safety and welfare?

**Ms. Satter** also reminded the Commissioners of the approval criteria that must be considered when reviewing Zoning Code amendments:

- Is it compliant with other City, State and Federal Codes, regulations, and ordinances?
- Is it consistent with the goals and policies of the Comprehensive Plan? If a Comprehensive Plan amendment is required, approval of the Comprehensive Plan amendment must occur prior to or concurrently with the Zoning Code amendment. They must be consistent.

**Ms. Satter** advised that the proposed amendment would change the minimum residential density citywide from 5 dwelling units per acre (du/ac) to 6 du/ac. Following the January workshop, the Commission asked staff to analyze if 7 du/ac would be appropriate. However, based on public feedback, staff is only proposing to increase the minimum to 6 du/ac. She reviewed that the Washington State Legislature passed House Bill (HB) 1923 in 2019, which encourages cities to increase opportunities for more residential capacity. The bill offered a menu of options to increase the supply of affordable housing. The City reviewed these options and agreed to consider the following three:

- Establish a minimum density of 6 du/ac. (subject of September 21 public hearing)
- Amend the ADU regulations. (subject of October 19 Commission public hearing)
- Amend the Zoning Code to address cluster housing and cottages. (briefing scheduled for early 2021)

**Ms. Satter** pointed out that the minimum density option requires both a Comprehensive Plan amendment and a Zoning Code amendment, whereas the other two initiatives under HB 1923 only require a Zoning Code amendment.

**Ms. Satter** advised that the amendment would apply to new development in the Low-Density and Medium-Density Residential zones, as well as four zones in the Downtown Subarea Plan (Downtown Multifamily Residential 1 and 2 and Downtown 1 and 2 Family Residential). As proposed, the Comprehensive Plan would be amended to change the minimum density in these zones from 5 du/ac to 6 du/ac. The Zoning Code would also be amended to change the minimum density from 5 du/ac to 6 du/ac. The maximum lot area would also be changed from 7,712 to 7,260 square feet.

**Ms. Satter** shared examples to show how a 1- acre parcel could be developed based on the current 5 du/ac per acre versus the proposed 6 du/ac. She also shared an example of a recently-approved subdivision with a density of 7 du/ac. She provided examples of existing development in the City to illustrate what development at 6 du/ac might look like:

- Dibb Street between Robin Avenue and Eagle. The property was developed at 6 du/ac and the average lot size is 7,114 square feet.
- 8<sup>th</sup> Street between Olympic Avenue and Rainier Avenue. The property was developed at 10 du/ac and the average lot size is 4,350 square feet.
- Dockside on Osprey Circle between Cormorant and Widgeon Court. The property was developed at 5 du/ac and the average lot size is 8,700 square feet.

**Ms. Satter** shared examples of recent development in Bremerton, noting that very few plats were subdivided at the minimum density. The range was between 7 du/ac and 13 du/ac. She summarized that, as per the Buildable Lands Review, projects in Bremerton are currently subdividing at an average of 10 du/ac citywide, so this change to the minimum will not likely affect development.

**Ms. Satter** emphasized that the amendments would not require existing lots and homes to squeeze in extra units. They would only impact future subdivisions and development. The proposal would change the minimum density, but the maximum density would remain the same, and there would be no changes to the zoning maps, either.

**Ms. Satter** reported that two public comments were received. One expressed opposition to the amendment and the other was generally supportive of increasing residential density but had other ideas for the Commission to consider.

**Chair Wofford** opened the hearing for public comments.

**Roy Runyon, Bremerton**, said he supports the proposed amendment. However, he suggested that, if they want to encourage increased density, the Commission should also look at other development regulations that drive up the cost of development, such as impact fees. If the cost of development is higher in Bremerton than in unincorporated Kitsap County, then the City is losing out and is not meeting the intent of the GMA. He asked the Commission to consider what changes it can recommend to the City Council to make residential development in the City more affordable. While the proposed amendment is a step in the right direction, they also need to consider other practical changes that will make it easier for developers to increase density. **Chair Wofford** said the Commission seeks input from time to time about what can be done to make development easier and more feasible for contractors. **Director Spencer** pointed out that while there are general facility charges to hook up to the

water and sewer systems, the City of Bremerton hasn't adopted any impact fee ordinances. On the other hand, Kitsap County, Port Orchard and Poulsbo have all adopted transportation impact fee ordinances.

**Kevin Walthall, Bremerton**, voiced support for the proposed amendments. However, he asked if they would hold any implication for duplexes to meet the minimum requirement. He also asked if the amendments would alter the setback requirement in single-family and multi-family residential zones. If not, he could see the setback requirements becoming a stumbling block for developers. He voiced his support for allowing duplexes, which would help developers meet the minimum requirement. **Ms. Satter** pointed out that the maximum density requirement actually has more impact on duplex development than the minimum density requirement, since the goal is usually to fit more units on a lot. Because the amendments would only apply in the low-density and medium-density residential zones, it is likely that developers will choose to construct single-family homes rather than duplexes. She said the amendments would not reduce the setback requirement, since developers are successfully developing at 8 and more du/ac and can still meet the current setbacks.

**Chair Wofford** closed the public portion of the hearing.

**Vice Chair Tift** referred to the public comment, which indicated support for the proposed amendment but wanted the minimum density to be mandated. He asked if that was practical. **Ms. Satter** answered that, once adopted, the amendment would establish a minimum of 6 du/ac for all new subdivisions, and it would become a mandate. The only exception would be if a property owner wants to retain one larger lot where his/her home is located. While the entire property might not meet the minimum density requirement at the time of subdivision, the property where the house is located would be subdivided at a later date to meet the requirement. That provision would not change, recognizing that Bremerton has a lot of existing development and people have a desire to keep their one house and subdivide the rest of the lot they aren't utilizing.

**Vice Chair Tift** asked if developers have indicated support for the proposed amendment. **Ms. Satter** said the proposal was sent to the Kitsap Building Association and the real estate group, but they have been silent on the matter since most developers are already developing at a higher rate.

**COMMISSIONER COUGHLIN MOVED THAT THE COMMISSION RECOMMEND THAT THE CITY COUNCIL ADOPT THE PROPOSED AMENDMENTS TO THE COMPREHENSIVE PLAN AND ZONING CODE AS DETAILED IN THE STAFF REPORT AND ATTACHMENTS AND BASED UPON THE FINDINGS AND CONCLUSIONS INCLUDED IN ATTACHMENT D. COMMISSIONER PEDERSEN SECONDED THE MOTION, WHICH CARRIED UNANIMOUSLY.**

**Public Workshop: Discussion of Amendments for the Shoreline Master Program (SMP) Periodic Update**

**Mr. Jackson** introduced Dan Nickel and Alex Capron, from the Watershed Company, the consultants hired to assist the department with the Shoreline Master Plan (SMP) update. He explained that this is a workshop for discussion and education purposes, and no formal decisions will be made at this time. It is anticipated that the project will be completed in mid-2021, and updates will be provided to the Commission over the next several months.

**Mr. Jackson** explained that the SMP is a set of state-required policies and regulations that are intended to protect state shorelines, promote public access to the shorelines, and ensure that uses that need to be located on the shoreline have priority. In addition to updating the SMP, the City will also update its Critical Areas Ordinance (CAO) for consistency with the SMP and other limited changes.

**Mr. Jackson** advised that the SMP applies to "Shorelines of the State," which are waterbodies that meet certain criteria. The shoreline jurisdiction is generally areas that are located within 200 feet of a high-tide line, some larger lakes and streams and other exceptions. Examples of those in Bremerton include Lake Kitsap, portions of the Union River and Gorst Creek, and all marine waters. He shared an example of a shoreline designation map, noting that the colored lines follow waters that are regulated by the SMP. Each of the colors represents a different shoreline designation and they correspond closely with the zoning map designations. For example, the Low-Density Residential Zone has a Single-Family Residential Shoreline Designation. He explained that the shoreline designations were assigned based on an analysis in the Inventory Characterization Report. The report was done in 2013 and took a snapshot of existing development on Bremerton shorelines and identified shoreline resources they wanted keep. For example, the area located south of Gorst was designated as Urban Conservancy

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because it is an environmentally-sensitive area they want to preserve, and the area around the shipyard was designated as Industrial based on existing development. Areas that are waterward of the high-tide mark were designated as Aquatic.

**Mr. Jackson** explained that the state requires jurisdictions to update their SMPs every eight years to ensure they are compliant with current state laws and changes in local plans and regulations and to incorporate new or improved data and information. The periodic update will not re-evaluate the ecological baseline, which was established as part of the 2013 comprehensive update that is used to determine no net loss. The ecological baseline is a snapshot inventory that established what the City's shorelines currently look like. It identified the ecological situation, the areas that were degraded, and the areas that had environmental resources. One of the main goals of the SMP is to assure no net loss of the 2013 baseline.

**Mr. Jackson** referred to the Gap Analysis Report (Attachment A), which was prepared by the Watershed Company and points out areas that the City has to improve upon in order to be compliant with the update process. He explained that staff will propose a number of amendments as part of the proposed update, and a full draft of the proposed amendments will be presented at a future workshop. He shared examples of the anticipated amendments to both the SMP and CAO as follows:

#### SMP Amendments

- **Definitions.** This section will be amended to be consistent with the state. For example, an updated definition for “floating residences” will be included. In addition, some definitions that are located in the nonconforming section of the SMP will be moved to the definition section of the SMP.
- **Exemptions.** The exemptions for Shoreline Substantial Development Permits will be updated to be consistent with what is available from the state.
- **Applicability.** A statement will be added to clarify that the SMP doesn’t apply to federal lands. Currently, there is no statement that the shipyard is not part of the SMP.
- **Restoration Projects.** Some of the dimensional standards for restoration projects will be updated.
- **Nonconforming Structures.** The amendments will look at the applicability of the code as it pertains to certain structures and the proportionality of mitigation required in some of those cases. For example, is the amount of mitigation required for a small addition proportional to the expansion?
- **Shoreline Buffer Reduction Options.** They are looking at minor revisions to this section to clarify buffer averaging provisions and to ensure that no net loss is achieved. Currently, the buffer averaging calculations are complicated, and the goal is to make them simpler.
- **New Sheridan/Harrison Center Subarea Plan.** Amendments will align the SMP with the new subarea plan that was recently adopted.
- **Vegetation Management Plan Allowances.** Portions of this section will be updated to provide relief for single-family property owners. The plan is required with any new shoreline development. It provides a snapshot of existing vegetation and describes how a developer will mitigate and add native vegetation to buffer areas.
- **Consolidation.** All of the SMP policies will be consolidated into one chapter. Currently, they are scattered throughout the document, and it would read much more clearly if they were located in one section.
- **Climate Resiliency.** Proposed language would be added for climate resiliency. As the department learns more about the ongoing effects of the global climate, it is important to ensure that the knowledge is represented in the environmental documents.
- **Minor Mapping Changes.** Minor updates to the Shoreline Environment Designations will be made to reflect new information and improve consistency with zoning.

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## CAO Amendments

- **Wetland Buffers.** The existing buffer requirements for wetlands will be clarified to be consistent with the Department of Ecology (DOE) guidelines.
- **Fish and Wildlife Habitat Conservation Areas.** Other minor amendments will be made to provide flexibility within Fish and Wildlife Habitat Conservation Areas.

**Mr. Jackson** announced that an online tool will be launched on October 1<sup>st</sup> to orient the public to the SMP update process. A full draft of the proposed amendments will be presented at a Planning Commission workshop on October 19<sup>th</sup>. The state has some specific requirements for the City to accomplish, one being a shared public comment period and shared public hearing. The joint public comment period will occur in November, and the joint public hearing is scheduled for November 16<sup>th</sup>. It is anticipated that the draft update will be presented to the DOE for an initial determination of compliance with DOE standards in January of 2021, and the Planning Commission review and recommendation, if necessary, will occur in February 2021. Local adoption will likely occur in Spring 2021. He emphasized that all of the dates are tentative at this time, and staff will take as much time as needed with the Commission and public to work through the process.

**Mr. Jackson** said that the online open house that will launch on October 1<sup>st</sup> is one way to engage the public and ensure they are involved in the SMP update process. It will review background information and project timelines so the public can understand the issues that are being addressed and provide comments. It will also provide an opportunity for the public to sign up to be notified of future actions on the update.

**Roy Runyon, Bremerton**, asked how many individual property owners/developers have been impacted by the current SMP and what their costs have been. He noted language regarding flexibility and minimizing the impact of the SMP and said he would be interested to see what that information shows. He recommended that this data be presented to the Commission, City Council and public for background.

**Sue Plahn, Bremerton**, asked if the slide set from the staff's presentation could be made available to the public. **Ms. Satter** answered that it would be sent to all of the property owners who received notification of the workshop.

**Vice Chair Tift** asked if the Vegetation Management Plan applies in the event that the shoreline is damaged during construction. **Mr. Jackson** answered that the Vegetation Management Plan is intended to repopulate the buffer areas as mitigation for the development and not just those areas disturbed during construction. It identifies how much of the buffer area should be populated with native vegetation and trees.

**Commissioner Mosiman** recognized that the presentation was intended to be just an overview. However, as they get into more detail at future meetings, he would like clarification on the following:

- Attachment A, Page 6, Item e, which talks about the difference between timber harvesting and timber cutting. It would be helpful to have a map showing where timber harvesting might take place within the City.
- Attachment A, Page 23, Item 9, which references a specific Washington Administrative Code (WAC) provision regarding public access requirements. It would be helpful for the Commission to see the actual WAC language to know what is being referenced. Years ago, a map was provided to show where public access was located within the City of Bremerton. If they are considering changes to public access, it would be helpful to have that map to provide some reference about what changes would take place and where.
- Attachment A, Page 24, Item 12, which has to do with climate change resiliency as it relates to bulkheads. Bulkheads are important in marine environments, and they have an impact on the upland of property owners. It would be helpful to have clarification on the City's policies relevant to sea level rise.
- Attachment A, Page 24, Item 14, which has to do with the portionality and scale of development. Would a developer be required to provide an entire buffer with native plants? Are you changing the residential permitting requirements to be simpler? He supports simplicity but without losing the ability to make the kinds of changes and impacts the City wants to see for the environment.

**Commissioner Mosiman** asked if the tribes have been informed that the City is in the process of updating its SMP. He would be curious to know what their interest might be.

**Commissioner Pederson** referred to Attachment A, Page 24, Item 12 and said he is also curious about the City's policies relevant to sea level rise. Olympia's 2019 Sea Level Rise Plan is referenced, and he is interested in learning more about what that plan entails. He asked staff to provide a link to the plan prior to the next workshop. **Ms. Satter** said staff is working on climate resiliency documents, and other documents related to this effort have also been prepared. Information will be sent to the Planning Commission soon about a recent Kitsap County study related to sea level rise.

## **BUSINESS MEETING**

### **Chair Report**

**Chair Wofford** acknowledged the citizens who participated in the Zoom meeting and thanked those who provided input.

### **Director Report**

**Director Spencer** reported that staff is settling into the new normal. There have been a lot of permit applications, and remote operations are going smoothly. A fun statistic showed that more than 1,000 people were able to engage with the online materials that were made available during the Eastside Employment Center planning process, which is encouraging to note. At this time, the City will proceed with digital meetings until there is a change in the governor's order.

### **Old Business**

There was no old business.

### **New Business**

There was no new business.

### **ADJOURNMENT**

The meeting was adjourned at 6:45 p.m.

Respectively Submitted by:

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Andrea L Spencer, AICP  
Executive Secretary

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Nick Wofford, Chair  
Planning Commission

**DRAFT**

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

**AGENDA TITLE:** Public Hearing for Zoning Code Amendment: Changes to Development Standards for Accessory Dwelling Units

**DEPARTMENT:** Community Development

**PRESENTED BY:** Isaac Gloor, Planner,  
(360) 473-5281 or [isaac.gloor@ci.bremerton.wa.us](mailto:isaac.gloor@ci.bremerton.wa.us)  
Allison Satter, Planning Manager  
(360) 473-5845 or [allison.satter@ci.bremerton.wa.us](mailto:allison.satter@ci.bremerton.wa.us)

**EXECUTIVE SUMMARY**

This packet is the proposal for amending the Accessory Dwelling Unit (ADU) code. The State of Washington and the City of Bremerton are currently experiencing a housing shortage that has led the region to some of the highest housing prices in the nation. In 2019, as part of an effort to increase the supply of housing, the City was awarded a grant from the Department of Commerce in order to implement new State recommended guidelines for increasing urban residential building capacity in the form of ADUs. There are several categories of the Bremerton Municipal Code that the City is proposing to revise:

- A. Increasing minimum size requirements.
- B. Removing parking requirements.
- C. Removing owner occupancy and ownership requirements.
- D. Minor modifications to the requirements for grandfathering date and minor modification of the design standards (these are staff and Commission initiated amendments and not part of the State guidelines)

Additionally, this packet presents other potential code amendments for the Commission to consider. While these amendments are not included within the City's recommended code, any of them may be incorporated into the Commission's recommendation for code update to the City Council.

The Planning Commission held a workshop in May of this year to discuss potential ADU amendments. At that meeting the Commission was largely supportive. However, the Commission directed Staff to consider stricter design standards. Staff has considered the Planning Commission's guidance and public comments, and summarizes the results within this packet. Staff anticipates that by adding / revising the code language as identified in **Attachment A**, the code will provide better flexibility for projects, and will result in a more housing options within Bremerton.

**ATTACHMENTS:**

Attachment A: Proposed Amendments to BMC 20.46.010 ADUs (**Revised**)

Attachment B: Findings and Conclusions of the Planning Commission

Attachment C: Written Public Comments received during this process.

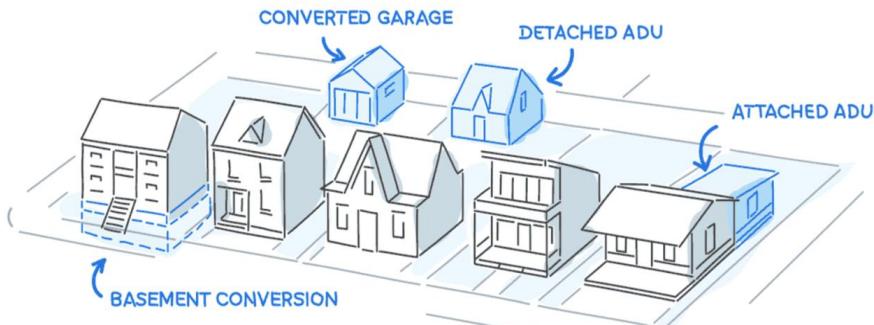
**RECOMMENDED MOTION:**

Move to recommend the City Council adopt text amendments to BMC 20.46.010 as detailed in Attachment A, based upon the Staff Report and the Findings and Conclusions presented in Attachment B.

# BACKGROUND

## BACKGROUND

Accessory Dwelling Units (ADU) – also referred to as accessory apartments, second units, mother-in-law homes, or granny flats – are additional living quarters on single-family lots that are independent of the primary dwelling unit. The separate living spaces are equipped with kitchen and bathroom facilities and can be either attached or detached from the main residence.



Development of accessory dwelling units can be traced back to the early twentieth century, when they were a common feature in single family housing. As suburbs continued to be a prevalent form of housing development, the rapid growth of suburbs reinforced the high demand for lower-density development and ultimately led most jurisdictions to prohibit ADU construction. In spite of the zoning restrictions, illegal construction of ADUs continues in communities where housing stock does not meet demand.

In 1993, the State required most Washington Cities and Counties to adopt ordinances that allowed for and encouraged ADUs, and this was when the City of Bremerton first amended the zoning code to allow them. In the time since, the ADU code has been amended multiple times. Most recently, in 2017, a proposal was brought before the City Council to remove the owner occupancy requirement and add additional design standards. Prior to this, code required the property owner to reside at the primary unit or in the ADU for at least 6 months of a year. Instead of eliminating the owner occupancy requirements, the City Council decided to raise required owner occupancy from 6 months to year-round, and they adopted stricter design requirements.

Presently Staff receives a few ADU applications each year, but we discuss ADU requirements several times a month with interested individuals. Most of these inquiries do not result in applications to construct ADUs. Many owners are not able to abide by the current ADU requirements, and as a result of this, the City processes very few ADU permits.

In 2019, Washington State passed into law a new bill, [House Bill 1923](#), aimed at increasing 'Urban Residential Building Capacity'. This law contains several specific housing recommendations in order to achieve that goal. One of these recommendations relates to Accessory Dwelling Units, and includes the specific code recommendations detailed later in this report. In May of this year, Staff presented proposed ADU amendments to the Planning Commission at a public workshop. The Planning Commission was supportive of the proposed changes, but one Commissioner expressed support for the owner occupancy requirements, and requested that design standards be not completely removed. On the following pages are the amendments that were presented in the workshop, as well as changes based on the Planning Commission's recommendations.

## **HOW TO REVIEW THIS DOCUMENT**

As mentioned in the Executive Summary, **Attachment A** is the Staff Recommendation for edits to the ADU code for compliance with the Washington State Legislature request. However, this packet does include other amending code options that the Planning Commission may consider. These options are both provided to the City via public comments and the result of feedback from the Planning Commission from the previous meetings. These alternative code options have been through environmental analysis and agency and public outreach.

In order to represent the scope of changes to the ADU development standards, each ADU code section with potential changes are summarized in the following pages.

In this document, the existing code is within blue brackets. Recommended code changes will be represented within green brackets, and alternative code changes that the City has also considered are represented within orange brackets.

**(EXISTING CODE IN BLUE BRACKETS)**

**(RECOMMENDED CODE AMENDMENTS IN GREEN BRACKETS)**

**(ALTERNATIVE CODE AMENDMENTS IN ORANGE BRACKETS)**

If the Commission desires to recommend an alternative option to the City Council, staff will assist the Commission on an amending motion. An example of the amending motion is:

Move to recommend the City Council adopt text amendments to BMC 20.46.010 as detailed in Attachment A, **with the exception that subsection (c) shall be Alternative B (for the number of ADUs that can be allowed per lot)**, based upon the Staff Report and the Findings and Conclusions presented in Attachment B.

## NUMBER OF ADUs: 20.46.010(c)

**Existing Code:** Only one (1) ADU may be created per lot. The lot shall only contain one (1) single-family dwelling unit and one (1) ADU.

The City does not recommend any changes to this code section, and any changes would be beyond the scope of House Bill 1923. However, public comment has suggested that the City should consider an increase to the number of allowed ADUs. Because of this, the City conducted environmental review for the following alternatives:

### Alternative A:

~~Only one (1) ADU may be created per lot. The lot shall only contain one (1) single-family dwelling unit and one (1) ADU. One (1) attached ADU and one (1) detached ADU may be created per lot. The lot shall contain one (1) single family dwelling unit and a maximum of two ADUs.~~

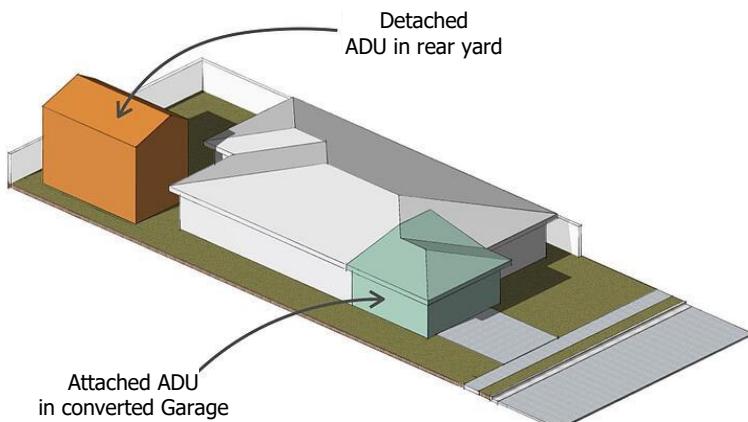
*Alternative A would allow for two ADUs per lot, but the lot would only be permitted to contain one ADU of each type: one attached and one detached ADU.*

### Alternative B:

~~Only one (1) ADU may be created per lot. The lot shall only contain one (1) single-family dwelling unit and one (1) ADU. Two (2) ADUs may be created per lot. The lot shall contain one (1) single family dwelling unit and a maximum of two ADUs.~~

*Alternative B would also allow for two ADUs per lot. The ADUs could be attached or detached.*

If either Alternative A or Alternative B were the preferred alternative of the Commission, the City would recommend that the code should require the 2<sup>nd</sup> ADU to provide one additional off-street parking spot and restrict parcels to no more than one driveway. Although BMC Title 11 states that two driveways on most single-family lots are not permitted, it would be helpful to have it repeated in this section for clarity.



## SIZE OF ADUs: 20.46.010(e)

**Existing Code:** An ADU shall be subordinate to the principal unit. The ADU shall be limited to not more than sixty (60) percent of the principal unit's total habitable floor area with the following exception:

- (1) To encourage the compact infill development and use of existing single-family homes, if a residence that was constructed or remodeled prior to January 1, 2017, is proposed to be divided into a principal unit and an ADU, the Director may allow equal square footage for the principal unit and the ADU if the ADU is located completely on a single floor of the existing residence. This does not apply to detached ADUs.

Currently, Code limits the size of ADU's to 60% of the principal unit's habitable floor area. This has the potential to penalize the owners of smaller homes by possibly requiring a potential ADU to be too small to be economical. The proposal is to change the size restrictions to a maximum ADU square footage of 60% of the primary structure, or 1000 square feet, whichever is larger. This is a requirement in order to be in conformance with State recommendations.

The City of Vancouver, British Columbia, has had similar ADU requirements for years, with a maximum ADU size of 900 square feet. In 2018, Vancouver completed a survey ([linked here](#)) of tenants and owners of detached ADUs (note: in Vancouver, detached ADUs are largely known as 'laneway houses'). The finding was that the primary desire from occupants of detached ADUs in the city was to have more interior living space. Design standards will be utilized in order to ensure that ADUs remain a distinct development type from other forms of residential units. Development coverage standards will still apply to residential lots. For instance, in the R-10 zone, the maximum that a lot may be covered by impervious surfaces is 60%. Thus, if the existing structures and pavement occupy 40% of the lot, new ADU construction could only occupy a maximum of 20% of the lot area (for a total of 60% lot coverage).

Additionally, the recommended code change updates the size exception section of the code. This section allows the square footage of an internal ADU to encompass an entire existing floor. This section is proposed to stay functionally identical, but the cut-off construction date will be updated from January 1<sup>st</sup>, 2017 to December 31<sup>st</sup>, 2020. This will allow more recently built houses to take advantage of this feature, while still prohibiting new construction of oversize ADUs.

### Recommended Code:

~~An ADU shall be subordinate to the principal unit.~~ The ADU shall be limited to 1,000 square feet or not more than sixty (60) percent of the principal unit's total habitable floor area, whichever is greater, with the following exception:

- (1) To encourage the compact infill development and use of existing single-family homes, if a residence that was constructed or remodeled prior to ~~January 1, 2017 December 31, 2020~~, is proposed to be divided into a principal unit and an ADU, the Director may allow equal square footage for the principal unit and the ADU if the ADU is located completely on a single floor of the existing residence. This does not apply to detached ADUs

## **DESIGN OF ADUs: BMC 20.46.010(f) & (g)**

### **Existing Code:**

(f) Any ADU shall be designed so that the appearance of the building remains that of a single-family residence and should architecturally blend into the existing neighborhoods through careful design. Unless the ADU is limited to only interior remodeling of an existing single-family dwelling, a proposed ADU shall meet the following design standards:

- (1) Exterior Finish. The exterior of an ADU shall have siding and roofing which in color, material and appearance are comparable to the predominant materials of the primary dwelling unit and/or characteristics of the neighborhood.
  - (i) Roofing. A roof of equal or greater pitch as the principal unit.
  - (ii) Eaves. The minimum projection is twelve (12) inches.
- (2) Detailed Design. All ADUs shall provide detailed design using at least four (4) of the following architectural features:
  - (i) Trim to denote all building's roof lines, porches, windows and doors that is at least three (3) inches wide;
  - (ii) Dormers;
  - (iii) Gables;
  - (iv) Recessed entries;
  - (v) Covered porch entries;
  - (vi) Offsets in building face or roof (minimum sixteen (16) inches);
  - (vii) Bay windows;
  - (viii) Decorative cornices and roof lines;
  - (ix) Shutters;
  - (x) Brickwork, masonry or stucco;
  - (xi) Any alternative feature providing visual relief similar to the options listed above provided it must be approved by the Director.

(g) The entrance to an attached ADU shall not be on the same facade of the structure as an entrance to the principal unit. Exterior stairway shall not be constructed on the street-frontage side of the principal dwelling unit.

Currently, code requires that the appearance of the building remains that of a single-family residence. It also requires that an ADU architecturally blend into the existing neighborhoods, have a roof of an equal or greater pitch as the main unit, and have eaves that project at least 12 inches. The owner must choose at least four standards from a list that includes options such as dormers, bay windows, shutters, and brickwork. Additionally, ADUs cannot have entrances on the same façade as the principal unit, and they cannot have exterior stairways on the street frontage side of the unit.

Some of these design standards have proven to be barriers to the creation of ADUs. In particular, staff commonly encounters parties interested in converting existing structures to ADUs that are not capable of complying with the provision that the roof must be "of equal or greater pitch as the principal unit". The [City of Bainbridge Island](#) has simplified their design standards to simply state that: 'Accessory dwelling units shall be designed to maintain the appearance of the primary

dwelling as a single-family dwelling...'. The [City of Seattle](#), in a recent comprehensive reform of their ADU code, has removed the vast majority of their design restrictions, only maintaining standards for ADU entrances on certain facades. Removing design restrictions is becoming a popular method to encourage more diverse types of ADUs.

Amendments of this code section are not required to be in compliance with the new State recommendations of HB 1923. Additionally, at the May Workshop with the Planning Commission, interest was expressed in maintaining some design standards in order to ensure that new development does not appear too box-like. With that in mind, the City is not recommending a complete removal of the design standards for ADUs. However, in order to facilitate the construction of more ADUs while still ensuring good design, the City recommends the following amendment:

**Recommended Code:**

(f) Any ADU shall be designed so that ~~the appearance of~~ the building ~~remains that of a single-family residence and should architecturally blend into the existing neighborhoods through careful design avoids the appearance of a duplex~~. Unless the ADU is limited to only interior remodeling of an existing single-family dwelling, a proposed ADU shall meet the following design standards:

- (1) Exterior Finish. The exterior of an ADU shall have siding and roofing which in color, material and appearance are comparable to the predominant materials of the primary dwelling unit and/or characteristics of the neighborhood.
  - i. ~~Roofing. A roof of equal or greater pitch as the principal unit.~~
  - ii. ~~Eaves. The minimum projection is twelve (12) inches.~~
- (2) ADU Entrance Placement. Entrances to attached ADUs that are visible from a right of way, not including an alley, must follow one of the following criteria:
  - i. A placement at a lower apparent elevation from the street than the primary unit entrance;
  - ii. A placement of the ADUs entryway on a different façade than the entrance of the primary unit.
  - iii. A modulation of the ADU façade of 25% of the length of the façade of the entrance of the primary unit;
  - iv. Any alternative feature providing visual distinction between entrances to the options listed above provided it must be approved by the Director.

(2-3) Detailed Design. All ADUs shall provide detailed design using at least four (4) of the following architectural features:

- i. Trim to denote all building's roof lines, porches, windows and doors that is at least three (3) inches wide;
- ii. Dormers;
- iii. Gables;
- iv. Recessed entries;
- v. Covered porch entries;
- vi. Offsets in building face or roof (minimum sixteen (16) inches);
- vii. Bay windows;
- viii. Decorative cornices and roof lines;
- ix. Shutters;
- x. Brickwork, masonry or stucco;
- xi. Any alternative feature providing visual relief similar to the options listed above provided it must be approved by the Director.

(g) ~~The entrance to an attached ADU shall not be on the same facade of the structure as an entrance to the principal unit. Exterior stairway shall not be constructed on the street frontage side of the principal dwelling unit.~~

*This recommended code reduces some requirements, while ensuring that ADUs do not resemble duplexes by requiring separate standards for the designs of ADU entryways. It would allow for ADU entrances on the same façade as the entrance of the principal unit, but only if the entrance was designed to be visually distinct.*



*Under current code requirements, this ADU entrance would not be allowed as it is located on the same façade as the entrance of the primary unit. The recommended code amendment would allow this entrance, as it is at a different apparent elevation when viewed from the street.*

In addition to the recommended code on the previous page, the City has also conducted environmental and internal review of the following alternatives:

**Alternative A:**

Complete removal of the design standards: section (f) and (g) of BMC 20.46.010.

*Alternative A is a suggestion that the City received via public comment. While reducing design standards is an emerging trend in various cities across the Pacific Northwest, removing the entirety of this code would be beyond the scope of House Bill 1923. However, the City does not currently regulate the design of single-family houses, so Alternative A would bring ADU standards in line with those of other housing structures in our single-family zones.*

## **PARKING REQUIREMENTS: BMC 20.56.010(h)**

### **Existing Code:**

Accessory dwelling units shall provide one (1) off-street parking space in addition to that which is required for the principal unit. When adding an ADU, all driveways and areas used for loading, parking, and maneuvering vehicles on the parcel shall have a paved surface.

Currently, code requires one (1) parking space be provided for an ADU, in addition to the 2 parking spaces that are required for single family dwellings. This has the potential to pose an unnecessary burden to the addition of some ADUs. One 8'x18' parking space (the minimum size permissible) requires 144 square feet of pavement, which can be difficult and expensive to provide on lots with inconvenient site conditions. In addition, many ADUs are used as housing for aging, younger, or disabled family members who may not require a vehicle. In these cases, requiring the addition of a parking space adds cost and reduces usable lot space unnecessarily.

According to US Census Data from 2018, 14.4% of Bremerton's households do not own a vehicle, comparable to Seattle at 17.3%, and much higher than Washington as a whole at 6.9%. In Portland, widely considered to be the leader in the US on ADU construction, no parking is required to be provided for ADUs. Despite this, 63% of Portland's ADUs still provide an off-street parking space, and according to a State of Oregon study, the impact of ADUs on parking standards is negligible. The State of Oregon's determination was that unless factors change substantially from what they observed, "the fear that ADUs harm parking conditions will have little rational basis". This is partly because ADUs are dispersed throughout the city, making any single ADU increase parking demand only minutely, and typically by much less than other types of residential development. The full study is linked [here](#). Attached to this report is an [online article](#), which summarizes many of these points in more detail.

Because of the reasons listed, and in order to comply with State recommendations, the City is recommending removing parking requirements for ADUs. Potential parking impacts are proposed to be mitigated via new code that prohibits parking that currently exists from being removed for the construction of the ADU. In addition, a primary dwelling must have or construct 2 parking spaces, in accordance with existing residential parking code, in order for an ADU to be permitted.

**Bremerton Vehicle Ownership Compared**

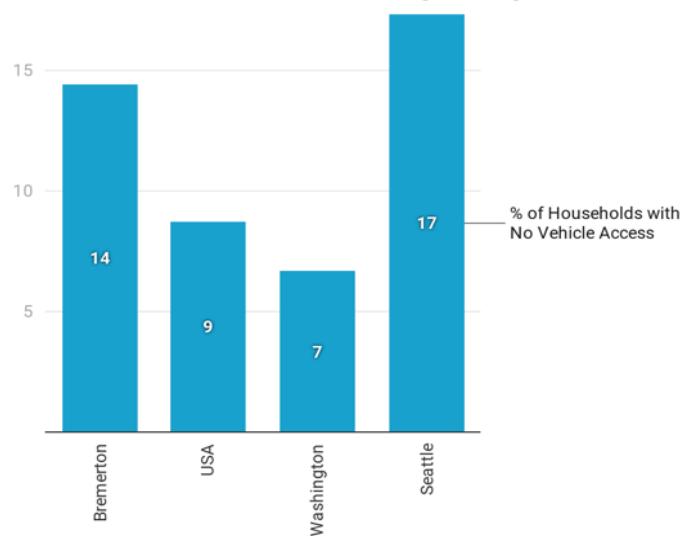


Chart: Isaac Gloor • Created with Datawrapper

### **Recommended Code:**

~~Accessory dwelling units shall provide one (1) off street parking space in addition to that which is required for the principal unit.~~ When adding an ADU, an ADU is not required to provide additional off-street parking space. The site must comply with BMC 20.48, off-street parking requirements, specifically that the required parking spaces for the principal unit shall be provided and that all driveways and areas used for loading, parking, and maneuvering vehicles on the parcel shall have a paved surface.

*The recommended code ensures that the development of ADUs does not result in a loss of parking but does not require that more parking must be developed in order to establish a new ADU.*



A single-family residence with a detached ADU above a garage.

PARKING GUIDE

## Owner-Occupancy Requirements: BMC 20.56.010(k)

### Existing Code:

The property owner, which shall include titleholders and contract purchasers, must occupy either the principal unit or the ADU as their permanent residence for all twelve (12) months of the year

Currently, code requires that a property owner occupy either the ADU or the primary residence of the ADU year-round. This City proposes to remove this requirement in order to conform with State recommendations. This is an increasingly common choice in areas with a strong need for housing and is supported as part of the City's [Infill Toolkit](#). This amendment would mean that both the single-family dwelling and the ADU could both be rented out at the same time.

### Recommended code:

The property owner, which shall include titleholders and contract purchasers, must ~~occupy either the principal unit or the ADU as their permanent residence for all twelve (12) months of the year~~, abide by the following:

- (1) International Property Maintenance Code Chapter 3 Section 302 concerning Exterior Property Areas, as adopted at BMC 17.04.020(f), except those not adopted as enumerated in BMC 17.04.110, or as amended; and
- (2) All applicable provisions in Chapter 6 of the BMC regarding Health and Sanitation including maintaining nuisance vegetation, proper garbage and refuse containment, and maintaining the buildings to not qualify as an unfit dwelling, building, structure and/or premise.

The City's recommended code represents the minimum amendment within the scope of the State recommendations in HB 1923, with the addition of property maintenance requirements supported in other sections of the BMC. These are included due to concerns that removing owner-occupancy requirements would lead to absentee landlords, and thus negatively impact property maintenance. For the record, there are a few facts that should be considered:

- **Little evidence exists** that renters on average maintain their housing units in worse condition than property owners do, and there is no current code that restricts those that own single family dwellings from posting them for rent. The City's previous Commissioner, Commissioner Nerf, made applicable comments in 2017 about this: he explained that there is no City code that would prohibit a neighborhood from being rentals, why do we care so much about the owner-occupied requirement for ADUs?
- **Other Cities:** The City of Portland removed owner-occupancy requirements for ADUs in 1998. Despite this, 64% of Portland properties with ADUs remain owner-occupied. Portland's experience with their revised ADU provisions is linked [here](#). Other Washington cities that do not require ADU owner-occupancy include Gig Harbor, Bainbridge Island, Olympia, Lacey, and Vancouver. Staff anticipates with this State recommendation, more cities will remove this requirement.

- **Existing BMC Protections:** Existing standards in Bremerton's code currently require that properties be maintained, whether the property is renter or owner occupied. These requirements also apply to ADUs. For instance, at [BMC 17.04.110](#), the City adopts the majority of the [International Property Maintenance Code's third chapter](#), regarding External Property Areas. In addition to more detailed standards, this requires that all exterior property areas are maintained in a clean and sanitary condition. [Chapter 6 of BMC](#), regarding Health and Sanitation, also contains existing Code that applies to ADUs including maintenance of nuisance vegetation and proper garbage control. The City recommends that these existing maintenance standards be cited in the revised ADU code section.

In addition to the recommended code on the previous page, the City has also conducted environmental and internal review of the following alternatives:

**Alternative A:**

~~The property owner, which shall include titleholders and contract purchasers, must occupy either the principal unit or the ADU as their permanent residence for all twelve (12) months of the year.~~

*Alternative A would also remove the owner occupancy restriction. As implemented, this code would be identical to the recommended code, but does not provide the property maintenance citations that the recommended code does.*

**Alternative B:**

The property owner, which shall include titleholders and contract purchasers, must occupy either the principal unit or the ADU as their permanent residence for ~~all twelve (12) a minimum of six (6) months of the year after issuance of the occupancy permit for the ADU.~~

*Alternative B is a suggestion that the City received via public comment. It would require owners of newly established ADUs to live on the premises for 6 months after occupancy is granted. For ADUs that have been granted occupancy for longer than 6 months, owner occupancy would not be required.*

*Alternative B is in violation of the State recommendations in HB 1923, and would disqualify the City from grant funding if chosen by the Commission.*



## DEED RESTRICTION: BMC 20.46.010(I)

### Existing Code:

An ADU shall have a deed restriction recorded with the Kitsap County Auditor to indicate the presence of the ADU, the requirement of owner occupancy, and other standards for maintaining the unit as described above.

The purpose of this section of code is to enforce the owner occupancy requirement. As the City is recommending that owner occupancy requirements be removed from the ADU development standards, this section is unnecessary and can be removed.

### Recommended Code:

~~An ADU shall have a deed restriction recorded with the Kitsap County Auditor to indicate the presence of the ADU, the requirement of owner occupancy, and other standards for maintaining the unit as described above.~~

## NONCONFORMING ADUs (REVISED)

No current code exists regulating non-conforming ADUs distinctly from other non-conforming structures or uses. The City is considering code that would allow some unused garages located on the property line and other existing structures, that under current code may go underutilized, to be used as ADUs. Since the publication of this Staff Report, a proposal to resolve this issue has been developed.

This alternative code was developed due to the public inquiring during this process on how to resolve the restrictions to convert an existing structure to an ADU. Throughout the years, the City has had many requests to convert existing garages to ADUs as the garage is too small for today's cars; it's underutilized space. This has always been a challenge, as ADUs must meet the underlying



This garage does not conform to the development standards for dwellings in its zone. The potential future proposal could allow it to be converted to an ADU.

zoning requirements such as setbacks (such as the 15' from front property line). To address this specific concern, and other similar issues, the following is being proposed for the Public Hearing:

k) Conversion of existing detached structures: To encourage the compact infill development of existing structures throughout the City, a detached ADU may be permitted in an existing structure that does not comply with certain development standards provided the requirements of this section (20.46.010) are met. The following shall apply to all development seeking to utilize this provision:

- (1) The structure must have been constructed prior to December 31, 2020. The structure must either have received a City or County building permit, not needed a permit at the time of construction, or be recognized as a structure per the Kitsap County Assessor records.
- (2) The structure must meet, either currently or through permitted remodeling, the requirements of the Building (BMC Title 17) and Fire (BMC Title 18) code for habitable structures.
- (3) The conversion of an existing structure to an ADU, with no expansions, may be exempt from:
  - (i) Compliance with the development standards for setbacks, height, and lot coverage, of the underlying zone.
  - (ii) Compliance with the ADU provisions of 20.46.010 related to size and design, except as provided at BMC 20.46.010(k)(4).
- (4) An existing structure may be enlarged or extended, or structurally altered provided the following provisions are met:
  - (i) The enlargements do not violate underlying zone requirements. Except that structures that do not conform to the setback requirements may expand up to 20% of the gross floor area, and to the building line, provided these enlargements do not further violate setback requirements.
  - (ii) The enlargements do not cause the entire structure to exceed the ADU size requirements of 20.46.010(e).
  - (iii) Any altered or new facades shall have siding and roofing which in color, material, and appearance, match or compliment the predominant materials of the existing structure.
  - (iv) Architectural features shall be provided on altered or new facades as outlined in BMC 20.46.010(f)(3), except that the Director may modify these requirements to reasonably fit the scope and scale of the alteration or expansion. The modifications may include that the required architectural design features be installed on street fronting facades to provide for greater public benefit.

## **CONCLUSION:**

Staff believes that these revisions reflect the input received by the Planning Commission at the May workshop. The proposed amendments satisfy the recommendations of House Bill 1923, meet the standards of the Comprehensive Plan, and help bolster items in the City's infill toolkit.

## **STAFF RECOMMENDATION:**

Staff recommends that Planning Commission review the materials provided, conduct a Public Hearing, consider testimony and move to recommend the proposed amendments to the City Council for adoption.

**REVISED 10/19/2020 (New Section K)****Staff Recommended Amendment for Accessory Dwelling Unit****Planning Commission Draft: October 19, 2020****(Anticipated final decision by City Council December 16, 2020 (tentative date))****To see existing Code in its entirety, please click [here](#).**

**Changes are shown in legislative mark-up: Text additions are underlined, text removal is strikethrough. All text changes are in red text.**

**Example: ~~Removed this section~~ Added this section.**

**20.46.010 ACCESSORY DWELLING UNITS.**

An accessory dwelling unit (ADU) may be permitted anywhere a new or existing single-family dwelling unit (hereafter, "principal unit") is allowed. Accessory dwelling units are exempt from the density requirements of the underlying zone and shall be subject to the following requirements:

- (a) An ADU shall comply with the development standards of the underlying zone for the principal unit including setbacks, height, and lot coverage or BMC 20.44.060, accessory structures setbacks for detached ADUs.
- (b) An ADU may be attached or detached from the principal unit.
- (c) Only one (1) ADU may be created per lot. The lot shall only contain one (1) single-family dwelling unit and one (1) ADU.
- (d) Manufactured homes may be allowed as an accessory dwelling unit provided it complies with the design criteria of ADUs and must comply with BMC 20.46.040, manufactured home provisions, excluding BMC 20.46.040(a)(2) and (6) regarding size and roof pitch.
- (e) ~~An ADU shall be subordinate to the principal unit.~~ The ADU shall be limited to 1,000 square feet or not more than sixty (60) percent of the principal unit's total habitable floor area, whichever is greater, with the following exception:
  - (1) To encourage the compact infill development and use of existing single-family homes, if a residence that was constructed or remodeled prior to ~~January 1, 2017~~ December 31, 2020, is proposed to be divided into a principal unit and an ADU, the Director may allow equal square footage for the principal unit and the ADU if the ADU is located completely on a single floor of the existing residence. This does not apply to detached ADUs.
- (f) Any ADU shall be designed so that ~~the appearance of~~ the building ~~remains that of a single family residence and should architecturally blend into the existing neighborhoods through careful design avoids the appearance of a duplex.~~ Unless the ADU is limited to only interior remodeling of an existing single-family dwelling, a proposed ADU shall meet the following design standards:
  - (1) Exterior Finish. The exterior of an ADU shall have siding and roofing which in color, material and appearance are comparable to the predominant materials of the primary dwelling unit and/or characteristics of the neighborhood.
    - i. ~~Roofing. A roof of equal or greater pitch as the principal unit.~~
    - ii. ~~Eaves. The minimum projection is twelve (12) inches.~~
  - (2) ADU Entrance Placement. Entrances to attached ADUs that are visible from a right of way, not including an alley, must follow one of the following criteria:

- i. A placement at a lower apparent elevation from the street than the primary unit entrance;
- ii. A placement of the ADUs entryway on a different façade than the entrance of the primary unit.
- iii. A modulation of the ADU façade of 25% of the length of the façade of the entrance of the primary unit;
- iv. Any alternative feature providing visual distinction between entrances to the options listed above provided it must be approved by the Director.

(2-3) Detailed Design. All ADUs shall provide detailed design using at least four (4) of the following architectural features:

- (i) Trim to denote all building's roof lines, porches, windows and doors that is at least three (3) inches wide;
- (ii) Dormers;
- (iii) Gables;
- (iv) Recessed entries;
- (v) Covered porch entries;
- (vi) Offsets in building face or roof (minimum sixteen (16) inches);
- (vii) Bay windows;
- (viii) Decorative cornices and roof lines;
- (ix) Shutters;
- (x) Brickwork, masonry or stucco;
- (xi) Any alternative feature providing visual relief similar to the options listed above provided it must be approved by the Director.

(g) ~~The entrance to an attached ADU shall not be on the same facade of the structure as an entrance to the principal unit. Exterior stairway shall not be constructed on the street frontage side of the principal dwelling unit.~~

(h-g) ~~Accessory dwelling units shall provide one (1) off street parking space in addition to that which is required for the principal unit.~~ When adding an ADU, an ADU is not required to provide additional off-street parking space. The site must comply with BMC 20.48, off-street parking requirements, specifically that the required parking spaces for the principal unit shall be provided and that all driveways and areas used for loading, parking, and maneuvering vehicles on the parcel shall have a paved surface.

(H-h) When development of an ADU is for people with disabilities, the Director may allow reasonable deviation from the stated requirements to install features that facilitate accessibility such as those required by the International Building Code.

(j-i) An ADU shall be required to be served by City water and sewer or an approved septic system.

(k-j) The property owner, which shall include titleholders and contract purchasers, must ~~occupy either the principal unit or the ADU as their permanent residence for all twelve (12) months of the year. abide by the following:~~

- (1) International Property Maintenance Code Chapter 3 Section 302 concerning Exterior Property Areas, as adopted at BMC 17.04.020(f), except those not adopted as enumerated in BMC 17.04.110; or as amended, and

- (2) All applicable provisions in Chapter 6 of the BMC regarding Health and Sanitation including maintaining nuisance vegetation, proper garbage and refuse containment, and maintaining the buildings to not qualify as an unfit dwelling, building, structure and/or premise.
- k) Conversion of existing detached structures: To encourage the compact infill development of existing structures throughout the City, a detached ADU may be permitted in an existing structure that does not comply with certain development standards provided the requirements of this section (20.46.010) are met. The following shall apply to all development seeking to utilize this provision:
- (1) The structure must have been constructed prior to December 31, 2020. The structure must either have received a City or County building permit, not needed a permit at the time of construction, or be recognized as a structure per the Kitsap County Assessor records.
- (2) The structure must meet, either currently or through permitted remodeling, the requirements of the Building (BMC Title 17) and Fire (BMC Title 18) code for habitable structures.
- (3) The conversion of an existing structure to an ADU, with no expansions, may be exempt from:
- (i) Compliance with the development standards for setbacks, height, and lot coverage, of the underlying zone.
- (ii) Compliance with the ADU provisions of 20.46.010 related to size and design, except as provided at BMC 20.46.010(k)(4).
- (4) An existing structure may be enlarged or extended, or structurally altered provided the following provisions are met:
- (i) The enlargements do not violate underlying zone requirements. Except that structures that do not conform to the setback requirements may expand up to 20% of the gross floor area, and to the building line, provided these enlargements do not further violate setback requirements.
- (ii) The enlargements do not cause the entire structure to exceed the ADU size requirements of 20.46.010(e).
- (iii) Any altered or new facades shall have siding and roofing which in color, material, and appearance, match or compliment the predominant materials of the existing structure.
- (iv) Architectural features shall be provided on altered or new facades as outlined in BMC 20.46.010(f)(3), except that the Director may modify these requirements to reasonably fit the scope and scale of the alteration or expansion. The modifications may include that the required architectural design features be installed on street fronting facades to provide for greater public benefit.

(I) An ADU shall have a deed restriction recorded with the Kitsap County Auditor to indicate the presence of the ADU, the requirement of owner occupancy, and other standards for maintaining the unit as described above.

## **FINDINGS AND CONCLUSIONS OF THE CITY OF BREMERTON PLANNING COMMISSION**

### **Summary:**

Proposed amendments to the Bremerton Municipal Code related to Accessory Dwelling Units.

### **I. FINDINGS OF FACT**

#### **1. Project Description:**

The proposed amendment includes revisions to Bremerton Municipal Code 20.46.010, Accessory Dwelling Units, as follows:

- A. Increasing minimum size requirements.
- B. Removing parking requirements.
- C. Removing owner occupancy and ownership requirements.
- D. Changing the design standards.

#### **2. Procedural History:**

- 2.1 Planning Commission Workshops: May 18, 2020
- 2.2 Washington State Department of Commerce Notice: June 1, 2020 AND October 2, 2020
- 2.3 SEPA Threshold Determination DNS: May 29, 2020 and October 2 2020
- 2.4 Notice of Public Hearing: October 2, 2020
- 2.5 Planning Commission Public Hearing: October 19, 2020

#### **3. Public and Agency Comment:**

- 3.1 At the workshop held on March 19, 2018, two public comments were received:
  - 3.1.01 A. Marcus expressed support.
  - 3.1.02 Russ Shipton, representing the Kitsap Building Association, expressed support.
- 3.2 Written comments are summarized below:
  - 3.2.01 Comment 01: R. Runyon submitted a potential code amendment.
  - 3.2.02 Comment 02: L. King is supportive of ADU amendments.
- 3.3 At the Planning Commission Public Hearing on October 19, 2020, the following testimony was provided:  

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#### **4. SEPA Determination:**

A Determination of Non-Significance (DNS) was issued on May 29, 2020, to date no comments or appeals have been filed. A subsequent DNS was issued on October 2, 2020 as additional code revisions were requested by the public for the City to consider.

#### **5. Consistency:**

Text amendments to Title 20 shall meet the decision criteria outlined in BMC 20.18.020(d). The Planning Commission may recommend, and the City Council may adopt or adopt with modifications, an amendment to Title 20 if the criteria outlined below are met.

- (1) It is consistent with the goals and policies of the comprehensive plan;

*Analysis:* The proposed amendments continue to uphold the objectives and goals of the Comprehensive Plan, and implement the following policies:

The amendment continues to uphold the objectives, goals and policies of the Comprehensive Plan such as:

- Policy LU1(B): Coordinate Bremerton's growth consistent with the Kitsap Countywide Planning Policies and the Puget Sound Regional Council's Vision 2040, and state requirements.
- Policy LU4(C): Provide land use regulations that give opportunities for the community to have fair access to livelihood, education, and resources.
- Policy LU4(D): On an annual basis review and provide amendments, if necessary, to the goals and policies and the Land Use Map to address changing circumstances and/or emergencies.
- Housing Vision: To encourage the growth of Bremerton by strategically locating a wide variety of housing types throughout the City in a way that protects the environment and fosters community health.
- Housing Goal H2: Encourage the development of a variety of new housing options and densities to meet the changing needs of Bremerton's residents.
- Policy H2(C): Supporting infill development and increased densities and the use of Low Impact Development (LID) techniques and Best Management Practices (BMPs) to ensure efficient and cost-effective utilization of existing public utilities.
- Housing Goal H3: Support access to quality and affordable housing for all Bremerton residents.
- Policy H3(A): Provide opportunities for the production of new housing for all incomes, ages, and family types through infill by stimulating growth of non-traditional housing types such as townhomes, carriage units, accessory dwelling units, and duplexes in locations where they will seamlessly infill into the fabric of the existing neighborhoods.
- Policy H3(E): Eliminate unnecessary regulatory impediments to the development of affordable housing.
- Goal H4: Implement and coordinate strategies that promote public and private efforts to facilitate improvements to the housing stock.
- Policy H4(F): Promote increased housing density to provide a broader customer base for more affordable public services including utilities.

(2) It does not conflict with other City, state and federal codes, regulations and ordinances.

*Analysis:* The proposed amendments do not conflict with any other regulations.

## **II. CONCLUSIONS & RECOMMENDATION**

Based on the findings above, the Planning Commission concludes that the proposed amendments to the Bremerton Municipal Code Title 20 Land Use Chapter, meets the requirements in BMC 20.18.020(d) text amendments, and therefore recommends to the City Council, the adoption of amendments to Title 20.

Respectfully submitted by:

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Andrea L. Spencer, Director of Community Development

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Nick Wofford, Planning Commission Chair

## **Planning Commission Public Hearing: Zoning Code Amendments for ADUs**

### Written Public Comments

**Comment 01:** R. Runyon submitted draft code for the City to consider. Runyon's comments are considered in the Staff Report

**Comment 02:** L. King comments that the City should allow garages to be used as ADUs.

# COMMENT 01

## 20.46.010 ACCESSORY DWELLING UNITS SHARE

An accessory dwelling unit (ADU) may be permitted where a new or existing single-family dwelling unit (hereafter, "principal unit") is allowed. Accessory dwelling units are exempt from density requirements and shall be subject to the following requirements:

- (a) An ADU shall comply with the development standards of the underlying zone for the principal unit including setbacks, height, and lot coverage or BMC [20.44.060](#), accessory structures setbacks for detached ADUs.
- (b) An ADU may be attached or detached from the principal unit.
- (c) Only one (1) ADU may be created per ~~any lot with an area less than 6000 square feet~~. The lot shall only contain one (1) ~~single family dwelling~~ principal unit and one (1) ADU. ~~For lots of 6000 square feet or greater area, one additional ADU may be placed on the lot for every 6000 square feet of area.~~
- (d) ~~A M~~manufactured homes may be ~~allowed used~~ as an accessory dwelling unit provided it complies with the design criteria of ADUs and must comply with BMC [20.46.040](#), manufactured home provisions, excluding BMC [20.46.040\(a\)\(2\), \(4\) and \(6\)](#) regarding size, ~~design standards~~ and roof pitch.
- (e) An ADU shall be subordinate to the principal unit. ~~The Each detached~~ ADU shall be limited to not more than ~~sixty (60)~~ ~~eighty (80)~~ percent of the principal unit's total habitable floor area with the following exception:
  - (1) To encourage the compact infill development and use of existing single-family homes, if a ~~an existing residence single-family dwelling unit that was constructed or remodeled prior to January 1, 2017, is proposed to be divided into a principal unit and an ADU, the Director ADU may allow occupy equal square footage equal to that of for the principal unit and the ADU if the ADU is located completely on a single floor of the existing residence.~~ This does not apply to detached ADUs.
  - (f) Any ADU shall be designed so that the appearance of the building remains that of a single-family residence and should architecturally blend into the existing neighborhoods through careful design. Unless the ADU is limited to only interior remodeling of an existing single-family dwelling, a proposed ADU shall meet the following design standards:
    - (1) ~~Exterior Finish.~~ The exterior of an ADU shall have siding and roofing which in color, material and appearance are comparable to the predominant materials of the primary dwelling unit and/or characteristics of the neighborhood.
    - (ii) ~~Roofing.~~ A roof of equal or greater pitch as the principal unit.
    - (iii) ~~Eaves.~~ The minimum projection is twelve (12) inches.
    - (2) ~~Detailed Design.~~ All ADUs shall provide detailed design using at least four (4) of the following architectural features:
      - (i) ~~Trim to denote all building's roof lines, porches, windows and doors that is at least three (3) inches wide;~~
      - (ii) ~~Dormers;~~

# COMMENT 01

- (iii) Gables;
  - (iv) Recessed entries;
  - (v) Covered porch entries;
  - (vi) Offsets in building face or roof (minimum sixteen (16) inches);
  - (vii) Bay windows;
  - (viii) Decorative cornices and roof lines;
  - (ix) Shutters;
  - (x) Brickwork, masonry or stucco;
  - (xi) Any alternative feature providing visual relief similar to the options listed above provided it must be approved by the Director.
- (g) The entrance to an attached ADU shall not be on the same facade of the structure as an entrance to the principal unit. Exterior stairway shall not be constructed on the street frontage side of the principal dwelling unit.
- (h) Accessory dwelling units shall provide one (1) off street parking space in addition to that which is required for the principal unit. When adding an ADU, all driveways and areas used for loading, parking, and maneuvering vehicles on the parcel shall have a paved surface.
- (i) When development of an ADU is for people with disabilities, the Director may allow reasonable deviation from the stated requirements to install features that facilitate accessibility such as those required by the International Building Code.
- (j) An ADU shall be required to be served by City water and sewer or an approved septic system.
- (k) The property owner, which shall include titleholders and contract purchasers, must occupy either the principal unit or the an ADU on the lot as their permanent residence for all twelve (12) months of the year a minimum of all twelve (12) six (6) months after issuance of an occupancy permit for each ADU. This six (6) month owner residency requirement may run concurrently in the event occupancy permits for multiple ADUs on the lot are issued within a six (6) month period.
- (l) An ADU shall have a deed restriction recorded with the Kitsap County Auditor to indicate the presence of the ADU, the requirement of owner occupancy, and other standards for maintaining the unit as described above. (Ord. 5330 §3, 2017; Ord. 5301 §3 (Exh. B) (part), 2016; Ord. 5008 §4, 2007; Ord. 4950 §8 (Exh. A) (part), 2005)

## COMMENT 02

Laura King  
834 Dr. Martin Luther King, Jr. Way  
Apartment 34  
Bremerton, WA 98337  
*laura.severt.king@gmail.com*  
3 July, 2020

The Honorable Greg Wheeler  
Mayor of Bremerton  
345 6th Street  
Suite 100  
Bremerton, WA 98337

Dear Mayor Wheeler,

I write to propose an idea that could help Bremerton navigate both its affordable housing crisis and the looming foreclosure crisis caused by COVID-19. The idea may sound a bit cracked at first, but I believe this uniquely challenging moment calls for heterodox thinking.

As you know, between many of our city's streets lie small alleys giving access to free-standing garages, some in good repair, some badly neglected. A few years ago, a town with similar alleys, Clovis California, developed the visionary Cottage Home Program, which encouraged homeowners to build ADUs facing those alleys. You can read about the award-winning program on its web site.\*

Much as I admire the program, I don't think Clovis went far enough—at least not far enough for Bremerton. Though I support the construction of new ADUs in our city, I can't help wondering how many homeowners with the resources to build them would charge affordable rents when they could more quickly recoup their costs by charging as much as the market will bear.

I think Bremerton should allow homeowners to sell their detached garages to buyers who will convert them into tiny houses for their own use. Right now, nine percent of American homeowners are not paying their mortgages and may face foreclosure when the current moratorium expires. How many of the Bremerton residents among them would happily sell their garages to preserve their family homes if zoning and building regulations allowed?

I see five potential benefits in this idea. Distressed homeowners would gain the cash they needed to avoid foreclosure and survive a period of job loss or insecurity. Rent-burdened lower-income residents would gain an affordable way into home ownership. Unemployed builders would gain work. Neighborhoods would gain residents with a stake in the community—and the satisfaction of participating in an urban experiment that could prove a model for other cities. And various state and local entities would gain additional tax revenues.

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\* <https://cityofclovis.com/planning-and-development/planning/cottage-home-program/>

## COMMENT 02

I understand that some members of the Bremerton City Council are not keen on tiny houses, at least not in the form of ADUs. But their objections (from what I can see in the *Kitsap Sun*) seem more focused on absentee landlords and irresponsible tenants than on the square footage of people's homes. My plan calls for tiny houses to be converted and occupied by their owners—and I think the city has the legal means to keep them owner-occupied, at least in the foreseeable future.

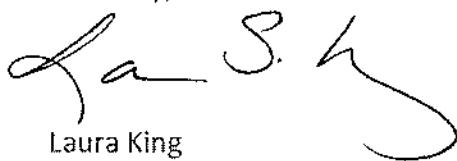
If some council members do object to the look of small houses, an afternoon's walk around Bremerton will reveal that the alley-facing garages I'm talking about are tucked away behind main houses, invisible or barely visible from the street. And the conversions themselves can be subject to clear design specifications, as was done in Clovis.

Should you be interested in building a prototype (and can sponsor the needed variances), I'll buy a suitable garage, pay for the conversion to a tiny house, and live in it, adhering to whatever design and building standards you and your colleagues deem reasonable.<sup>†</sup> You can then assess the results and either encourage other such conversions or let my house stand as monument to good intentions.

You ran for mayor promising to address Bremerton's need for affordable housing, and you've kept that promise with programs such as rental assistance. Another challenge is developing options for residents squeezed between out-of-control rents and an overheated real estate market. I think alley-facing owner-occupied tiny houses would work, and, though critics will likely cite property values as a reason to reject the idea, I believe it's time to give other values equal, if not greater, consideration.

Thank you for your time and your service to Bremerton.

Sincerely,

A handwritten signature in black ink, appearing to read "La S. King".

Laura King

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<sup>†</sup> I can also guarantee excellent design. Though not an architect myself, I have two cousins who are and a brother who's a builder. One cousin, Christopher Deam, is an award-winning designer who specializes in small-space conversions. Also a founder of *Dwell*, if that helps.

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

<b>AGENDA TITLE:</b>	Workshop: Overview of the Shoreline Master Program periodic update
<b>DEPARTMENT:</b>	Community Development
<b>PRESENTED BY:</b>	Garrett Jackson, Senior Planner, (360) 473-5289 Garrett.Jackson@BremertonWA.gov
<b>ASSISTED BY:</b>	Allison Satter, Planning Manager, (360) 473-5845 Allison.Satter@BremertonWa.gov

### **EXECUTIVE SUMMARY**

The City is completing a periodic update of its Shoreline Master Program (SMP), along with a minor update to its Critical Areas Ordinance (CAO) to meet Department of Ecology state mandates and advancements in best available science (BAS). Proposed SMP and Critical Areas Code Amendments, as well as Shoreline Environment Designation mapping changes are provided as part of this meeting with a discussion of changes.

Identified changes are outlined in a Draft Gap Analysis, which documents how the SMP will address changes to state law, BAS, zoning regulations, and other areas to improve the usability of SMP regulations, as identified by staff and their consultant. Rationale for these changes is tied to the Draft Gap Analysis through comment bubbles tied to code amendments, listing the table and item number.

This periodic update is also limited in scope in that the update is not required to re-evaluate the ecological baseline established as part of the 2012 update or assess no net loss of shoreline ecological functions from permitted development since comprehensive adoption.

The City is working toward having a joint adoption process with Department of Ecology as allowed and outlined in WAC 173-26-104.

### **ORDERS OF THE DAY**

This is a workshop for discussion and education purposes. No formal decisions will be made at this meeting.

### **ATTACHMENTS**

- Attachment A – Revised Gap Analysis of SMP and Critical Area regulations for SMP Update
- Attachment B – Draft SMP Code Amendments
- Attachment C – Draft Critical Areas Ordinance (BMC 20.14) Amendments
- Attachment D – Commissioner Comments

## SMP UPDATE TENTATIVE SCHEDULE

- **October 2020:** An online open house will be posted at the project website [www.BremertonWA.gov/SMPUpdate](http://www.BremertonWA.gov/SMPUpdate)
- **October/November 2020:** Minimum 30-day City and Ecology joint comment period
- **Nov. 16, 2020:** Planning Commission joint Public Hearing with Department of Ecology to solicit public comment. Planning Commission has the opportunity to provide a recommendation to City Council about amendments; this is a State requirement.
- **Early 2021:** If further public comments are received after Planning Commission's November public hearing, an additional Planning Commission Public Hearing may be held prior to City Council decision.
- **Early 2021:** City Council Public Hearing.

## PROJECT OVERVIEW

The Planning Commission received a very brief overview of the Shoreline Master Program update project at the September 21 workshop (for reference here are both the [packet](#) and [presentation](#) from that meeting). The purpose of this meeting is to provide the Commission and public a more in-depth presentation of the code amendments and what the preliminary code changes may look like and the reasons for the code changes. This packet contains a Gap Analysis (professional assessment of where the code needs clarification and amendments), and preliminary proposals of how the new amended SMP and CAO may be revised so that the Commission and citizens can provide feedback about how the code should be amended.

## UPDATED GAP ANALYSIS (ATTACHMENT A)

The City has contracted with an expert firm to evaluate the City's regulations and identify areas that need to be revised or amended for more code clarity, and the Watershed Company has prepared a document called a "Gap Analysis" to document these code sections. The purpose of the Gap Analysis document is to identify SMP and related CAO regulations that require updates due to changes to state law (via the Department of Ecology's periodic review checklist), best available science, consistency with development regulations and the Comprehensive Plan, code usability, and overall regulatory flexibility for single-family property owners. The Gap Analysis document can be used as a crosswalk to identify how changes in the code came to be. The Commission reviewed a preliminary draft of the Gap Analysis in September and has been revised to add an item to Table 5-1 to address forestry practices on certain City lands.

## SMP DRAFT CODE AMENDMENTS (ATTACHMENT B)

The provided complete draft proposes several minor changes to the existing SMP document. Some of the proposed changes are house keeping items like reformatting portions of the SMP to ensure a more manageable document for individual readers, and additions/tweaks to ensure consistency with State shoreline requirements. Other changes were a result of working with individual property owners and State Agencies to find more equitable outcomes for individual property owners, and consistency with other jurisdictions. Some examples are discussed later in this report and will be elaborated on at the workshop presentation.

## CAO CODE AMENDMENTS (ATTACHMENT C)

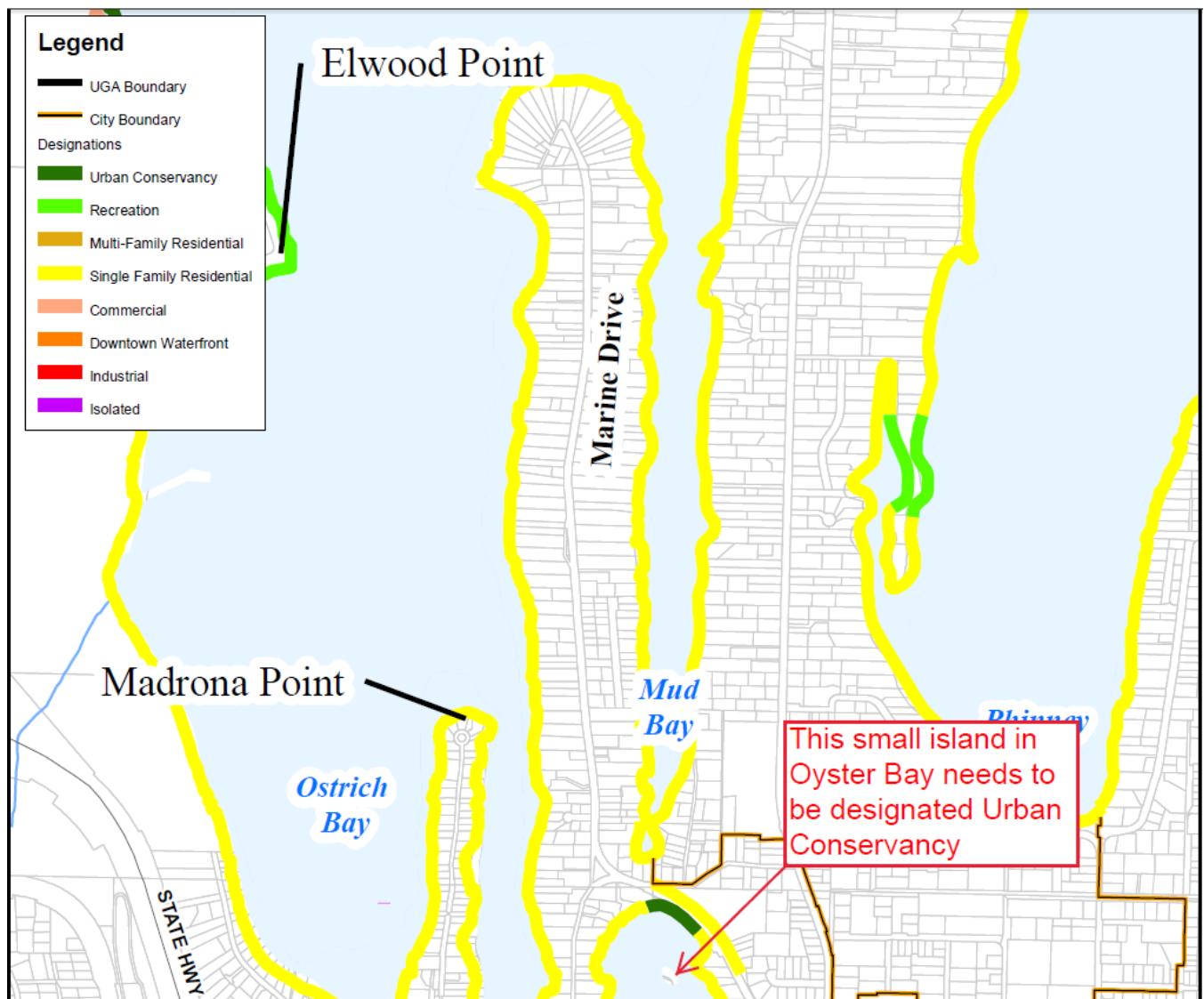
While the SMP regulates shorelines, the CAO regulates other critical areas like wetlands, steep slopes, critical aquifers, etc. Proposed amendments to the CAO are somewhat limited. Staff is proposing to clarify wetland buffer requirements and general planting criteria, both of which are discussed later in this report.

## COMMISSIONER COMMENTS (ATTACHMENT D)

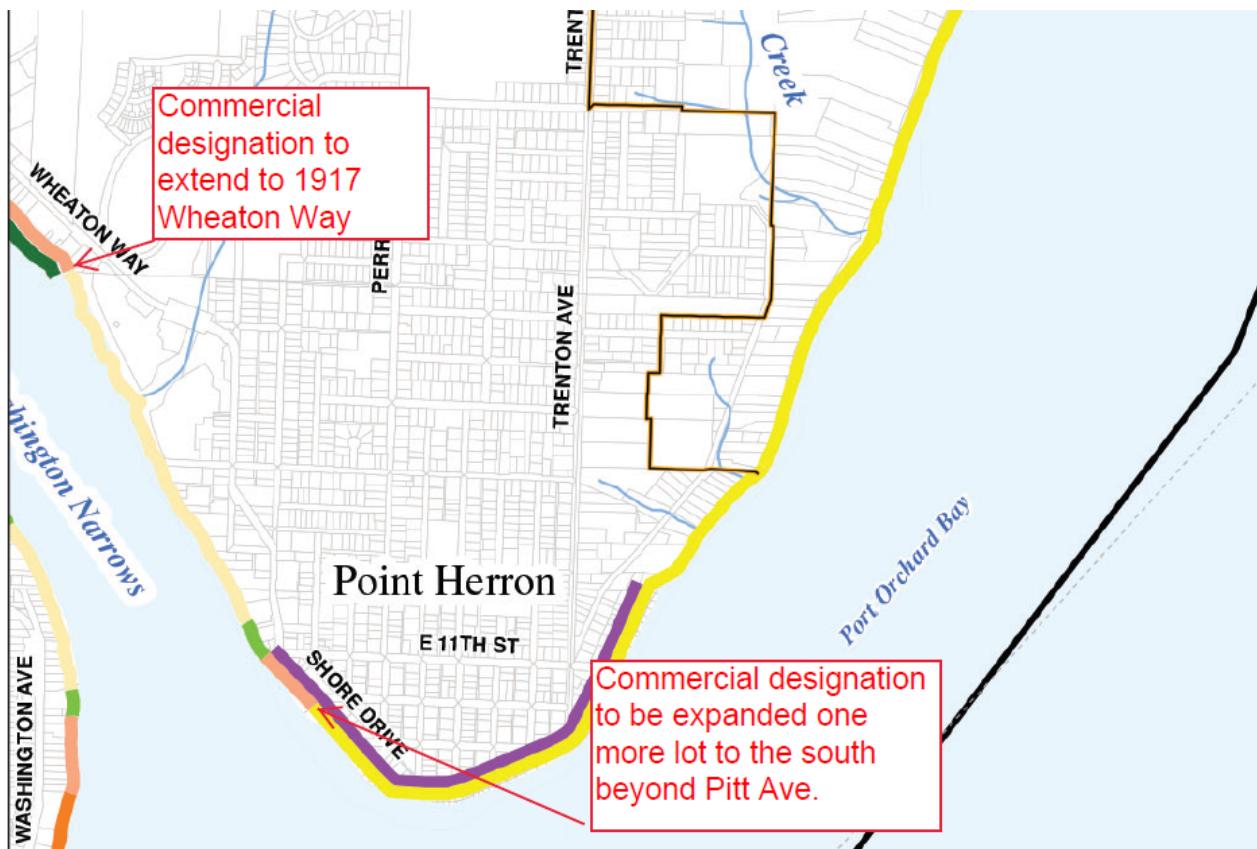
At the last meeting, Commissioners had a number of questions regarding the update process. Staff has provided an inventory of those inquiries and answers to each with Attachment D.

## MAPPING UPDATES

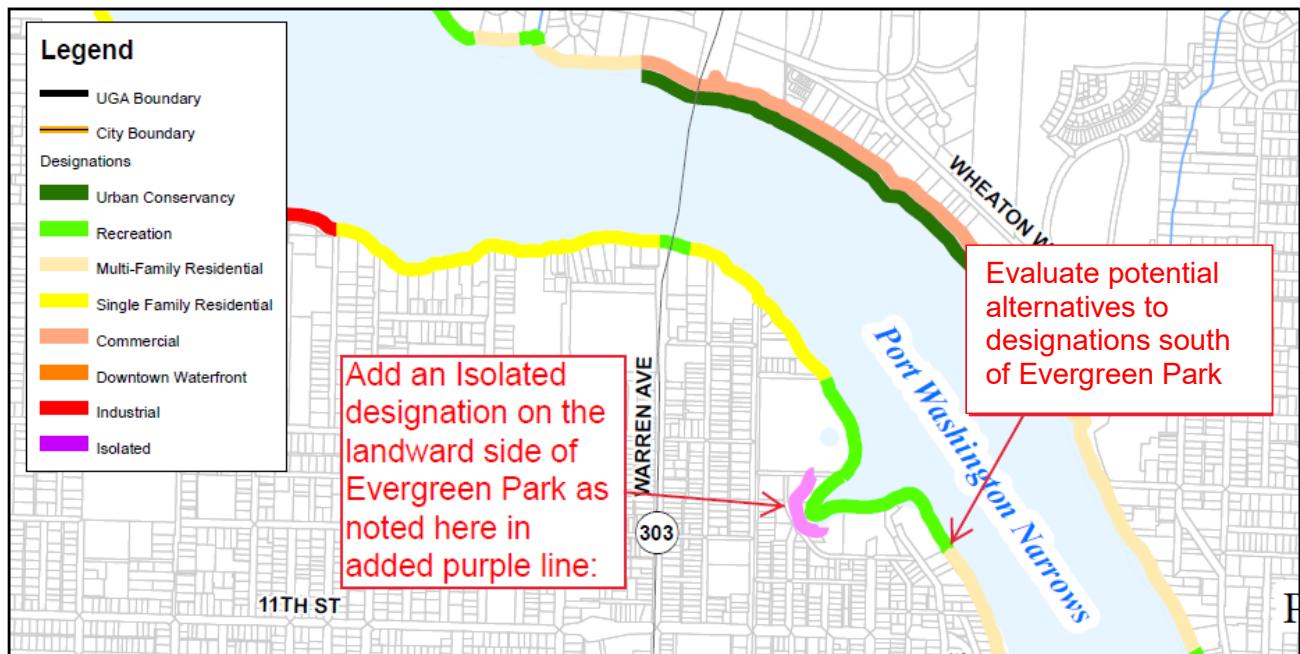
Discrepancies in mapping Shoreline Environment Designations (SEDs) have been identified in the screenshots below with red boxes describing the proposed change. Globally, a change proposed to the Commercial SED color will help avoid confusion with the Downtown Waterfront SED.



Map B.



Map D.



MAP E.

## SMP AND CAO DRAFT AMENDMENTS SUMMARY

The following are examples of revisions proposed with this update, however, please see Attachment B for all proposed amendments.

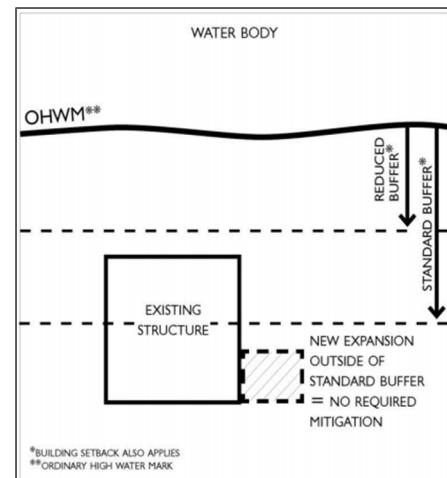
### I. Re-Formatting for Reader ease and citation

Many SMP chapters currently have a policies section near the beginning, which may confuse applicants as to whether they need to address these policies within their development application. Re-formatting the SMP includes consolidating all policies into Chapter 2, Goals and Policies, to improve readability and condense regulations. In addition, document navigation will improve by adding hyperlinks to all chapter subheadings, allowing users easy access between different regulatory topics.

### II. Vegetation Management Plans

A Vegetation Management Plan (VMP) is a landscaping plan that is currently required with all development requests in shoreline jurisdiction. The plan is recorded as a Notice to Title on the property prior to final project approval. As currently written, small projects may be subject to overly burdensome documentation to comply with VMP regulations. Currently, development exclusively outside of the buffer must enhance buffer areas.

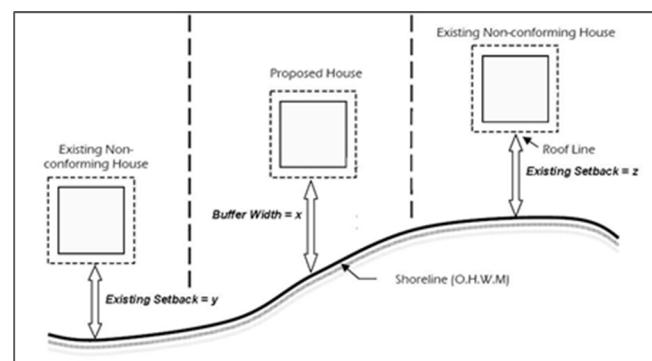
Through a review of VMP provisions for other jurisdictions and discussion with Ecology, proposed revisions for structure expansions outside the shoreline buffer include limiting VMP documentation to mapping of existing vegetation and recording presence of native vegetation as a Notice to Title. Therefore, a buffer will be revegetated only when directly impacted by proposed development, thereby removing the required buffer vegetation enhancement for all projects. The adjacent image is sourced from the Kitsap County SMP and illustrates a structure expansion located outside the buffer requiring no mitigation.



In addition, minor single-family development may forgo bonding requirements when less than \$5,000, as well the requirement that plans/reports be prepared by a qualified professional.

### III. Shoreline Buffer Reduction

The SMP currently requires some buffer reductions to compare 60% or more of like structures within the same numbered block when allowing a setback reduction. This is not the most workable system, as neighboring lots are sometimes not in the same numbered block. Proposed setback reduction amendments include a simplified standard, taking the average of like structures on either side of the subject property; an example of this is seen in the adjacent image. This simplified standard also



references VMP revegetation requirements, so it is clear to the applicant that revegetating the most waterward 25% of the buffer is a requirement, in addition to selecting a shoreline buffer reduction options/enhancement alternatives proposed under figure 7.010 (b).

Buffer enhancement alternatives proposed include a reduction based upon bulkhead removal, bulkhead setback, creosote pile removal, green stormwater techniques, or other approved alternative jointly agreed upon by the Director and Washington Department of Fish and Wildlife. These prescribed enhancement alternatives help the applicant in meeting net-loss of shoreline ecological functions.

#### IV. *Nonconforming*

To address ambiguity in this code section, proposed amendments include allowing legal nonconforming structures, uses, and lots within shoreline jurisdiction to exist and, in the instances of structures, allow for repair, remodel or restoration of the structure in its current configuration. This change provides flexibility, relief, and predictability to property owners, while allowing these properties to be properly maintained in the future. These changes would only effect nonconformities related to SMP regulations, and would not apply to other regulations codified in the Bremerton Municipal Code or other regulatory documents.

For expansions of nonconforming structures outside the shoreline buffer, mitigation is not required. This change is proposed for consistency with proposed changes to Vegetation Management Plan requirements for work outside shoreline buffers. Mitigation to restore 50% of the required shoreline buffer with native vegetation remains a requirement for expansions of nonconforming structures. However, expansion provisions do not apply to overwater homes, including floating homes and on-water residences, as these are a prohibited use within shoreline jurisdiction.

#### V. *Consistency with New Downtown Subarea Plan*

The changes resulting from the Downtown Subarea Plan allow for building heights that exceed what the SMP currently allows. Amendments to the height requirements within the SMP aim to accommodate height allowances captured within the Downtown Subarea Plan, so long as view corridors are not substantially impacted.

Proposed height limits found within SMP figure 7.090 (b), Height Restrictions, allows an increase in building height in the Downtown Waterfront shoreline designation, otherwise found within the Downtown Subarea Plan. This can be achieved when demonstrating no view blockage from a substantial number of upland residential properties, consistent with RCW 90.58.320.

#### VI. *Critical Areas Ordinance*

To align with BAS, the City anticipates incorporating the July 2018 Department of Ecology wetland buffer guidance as a critical areas ordinance amendment. This amendment results in a re-categorization of wetland habitat scores, where a habitat score of 5 now falls into the low wetland category rating, whereas before it fell into a medium category rating. The change results in slightly smaller buffers for lower functioning wetlands, so long as wetland minimization measures are met. In limited instances where a wetland habitat score is 6 or greater and an adjacent recorded conservation easement exists

connecting neighboring Priority Habitats, as defined by Washington State Department of Fish and Wildlife, a corridor of at least 100 feet must be protected by a similar legal instrument.

In addition, changes to fish and wildlife habitat conservation area regulations will allow for more flexible plant spacing requirements with buffer enhancement, allowing a lower ratio of conifers compared to deciduous trees, as they provide a higher ecological value. One-time single-family expansions within a fish and wildlife habitat conservation area of 500 square feet or less may be exempt, at the Director's discretion, so long as native plantings are placed waterward of the structure at a 1:1 ratio.

The Director may also allow a departure from prescribed buffers through mutually agreed-upon buffers, as supported by state and federal resource agencies or tribes. This may only be exercised when all other options have been exhausted, as a way to garner inter-agency support of a development, ensuring equal to or greater critical areas protection without having to pursue a Shoreline Variance.

As a rule, the CAO amendments must be adopted prior to or concurrently with the SMP adopted changes to incorporate the ordinance by reference, within the SMP document.

## VII. Climate Resiliency

The SMP currently provides no discussion on climate change and sea level rise. To set the stage for future climate change resiliency efforts, the SMP will benefit from adding goals to prioritize development that accounts for sea level rise, along with gathering scientific information to help guide a future climate change strategic plan. Policy objectives include encouraging development and redevelopment projects that prioritize the following sequencing action from most to least favorable: avoid, retreat, protect and accommodate.

As an earmark for future SMP updates, documenting shoreline changes of character, such as sediment and rates of erosion, are ways to focus resources and regulations on specific areas that may be more effected than others by sea level rise.

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# **ATTACHMENT A**

## **GAP ANALYSIS**

## **City of Bremerton Shoreline Master Program**

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### **Gap Analysis Report**

Prepared on behalf of:



BREMERTON  
WASHINGTON

City of Bremerton  
Department of Community Development  
345 6<sup>th</sup> Street, Suite 600  
Bremerton, WA 98337

Prepared by:



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September 2020

The Watershed Company Reference Number:  
190347

# ATTACHMENT A

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# ATTACHMENT A

The Watershed Company  
Bremerton SMP Gap Analysis Report  
September 2020

## 1. Introduction

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In accordance with the Washington State Shoreline Management Act, local jurisdictions with “Shorelines of the State” are required to conduct a periodic review of their Shoreline Master Programs (SMPs) (Washington Administrative Code [WAC] 173-26-090). The periodic review is intended to keep SMPs current with amendments to state laws, changes to local plans and regulations, changes in local circumstances, and new or improved data and information.

The Shorelines of the State in the City of Bremerton (City) include all marine shoreline, the lower portion of Gorst Creek (approximately one mile), Lake Kitsap, Lake Union Reservoir and Union River between McKenna Falls and the reservoir, and Twin Lakes.

The City most recently updated its SMP with a limited amendment adopted fall 2017 in conjunction with the Major Comprehensive Plan update. A more substantial, comprehensive SMP update took place in 2012. City of Bremerton Shoreline Master Program (BSMP), is a separate document from the Comprehensive Plan and Bremerton Municipal Code (BMC), outlining goals and policies for the shorelines of the City and establishes regulations for development occurring within shoreline jurisdiction. Several regulatory requirements of the BSMP are codified or cross-referenced under the BMC and herein are incorporated as the applicable development regulations the City's shoreline jurisdiction. The City's current SMP incorporates by reference the 2016 city-wide critical areas regulation update which are codified under BMC 20.14, with certain exceptions.

As a first step in the periodic review process, the City's current SMP was reviewed by City staff and consultants. The purpose of this Gap Analysis Report is to provide a summary of the review and inform updates to the SMP. This report is organized into the following sections:

- **Section 2** identifies gaps the SMP has in consistency with state laws. This analysis is based on a list of amendments between 2007 and 2019 as summarized by the Washington State Department of Ecology (Ecology) Periodic Review Checklist.
- **Section 3** identifies gaps in consistency the City's critical areas regulations (BMC 20.14) have with current guidance. Critical area regulations are incorporated by reference into the current SMP.
- **Section 4** identifies gaps in consistency with the City's Comprehensive Plan, and with implementing sections of the City's development regulations other than the critical areas regulations.
- **Section 5** identifies other issues to consider as part of the periodic update process to produce a more effective SMP, including those issues identified by staff during the implementation of the last SMP update.

This report includes several tables that identify potential revision actions. Where potential revision actions are identified, they are classified as follows:

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Bremerton SMP Gap Analysis Report  
September 2020

- “**Mandatory**” indicates revisions that are required for consistency with state laws.
- “**Recommended**” indicates revisions that would improve consistency with state laws but are not strictly required.
- “**Optional**” indicates legislative amendments or updated Ecology guidance can be adopted at the City’s preference but are not required.
- “**No action necessary**” indicates the current SMP meets the intent of or already contains listed legislative updates, changes to critical areas, comprehensive plan or zoning code.

This document attempts to minimize the use of abbreviations; however, a select few are used to keep the document concise. These abbreviations are found below in Table 1-1.

Table 1-1. Abbreviations used in this document.

Abbreviation	Meaning
BAS	Best Available Science
CAO	Critical Areas Ordinance
City	City of Bremerton
Ecology	Washington State Department of Ecology
BMC	Bremerton Municipal Code
RCW	Revised Code of Washington
BSMP	Bremerton Shoreline Master Program
SED	Shoreline Designations
SDP	Shoreline Substantial Development Permit
WAC	Washington Administrative Code

## 2. Consistency with State Laws

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Table 2-1 summarizes potential revisions to the City’s SMP based on a review of consistency with amendments to state laws identified in the Periodic Review Checklist provided by Ecology. Topics are organized chronologically by year.

Table 2-1. Summary of consistency with amendments to state laws and potential revisions.

Row	Summary of change	Review	Action
2019			
a.	Washington State Office of Financial Management (OFM) adjusted the <b>cost</b>	In addition to the general Shoreline Substantial Development Permit (SDP) cost threshold (see item 2017a	<b>Mandatory:</b> The City will update the cost threshold dollar figure for when a SDP is triggered

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<b>Row</b>	<b>Summary of change</b>	<b>Review</b>	<b>Action</b>
	<b>threshold for building freshwater docks</b>	<p>below), the SMA includes a separate dollar threshold for when construction of a freshwater dock triggers an SDP.</p> <p>BSMP 5.010(h)(8), Exemptions, references the out of date dollar figure of \$10,000.</p>	<p>on single-family freshwater dock replacement projects as follows:</p> <p>5.010(h)(8)</p> <p><u>(ii) In fresh waters the fair market value of the dock does not exceed:</u></p> <p>(A) <u>twenty-two thousand five hundred dollars (\$22,500) for docks that are constructed to replace existing docks, are of equal or lesser square footage than the existing dock being replaced; or</u></p> <p>(B) <u>Eleven thousand two hundred (\$11,200) dollars for all other docks constructed in fresh waters.</u></p> <p><u>However, if subsequent construction occurs within five years of completion of the prior construction, and the combined fair market value of the subsequent and prior construction exceeds the amount specified above, the subsequent construction shall be considered a substantial development for the purpose of this chapter.</u></p> <p><b>Recommended:</b> Alternately, the BSMP could refer directly to the RCW and eliminate reference to a specific cost threshold for greater flexibility with future threshold changes.</p>
<b>b.</b>	The Legislature removed the requirement for a shoreline permit for <b>disposal of dredged materials at Dredged Material Management</b>	There is not a Dredged Material Management Program site within the City's Shoreline Jurisdiction. Therefore, this legislative amendment does not apply.	No action necessary.

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	<b>Program sites</b> ( <i>applies to 9 jurisdictions</i> )		
c.	The Legislature added <b>restoring native kelp, eelgrass beds and native oysters</b> as fish habitat enhancement projects.	Habitat enhancement project exemptions are discussed under BSMP 5.010(h)(16) (pg. 51) and reference to RCW 77.55.181 for fish habitat enhancement projects is included under (iv). This reference captures the legislative update.	No action necessary.

## 2017

a.	<b>OFM adjusted the cost threshold for substantial development to \$7,047.</b>	<p>Page 47, BSMP 5.010(h)(1), Exemptions, references an out of date dollar figure, but does provide an indication that the dollar threshold changes with inflation.</p> <p>The definition of Shoreline Substantial Development Permit on Page 19 also references the out of date dollar figure.</p>	<p><b>Mandatory:</b></p> <p>The City will reference the updated dollar figure in 5.010(h)(1), in addition to leaving the reference that cost thresholds are periodically amended. The definitions section should also be updated.</p> <p><b>Recommended:</b></p> <p>Alternately, the BSMP could refer directly to the RCW and eliminate reference to a specific cost threshold in both sections for greater flexibility with future threshold changes.</p>
b.	<b>Ecology permit rules clarified the definition of “development” does not include dismantling or removing structures.</b>	<p>BSMP contains definitions in Chapter 3. The definition of development on page 13 does not specifically exclude dismantling or removing structures.</p>	<p><b>Recommended:</b></p> <p>The City should consider adding to the definition of development to be consistent with Ecology's recommended language:</p> <p><i>“Development” does not include dismantling or removing structures if there is no other associated development or re-development.</i></p>
c.	<b>Ecology adopted rules clarifying exceptions to local review under the SMA.</b>	<p>There is not a section dedicated to exceptions in the BSMP.</p>	<p><b>Recommended:</b></p> <p>The City should consider updating BSMP Chapter 5, Permit Administration, to include a section that refers directly to the exceptions in WAC 173-27-044, and -045,</p>

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<b>Row</b>	<b>Summary of change</b>	<b>Review</b>	<b>Action</b>
			regarding projects that are not subject to review under the SMA.
d.	Ecology amended rules clarifying <b>permit filing procedures</b> consistent with a 2011 statute.	BSMP 5.040(a)(3) refers to WAC 173-27-130 for filling procedures for Shoreline Substantial Development Permits.  BSMP 5.060(a) and (b) appropriately reference filing procedures regarding the 21-day appeal period.	No action necessary.
e.	Ecology amended <b>forestry use regulations</b> to clarify that forest practices that only involves timber cutting are not SMA “developments” and do not require SDPs.	BSMP 8.040, Forest Practices, regulation (b) states that forest practices for the sole purpose of timber harvesting are prohibited in shoreline jurisdiction. However, other types of forest practices may be allowed.	<p><b>Recommended:</b></p> <p>The City should consider adding a Ecology’s recommended language to 8.040 as follows:</p> <p><i>8.040 Forest Practices:</i></p> <p><i>Forest practices within the City along shorelines would occur as a conversion of forested areas to a certain level of urban development (Class IV – General per the Forest Practices Act, RCW 76.09).</i></p> <p><i><u>A forest practice that only involves timber harvesting is not a development under the act and does not require a shoreline substantial development permit or a shoreline exemption.</u></i></p> <p><i><u>A forest practice that includes activities other than timber cutting may be a development under the act and may require a substantial development permit, as required by WAC 222-50-020.</u></i></p>

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Row	Summary of change	Review	Action
f.	Ecology clarified the SMA does not apply to lands under <b>exclusive federal jurisdiction</b>	BSMP does not discuss the applicability of the SMA to federal land.	<p><b>Recommended:</b>  As the City does have some shoreline under exclusive federal jurisdiction, the City may consider adding clarification of the applicability of the SMP to those areas.  Sub-section (I) can be added to SMP 5.010 Applicability, to address this recommendation:  <u><i>Lands Under Exclusive Federal Jurisdiction. Areas and uses in those areas that are under exclusive Federal jurisdiction as established through federal or state statutes are not subject to Chapter 90.58 RCW. This means that in Bremerton, the SMA, and therefore the BSMP, does not apply to Federal Owned Lands including, but not limited to the Naval Base Kitsap-Bremerton, Naval Hospital and Puget Sound Naval Shipyard &amp; Intermediate Maintenance Facility.</i></u></p>
g.	Ecology clarified “default” provisions for <b>nonconforming uses and development</b> .	SMP Chapter 6 already provides provisions for nonconforming uses and development. “Nonconforming development” is also defined and additional definitions for nonconforming lot, use and structure are provided in BSMP 6.040.	<p><b>Recommended:</b>  The City should re-locating the additional nonconforming definitions in BSMP 6.040 in the main definitions section for clarity.</p>
h.	Ecology adopted rule amendments to clarify the scope and process for conducting <b>periodic reviews</b> .	This is optional and the current SMP does not address the periodic review provision.	No action necessary.
i.	Ecology adopted a new rule creating an <b>optional SMP amendment process</b> that allows for a shared local/state public comment period.	The SMP does not currently address the amendment process, nor is it required to.	No action necessary. The City complies with the State process.

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<b>Row</b>	<b>Summary of change</b>	<b>Review</b>	<b>Action</b>
j.	<b>Submittal</b> to Ecology of proposed SMP amendments.	The SMP does not currently address the amendment process, nor is it required to.	No action necessary. The City complies with the State process.
<b>2016</b>			
a.	The Legislature created a new shoreline permit exemption for retrofitting existing structures to comply with the <b>Americans with Disabilities Act (ADA)</b> .	BSMP Section 5.010, Applicability includes this exemption.	<b>Recommended:</b> “Propvide” should be changed to “provide”.
b.	Ecology updated <b>wetlands critical areas guidance</b> including implementation guidance for the 2014 wetlands rating system.	The City updated their critical areas ordinance (CAO) in 2016 and updated the SMP at the same time to incorporate the new CAO by reference.	No action necessary. The 2016 CAO adopts the 2014 wetland rating system.  Note, Ecology has additional updated guidance on wetland buffer widths which the City may consider incorporating into their CAO and SMP. See discussion in Section 3 below.
<b>2015</b>			
a.	The Legislature adopted a <b>90-day target</b> for local review of Washington State Department of Transportation (WSDOT) projects.	The SMP does not address the review of WSDOT projects. While this is optional, the WSDOT presence is significant with the ferry terminal and several state highways within shoreline jurisdiction.	<b>Recommended:</b> The City may consider adding a section on special procedures for WSDOT projects to Chapter 5: Permit Administration. Language from Ecology is available.
<b>2014</b>			
a.	The Legislature created a new definition and policy for <b>floating on-water residences</b> legally established before 7/1/2014.	SMP Section 8.080, Residential Regulation (d) prohibits over-water residences and floating homes. However, “floating on-water residences” are not defined or addressed.	<b>Recommended:</b> The City may consider adding a definition for “floating on-water residence” to Chapter 3- Definitions, to reduce ambiguity while prohibiting this use.  <u><b>Floating on-water residence:</b> Means any floating structure other than a floating home, as defined by this chapter: (a) that is designed or used primarily as a residence on the water and has detachable utilities; and (b) whose owner or primary</u>

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			<p><u>occupant has held an ownership interest in space in a marina, or has held a lease or sublease to use space in a marina, since a date prior to July 1, 2014.</u></p> <p>Additionally, Page 97, regulation (d) should be amended to acknowledge how existing, legally established floating on-water residences are treated:</p> <p>(d) Over-Water Homes: Over-water residences and floating homes are <u>not a preferred use and are prohibited.</u></p> <p>(i) <u>Existing floating on-water residences legally established and moored within a marina within the City prior to July 1, 2014 are considered a conforming use and should be accommodated through reasonable permit conditions, or mitigation that will not effectively preclude maintenance, repair, replacement, and remodeling of existing floating on-water residences and their moorages by rendering these actions impracticable.</u></p> <p>(ii) <u>A floating home permitted or legally established prior to January 1, 2011 is considered a conforming preferred use. "Conforming preferred use" means that applicable development and shoreline master program regulations may only impose reasonable conditions and mitigation that will not effectively preclude maintenance, repair, replacement, and remodeling of existing floating homes and floating home moorages by rendering these actions impracticable. Floating homes should be accommodated to allow improvements associated</u></p>

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			<u>with life safety matters and property rights to be addressed provided that any expansion of existing communities is the minimum necessary to assure consistency with constitutional and other legal limitations that protect private property.</u>
<b>2012</b>			
a.	The Legislature amended the SMA to clarify <b>SMP appeal procedures</b> .	The current SMP does not address appeal procedures, nor is it required to.	No action necessary.  The City will continue cross-reference State regulations.
<b>2011</b>			
a.	Ecology adopted a rule requiring that wetlands be delineated in accordance with the approved <b>federal wetland delineation manual</b> .	The City incorporates by reference the 2017 city-wide critical areas regulations by ordinance which are codified under BMC 20.14 and include the requirement for delineation in accordance with the federal wetland delineation manual. The BSMP "wetlands" Chapter 3 definition includes reference to the approved federal manual.	No action necessary.  However, as discussed in further detail in Section 3 below, the critical areas definitions in Chapter 3 BSMP should be reviewed for consistency with the definitions in 20.14.200. Only definitions specific to shoreline jurisdiction need to be included in the SMP.
b.	Ecology adopted rules for new commercial <b>geoduck aquaculture</b> .	BSMP Section 8.020 discusses policies and development regulations for all types of aquaculture. Chapter 3, Definitions, defines aquaculture and includes the clarification that it does not include wild geoduck harvest. BSMP 8.020.n requires a Shoreline Conditional Use Permit for all new commercial aquaculture. It does not ensure that planting, growing, and harvesting of farm-raised geoducks also require a Substantial Development	<b>Recommended:</b>  The City may consider revising BSMP 8.020 to ensure an SDP is required if a project causes substantial interference with public access or passage. The City may reference the review provisions under WAC 173-26-241(3)(b) (ii-iv) directly to ensure all aspects of the new rules are noted in the SMP.

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<b>Row</b>	<b>Summary of change</b>	<b>Review</b>	<b>Action</b>
		Permit if a specific project or practice causes substantial interference with normal public use of the surface waters, in accordance with Attorney General Opinion 2007 No. 1 and WAC 173-26-241(3)(b)(ii-iv).	
c.	The Legislature created a new definition and policy for <b>floating homes</b> permitted or legally established prior to January 1, 2011.	BSMP Section 8.080, Residential Regulation (d) prohibits over-water residences and floating homes. However, neither term is defined in the SMP.	<p><b>Recommended:</b></p> <p>The City does not have any floating homes to-date. However, a definition may be added to improve administration of the code. The definition can be added to Chapter 3, consistent with the State statute as follows:</p> <p><b><u>"Floating home"</u></b> means a single-family dwelling unit constructed on a float, that is moored, anchored, or otherwise secured in waters, and is not a vessel, even though it may be capable of being towed.</p>
d.	The Legislature authorized a new <b>option to classify existing residential structures as conforming</b> .	<p>BSMP Chapter 6, Nonconforming Provisions, establishes criteria for when and how nonconforming structures can be continued, expanded, maintained or repaired.</p> <p>The legislative option to allow existing legally established non-conforming residential structures to be treated as conforming if not included.</p> <p>This legislative action does not impact future development; it merely treats existing legally permitted nonconforming development as conforming.</p>	<p>No action necessary.</p> <p>This law is optional. The City considered this option prior to the 2013 adoption and chose not to change the legal classification of nonconforming residential structures. Rather, SMP Chapter 6 clarifies the existing rights and allowances for nonconforming use and development without changing the legal status.</p>
<b>2010</b>			
a.	The Legislature adopted <b>Growth</b>	BSMP 5.010, Applicability, already contains reference to	No action necessary.

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<b>Row</b>	<b>Summary of change</b>	<b>Review</b>	<b>Action</b>
	<b>Management Act – Shoreline Management Act clarifications.</b>	<p>WAC 173-26, which therein references Approval/Amendment Procedures and Master Program Guidelines. City-wide critical areas regulations are adopted by reference in BSMP 5.010.c.2 with exclusions noted where GMA requirements are not compatible with SMA requirements.</p>	
<b>2009</b>			
	a. The Legislature created new “relief” procedures for instances in which a <b>shoreline restoration project within a UGA</b> creates a shift in Ordinary High Water Mark.	<p>BSMP 5.090, Restoration Project Relocation of Ordinary High Water Mark, includes most of the language in Ecology’s rule intended to implement this relief provision. However, not all of the criteria and provisions of WAC 173-27-215 are included for example:</p> <p>(4) A substantial development permit is not required on land within urban growth areas as defined in RCW 36.70A.030 that is brought under shoreline jurisdiction due to a shoreline restoration project creating a landward shift in the ordinary high-water mark.</p> <p>(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.</p> <p>(6) "Shoreline restoration project" means a project designed to restore impaired ecological function of a shoreline.</p>	<p><b>Required:</b> The City should amend 5.090 to add the additional criteria and provisions of WAC 173-21-215 which are not currently included.</p> <p><b>Recommended:</b> The City may adopt the by simple reference under BSMP 5.090 or incorporate the following:</p> <p><u>In limited instances, the city may grant relief from development standards and use regulations within the SMP that result from shoreline restoration projects that cause a landward shift in the extent of the shoreline jurisdiction consistent with criteria and procedures in WAC 173-27-215. These criteria include, but are not limited to the following:</u></p> <p class="list-item-l1">a. <u>Application of regulations within this SMP would preclude or interfere with use of the affected property, where such use would otherwise be permitted by city regulations, thus presenting a hardship to the project proponent;</u></p>

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<b>Row</b>	<b>Summary of change</b>	<b>Review</b>	<b>Action</b>
			<p>b. <u>The proposed relief is the minimum necessary to relieve the hardship;</u></p> <p>c. <u>After granting the proposed relief, there is net environmental benefit from the restoration project;</u></p> <p>d. <u>Where a shoreline restoration project is created as mitigation for a development permit, the project proponent required to perform the mitigation is not eligible for relief under this section; and</u></p> <p>e. <u>Application for relief must be approved by the city and must be submitted to Ecology for written approval or disapproval; Ecology submittal and decision procedures shall occur consistent with WAC 173-27-215.</u></p>
	<p>b. Ecology adopted a rule for certifying <b>wetland mitigation banks</b>.</p>	BMC 20.14, adopted by reference into the SMP, allows the use of certified wetland mitigation banks under BMC 20.14.340.d.3(ii), Mitigation Requirements - Wetlands.	No action necessary.
	<p>c. The Legislature added <b>moratoria authority</b> and procedures to the SMA.</p>	Moratoria procedures are not included in the current SMP, nor are they required to be. BSMP already refers to WAC 173-27 under BSMP 5.010, Applicability, capturing WAC 173-27-085.	No action necessary.
<b>2007</b>			
	<p>a. The Legislature clarified options for defining "<b>floodway</b>" as either the area that has been established in</p>	Floodway is defined in Chapter 3, Definitions and covers both Ecology-prescribed options and	No action necessary.

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<b>Row</b>	<b>Summary of change</b>	<b>Review</b>	<b>Action</b>
	FEMA maps, or the floodway criteria set in the SMA.	includes reference to the law (RCW 90.58.030)	
<b>b.</b>	Ecology amended rules to clarify that comprehensively updated SMPs shall include a <b>list and map of streams and lakes</b> that are in shoreline jurisdiction.	No new shoreline waterbodies have been identified since the comprehensive update. The areas of shoreline jurisdiction are shown on the maps in BSMP Section 4.020, but not provided as a list.	<b>Recommended:</b> To increase usability, provide a list of shoreline waterbodies preceding the maps which identify specific designations. This could be added as a separate subsection under BSMP Chapter 4- Shoreline Maps and Designations.
<b>c.</b>	Ecology's rule listing statutory exemptions from the requirement for an SDP was amended to include <b>fish habitat enhancement projects</b> that conform to the provisions of RCW 77.55.181.	SMP 5.010.h, Exemptions, includes reference to fish habitat enhancement projects under RCW 77.55.181 and includes the list of the specific types of projects which qualify. However, the list of types of projects which qualify under RCW 77.55.181 was recently expanded (2019) by the legislature to include "restoration of native kelp and eelgrass beds and restoring native oysters" (RCW 77.55.181.(1)(a)(iv) which is not included in the current SMP.	<b>Recommended:</b> Update the language in BSMP 5.010.h.16.iv.A.I to include restoration of native kelp and eelgrass beds and restoring native oysters, for consistency with the revised criteria of RCW 77.55.181.

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## 3. Consistency with Critical Areas Regulations

Bremerton's critical areas ordinance (CAO) was updated in 2016, at the time of the Major Comprehensive Plan update, and are codified in BMC Chapter 20.14. The BSMP was updated at the same time, through a limited amendment; adopting BMC Chapter 20.14 by reference. Therefore, the BSMP critical area regulations are mainly up to date and consistent with Ecology's guidance.

Table 3-1 below summarizes the issues identified above which should be resolved in order to properly incorporate the latest Ecology critical areas guidance and reference the City's critical areas regulations into the updated SMP. The table is organized by critical areas regulations subject area.

Table 3-1. Summary of consistency with the SMP and Critical Areas Ordinance and potential revisions.

#	Issue	Relevant Location(s) <sup>1</sup>	Review & Action
1	<b>July 2018 Ecology Wetland Buffer Guidance Update</b>	<b>Location:</b> BMC 20.14.330(h)	<b>Review:</b> Ecology updated their wetland rating guidance in July 2018. Changes include modified habitat score ranges in wetland buffer tables. Chapter 5 BSMP adopts the wetland buffer table in BMC 20.14. Updating this table to reflect Ecology's 2018 guidance would result in a decrease in buffer widths for lower rated wetlands. A discussion is provided below.  <b>Action</b> <i>Recommended:</i> Revise BMC 20.14.330.h to reflect the latest Ecology guidance and <i>if required</i> incorporate the updated BMC 20.14 by reference into the updated BSMP.
2	<b>Reducing wetland buffer widths with minimization measures</b>	<b>Location:</b> BMC 20.14.330(h)(3); BSMP Section 7.010(a)	<b>Review:</b> BMC 20.14 allows a 25% reduction of the standard buffer widths if certain minimization measures are applied. This is generally consistent with Ecology guidance and the buffer tables presented in Ecology's Wetland Guidance for CAO Updates except that the requirement for protection of wildlife corridor is not fully consistent with Ecology's guidance.  The SMP excludes incorporation of this regulation from BMC 20.14.

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#	Issue	Relevant Location(s) <sup>1</sup>	Review & Action
			<p><b>Action</b></p> <p><b>Recommended:</b> Revise BMC 20.14.330.h.3 to incorporate all Ecology guidance on protection of a wildlife corridor for wetlands with a habitat score greater than 6. If this is done, this section will be consistent with BAS and will no longer need to be excluded from the BSMP.</p>
3	<b>Critical Area Regulations excluded from BSMP</b>	<u>Location:</u> BSMP 5.010(c)(2); BSMP 7.010.a	<p><b>Review:</b>            Critical area exclusion lists do not match.</p> <p><b>Action:</b>            Revise code and consider removing BMC 20.14.330(h)(3) if the wildlife corridor revisions to the CAO incorporated in the BMC.</p>
4	<b>Extraneous Critical Area Regulations</b>	<u>Location</u>	<p><b>Review</b>            For SMP &amp; CAO, it would be helpful that have a 'GAP' analysis of what is in our code that is not required to be there.</p> <p><b>Action</b>            Conduct a general review of existing CAR and identify overly burdensome or inflexible items for applicants that are not required by state laws or Best Available science.</p>
5	<b>Definitions</b>	<u>Location:</u> BSMP Chapter 3; BMC 20.14.200 'Definitions'	<p><b>Review:</b>            The definitions for the following are inconsistent between the Chapter 3 BSMP and BMC 20.14.200 'Definitions':</p> <ul style="list-style-type: none"> <li>• Restore, Restoration, or ecological restoration</li> <li>• Repair or maintenance (CAO) vs. Normal repair and maintenance (BSMP)</li> <li>• Qualified Professional</li> </ul> <p><b>Action</b>  <b>Recommended:</b> The City will use the most up-to-date definition available that is consistent with State law and the City's use of the term in any other relevant regulations.</p>
6	<b>Definitions</b>	<u>Location:</u> BSMP Chapter 3; BMC 20.14.200 'Definitions'	<p><b>Action:</b> Remove redundant definitions. Critical area definitions defined by BMC 20.14.200 to be removed from Chapter 3.</p>

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#	Issue	Relevant Location(s) <sup>1</sup>	Review & Action
7	<b>Wetland delineations valid for five (5) years: regulation in definition</b>	<u>Location:</u> BMC 20.14.200	<u>Review:</u> Wetland delineation expiry is in an awkward code location for readers.  <u>Action:</u> <b>Recommended:</b> Relocate wetland delineation expiry to administrative code within wetland delineation section (BMC 20.14.310).
8	<b>Replacement Trees</b>	BMC 20.14.190	<u>Review/Action</u> Incorporate existing CAO code or propose new code for replacement trees in critical areas. Issues include the no explicit information on replacement tree spacing, in critical areas and their buffers removal of trees greater than six inches in diameter at four ft height have a 1:3 replacement ratio.

<sup>1</sup> This column attempts to capture the primary relevant location(s) of content related to the item described in the Summary of Change column; however, due to length of the SMP, all relevant locations may not be listed.

## Ecology Wetland Buffer Guidance

In July 2018, Ecology updated its guidance for wetland ratings. The change represents best available science (BAS) and includes modified habitat score ranges used in wetland buffer tables. The change in guidance is the result of Ecology's continued evaluation of the 2014 wetland rating system as it relates to the 2004 wetland rating system. Ecology's continued evaluation resulted in revised buffer guidance that is more in line with rating system reference wetland data. The recommendation assigns wetlands with a habitat score of 5 as "low" function along instead of a separate "low/medium" grouping. This reduces the buffer for wetlands with a habitat score of 5 when compared to the City's current buffer table (see Tables 3-2 and 3-3 below). It also reduces the recommended buffer for "medium" habitat functions (scores of 6 and 7). We propose the City modify its wetland regulations to follow Ecology's new guidance, although not required by Ecology at this time. Table 3-1 shows the existing buffer widths under BMC Chapter 20.14 and Table 3-2 shows Ecology's most recent 2018 guidance.

Table 3-2. Current standard wetland buffer table per BMC 20.14.330.h.1

Wetland Category and Type	Buffer Width (in feet) Based on Habitat Score			
	3-4 (Low)	5 (Medium)	6-7 (Medium)	8-9 (High)
I: Estuarine wetlands	200			
I: All others	100	140	220	300

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Wetland Category and Type	Buffer Width (in feet) Based on Habitat Score			
	3-4 (Low)	5 (Medium)	6-7 (Medium)	8-9 (High)
II: Estuarine wetlands	150			
II: All	100	140	220	300
III: All	80	140	220	300
IV: All	50			

Table 3-3. Standard wetland buffer widths table per July 2018 updated Ecology guidance (when minimization measures and a wildlife corridor are NOT provided)

Wetland Category and Type	Buffer Width (in feet) Based on Habitat Score		
	3-5 (Low)	6-7 (Medium)	8-9 (High)
I: Estuarine wetlands	200		
I: All others	100	150	300
II: Estuarine wetlands	150		
II: All	100	150	300
III: All	80	150	300
IV: All	50		

Note that BMC Chapter 20.14 utilizes the un-reduced standard buffers presented in Ecology's Wetland Guidance for CAO Updates for when minimization measures are not implemented (BMC 20.14.330.h.1). BMC Chapter 20.14 allows a 25 percent reduction in wetland buffer widths if impact minimization measures are applied (BMC 20.14.330.h.3). To be consistent with Ecology's guidance, the use of minimization measures must also require protection of a wildlife corridor, when appropriate. A corridor requirement is currently included in the City's minimization measures table, but the table does not include all current Ecology requirements. To better align with BAS, a wildlife corridor protection requirement is recommended for wetlands with a habitat score of 6 or more to use the reduced standard buffers of BMC 20.14.330.h.3. The wildlife corridor is only required, and may apply the city in areas owned by the county, if an existing, relatively undisturbed corridor at least 100 feet in width exists between the subject wetland and another Washington Department of Fish and Wildlife priority habitat, *and* the off-site portion of the corridor is already protected by a legal mechanism. (Legal mechanisms may include, conservation easements, public dedications or tracts etc. established in perpetuity). If so, the applicant must extend the wildlife corridor protection onto the subject parcel to connect it to the wetland. If such a wildlife corridor exists but the protection is not provided, the standard buffers must be used. If no wildlife corridor is present, the reduced standard buffers may be used with application of the minimization measures alone.

Ecology's recommended buffer widths when minimization measures are implemented, and a wildlife corridor is provided are presented in Table 3-3 below. These correspond to the reduced buffer widths allowed by BMC 20.14.330.h.3.

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Table 3-4. Reduced wetland buffer widths when minimization measures and corridor are provided

Wetland Category and Type	Buffer Width (in feet) Based on Habitat Score		
	3-5 (Low)	6-7 (Medium)	8-9 (High)
I: Estuarine wetlands		150	
I: All others	75	110	225
II: Estuarine wetlands		110	
II: All	75	110	225
III: All	60	110	225
IV: All		40	

## Critical Areas Applicability in Shoreline Jurisdiction

BMC Chapter 20.14 includes some regulations that are inconsistent with the Shoreline Management Act. The inconsistent regulations have been identified and excluded from incorporation into the SMP in SMP Section 7.010, Regulation (a) and include some exemptions, reasonable use exceptions and stream buffer reductions. Included in the list of exclusions is BMC 20.14.330(h)(3) Reducing Wetland Buffer Widths. While it is true that the SMA would not allow wetland buffer reductions beyond the minimum supported by the most current, accurate, and complete scientific or technical information available, the widths offered by BMC 20.14.330(h)(3) and shown above in Table 3-4 are supported by Ecology as BAS, if the minimization measures and wildlife corridor are provided when applicable. Therefore, the City could consider including this section in the SMP if the suggested changes to the wildlife corridor provision are incorporated.

The list of critical area sections ((BMC 20.14) excluded from the BSMP is repeated in section BSMP 5.010(c)(2). The Chapter 5 list differs slightly from the Chapter 7 list (BSMP 7.010.a). These two lists should be revised to be the same.

BSMP section 5.010 excludes BMC 20.14.730(d)(8), while section 7.010 does not. Secondly, the wetland sections excluded are listed together and given the incorrect name, “standard wetland buffers widths” in 5.010 (the standard wetland buffer widths section is not listed, and it is assumed it is not actually intended to be excluded.) BMC 20.14.730 (d)(8) Habitat Conservation Area Buffers, is not inconsistent with the SMA and it is not clear why it would be excluded. The City should consider including this section in the SMP. Overall it is recommended that the list in BSMP Section 7.010 be used with the possible removal of BMC 20.14.330(h)(3) if the wildlife corridor revisions are made as discussed above.

Finally, the BMC 20.14.200, Definitions, contains several definitions which are inconsistent with the definitions in the BSMP Chapter 3. These two definitions sections should be reviewed and reconciled, however BSMP Chapter 3, Page 11 states:

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*'Where these definitions conflict with other definitions in the Bremerton Municipal Code, these definitions shall prevail for projects within the shoreline jurisdiction'.*

In general, definitions not specific to shoreline jurisdiction do not need to be defined in the BSMP. Therefore, critical areas definitions which are appropriately defined in BMC 20.14.200 could be removed from BSMP Chapter 3.

## 4. Consistency with Comprehensive Plan & Other Development Regulations

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Based on a review of the City's Comprehensive Plan and BMC Title 20 'Land Use', there are no major inconsistencies observed within the City's SMP. There are potential amendments, including discretionary staff requests, which are included in Section 5 of this document.

## 5. Other Issues to Consider

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In addition to the issues discussed in the previous sections of this report, several other issues in the current SMP could be addressed as part of the periodic update process to produce a more effective SMP per City staff comments on the administration of the BSMP. These other issues are described in Table 5-1 below.

Table 5-1. Other issues that could be addressed to produce a more effective SMP.

#	Issue	Relevant Location(s) <sup>1</sup>	Review & Action
<b>Permit Administration</b>			
1	<b>Shoreline Permit Expiration</b>	BSMP Section 5.060, Time Periods	<p><b>Review:</b> The two-year time period to complete work one-year extension is insufficient.</p> <p>RCW 90.58.143 allows five years for substantial development permits with authorization for a single extension not to exceed one year. If no substantive changes, the city may 'authorize different time limits as part of action on a permit' ((Ecology, 2019, p. 10-1).</p> <p><b>Action:</b> Revise the BSMP to either cross-reference RCW 90.58.143 or as amended, or five-years</p>

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			(except variances) to substantially complete construction for the requested development activity, with an opportunity for an extension up to one-year extension under reasonable factors.
2	<b>Shoreline permit Ecology Filing</b>	BSMP 5.040(a)(3)	<p><b>Review:</b>            Shoreline CUP, shoreline variance permits and SDPs must be filed with ecology. Permits and shoreline exemptions requiring environmental checklist are submitted to DOE SEPA registry per SEPA rules/WAC 197-11.</p> <p><b>Action:</b>            Revise the BSMP cross-reference WAC 173-27-130.</p>
<b>Nonconforming Provisions</b>			
3	<b>Conditional use Permit required for Nonconforming Use</b>	BSMP 6.080	<p><b>Review</b>            This section creates administration issues for staff and is not necessary.</p> <p><b>Action</b>            Remove section and conditional use permit requirement.</p>
4	<b>Re-use of vacant structures</b>	BSMP Chapter 6, Nonconforming Provisions	<p><b>Review:</b>            Any use allowed in the zone may occupy a vacant structure, until such time a preferred shoreline use becomes available, if no exterior alterations to the site are proposed. Restaurants to be permitted in multifamily shoreline designation if a legal non-conforming use.</p> <p><b>Action</b>            The City may consider establishing a maximum time period for re-occupying existing vacant structures, subject to zoning and building code requirements.</p>
<b>General Standards and Regulations</b>			
5	<b>Fence construction in the shoreline buffer area</b>	BSMP, Chapter 7.010.6	<p><b>Review:</b>            Staff request the opportunity to modify fence allowances in buffer areas with provision for ADA requirements, health, life and safety.</p>

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			<p><b>Action:</b> <i>Recommended:</i> Revise BSMP 7.010.6, to permit some fencing configurations in certain shoreline buffer areas.</p>
6	<b>Streamline buffer averaging requests - Fish &amp; Wildlife Habitat Conservation Areas</b>	BSMP Section 7.010.5	<p><b>Review:</b> Regulations require that applicants analyze '60% or more of like structures along the shoreline within the same numbered block as the subject property [which] are less than the required buffer/setback required by the SMP.' The average is permitted for the current proposal.</p> <p>For staff and applicants this is difficult and cumbersome to implement. There are best practices with regulations that may be easier to implement.</p> <p><b>Action:</b> <i>Recommended:</i> Review best practices of other cities and revise BSMP Section 7.010.5 to establish an improved buffer averaging process. Add a general provision for a critical area building setback line of 5-ft. from the edge of a buffer.</p> <p><i>Recommended:</i> Replace the traditional rear yard setback with a string-line setback regulations.</p>
7	<b>Height Restrictions</b>	BSMP Section 7.090	<p><b>Review:</b> Explore opportunities to allow for height exceptions for certain types of structures (i.e. bridges). Regulations did not anticipate regulating public bridges that transverse a body of water.</p> <p><b>Action:</b> <i>Recommended:</i> Codify Director's Interpretation 18-001-SMP in BSMP Section 8.090 'Roads, Railways, and Utilities.' <i>'Height restrictions and light penetration standards do not apply to public bridges.'</i></p>

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			<i>Compliance with all other code provisions shall apply'</i>
8	<b>Isolated SED-Implementation</b>	BSMP 4.030.f, 7.090.5 Chapter 7; SED mapping	<p><b>Review</b> An 'Isolated' designation exists and BSMP provisions exempt fish and wildlife buffer on these parcels within the shoreline. These isolated parcels are separated from the shoreline jurisdiction by another parcel, bisected by a road or improvements, etc.</p> <p><b>Action</b> Consider adding allowances to be less restrictive on other parcels which are not designated as Isolated yet are separated by a road or other significant improvement.</p>
9	<b>Public Access</b>	BSMP Section 7.040(b)(2) Regulations and throughout SMP	<p><b>Review</b> Consider alternatives that add flexibility for applicants and staff while still meeting WAC public access requirements</p> <p><b>Action</b></p> <ul style="list-style-type: none"> <li>• Consider alternatives that add flexibility to current public access requirements (e.g. in-lieu, collective off-site locations, nearby access). Including, adding director discretion to remove public access requirement (7.040(h)(9)) as appropriate.</li> <li>• Clarify acceptable trail materials and size along with requirements for no net loss</li> </ul>
10	<b>Mitigation Performance and Monitoring Bonding</b>	7.020 Regulations (a)(7)	<p><b>Review</b> Current bonding requirements do not always contribute to overall success of mitigation</p> <p><b>Action</b> Consider incremental release of bonds if the plants are installed and meeting survival retention rates. Remove bonding requirement for small residential projects.</p>
11	<b>Advance mitigation planning</b>	TBD	<p><b>Review</b> Public Works could benefit from use of an advanced mitigation bank to improve project implementation timeline.</p>

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			<u>Action</u> Consider establishing a process in the SMP/CAO for mitigation banking sites in the City for city projects only.
12	<b>Climate Change Resiliency</b>	TBD	<u>Review</u> The City is interested in reviewing how other jurisdictions have incorporated best practices regarding sea level rise and adaptation. The City expects to receive more requests to repair or modify bulkheads as sea levels begin to rise.  <u>Action</u> Where appropriate, incorporate relevant policies into City's SMP (e.g. Olympia's 2019 Sea Level Rise Plan).
<b>Shoreline Use and Modification Regulations</b>			
13	<b>Light penetration for public bridges</b>	BSMP Section 9.030 Regulations (b)	<u>Review:</u> Regulations did not anticipate regulating public bridges that transverse a body of water for conformance to light penetration standards. (see response to height restrictions above)  <u>Action:</u> <i>Recommended: Codify Director's Interpretation 18-001-SMP in BSMP Section 8.090 'Roads, Railways, and Utilities.'</i> <i>'Height restrictions and light penetration standards do not apply to public bridges.'</i> <i>Compliance with all other code provisions shall apply'</i>
14	<b>Vegetation Management Plan Requirements</b>	BSMP Section 9.080.i, BSMP Section 7.020	<u>Review:</u> Explore opportunities to reduce unnecessary restrictions, while maintaining no net loss. Add prescriptive standards or those instances where projects are exempt from VMP or enhancement; proportional to the impact proposed; particularly when development located outside of buffer.  <u>Action:</u> Review and revise issues identified by City staff.
15	<b>Tender Docks</b>	9.030.i Regulations; BSMP Ch. 3 Definitions	<u>Review:</u>

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			No dimensional standards are currently included for a tender dock.  <b>Action:</b> Add 'tender dock' definition or 'to tender' versus 'to dock'. Consider adding dimensional criteria for a tender dock, as appropriate.
<b>Shoreline Environment Designation Mapping</b>			
16	<b>SED Designation:</b> Commercial Designation – Extension to lots with existing commercial buildings along shore drive.	BSMP Section 4.020, Map D	<b>Review:</b> The City may consider expanding the 'Commercial' shoreline designation to the south on 'Multi-Family Residential' parcels along Wheaton Way. BSMP Section 6.070 states 'substantial destruction' removes all legal nonconforming use and development status. Therefore, legal non-conforming commercial uses who wish to upgrade buildings, demolish structure and remodel for economic development in the commercial node are strictly prohibited under the current land use designation.  Commercial and multi-family development represent similar permitted uses in the BSMP in terms of their potential impact on the shoreline environment. Expanding commercial areas would increase permitted uses including hotels, general retail, restaurants, and public parking capacity.  Further, the expansion to the commercial does not impact public access nor reduce the types of 'Recreation and Public Access' use permitted.  <b>Action:</b> The City may consider changing identified 'Multi-Family Residential' lots to the 'Commercial' designation. Staff knowledge, historical aerials, assessor data and subarea plans may determine appropriate parcels.  The City may choose to include other shoreline designation amendments at their discretion. DOE will require a 'no net loss'

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			analysis if such map designation changes are proposed.
17	<b>SED Designations #2:</b> "Commercial" and "Downtown Waterfront" Designations	BSMP Section 4.020 – SMP Official Maps A-J	<p><b>Review:</b>            'Commercial' and 'Downtown Waterfront' are difficult to differentiate due to their similarity in color.</p> <p><b>Action:</b>  <b>Recommended:</b> Change the SED 'Commercial' and "Downtown Waterfront" designation colors to clearly delineate.</p>
18	<b>Other SED map revisions</b>	Official Shoreline Environment Designation Maps A-M; Appendix III Designation Boundary & Resource Table	<p><b>Review</b></p> <ul style="list-style-type: none"> <li>SED Map D, mapping error- commercial designation to extend to 1912 Wheaton Way.</li> <li>Honor Bar/Evergreen Park re-designate to Isolated SED</li> <li>Oyster Bay requires SED assignment</li> <li>Commercial SED to be expanded one lot beyond Pitt Avenue to the South.</li> </ul> <p><b>Action</b>            Revise maps.</p>
<b>Administrative Amendments</b>			
19	<b>Industrial Development</b>	Throughout BSMP	<p><b>Review</b>            General evaluation of the SMP to ensure consistency with industrial development.</p> <p><b>Action</b>            Explore opportunities to ensure consistency with the need for industrial development in certain locations.</p>
20	<b>Reformat/Fix SMP Errors</b>	Throughout BSMP	<p><b>Review</b>            Revise text and sections for improved clarity and flow, address miscellaneous typos and formatting errors. The following are known issues. Others to be addressed during review process.</p> <p><b>Action</b>            Amend the following SMP items</p> <ul style="list-style-type: none"> <li>7.040 Regulations(b)(7) should be (b)(5)</li> <li>7.040 Regulations(f) should be (c)</li> <li>8.040 Regulations(a) &amp; 7.040</li> <li>7.090(b) Regulations scriveners' error</li> <li>7.010 (c)(g) Regulations</li> </ul>

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			<ul style="list-style-type: none"><li>• Correct public access requirement for lot threshold</li><li>• Figure 7.090(b)(a)(1), revise order</li><li>• 9.060 Regulations(a), fix typo</li><li>• BSMP 7.010.6, 'Buffers &amp; Setbacks' - The code reference for fencing is incorrect. Update reference in BSMP from BMC 20.44.020 to BMC 20.46.020</li></ul>
21	<b>Employment Center Planned Action</b>	NA	<p><b>Review</b></p> <p>Land use considerations are on-going for this area and future ordinance may impact city plans for shoreline development. SMP update to be mindful and consistent with area policies.</p> <p><b>Action:</b></p> <p>Implement the recommendations from the Eastside Center Subarea Plan.</p>
22	<b>Forestry activities</b>	BSMP Section 8.040	<p><b>Review</b></p> <p>Forestry activities for the sole purpose of timber harvesting are currently prohibited within shoreline jurisdiction. Certain City properties may benefit from timber harvesting as a way to manage the forest, or for utility maintenance.</p> <p><b>Action:</b></p> <p>Amend Forest Practices section 8.040(c) to allow the City Watershed and utility lands to utilize forest practices.</p>
<p><sup>1</sup> This column attempts to capture the primary relevant location(s) of content related to the item described in the Summary of Change column; however, due to length of the BSMP, all relevant locations may not be listed.</p>			

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DRAFT  
SHORELINE MASTER PROGRAM**

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

Approved Dec. 4, 2013XXXX,  
XXXX by Ordinance Number 5229  
and limited amendments on Sept. 7,  
2017 by  
Ordinance Number 5327

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I: Shoreline Inventory & Analysis

II: Cumulative Effects Analysis

III: Critical Area Ordinance

## **Chapter 1 - Introduction, Authority and Purpose**

The City of Bremerton recognizes the intent of the legislature of the State of Washington in adopting the "Shoreline Management Act (SMA) of 1971" and adopts by reference the findings therein including, but not limited to, the intent to protect shorelines of statewide significance, their associated natural resources, and providing opportunities for the general public to have access to generally enjoy shorelines. The Shoreline Management Act is incorporated into the Washington State Coastal Zone Management Program and, thereby, those direct federal agency activities affecting the use or resources subject to the Act must be consistent to the maximum extent practicable with the enforceable provisions of the Act, regulations adopted pursuant to the Act and this local Master Program.

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

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

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

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

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the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.

The legislature declares that interest of all people shall be paramount in the management of shorelines of statewide significance. The department (of Ecology) in adopting guidelines for shorelines of statewide significance, and local government in developing master programs for shorelines of statewide significance shall give preference to uses in the following order of preference which:

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

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

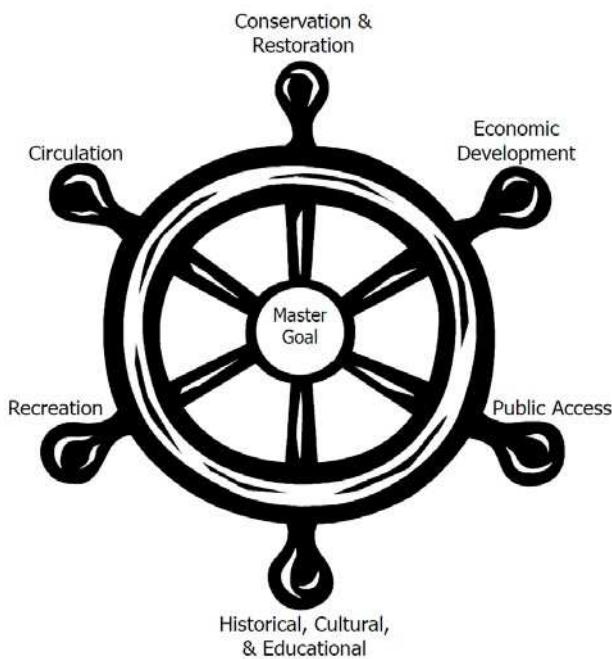
This cooperative effort balances local and State wide interests in the management and development of shoreline areas. Local governments are required to plan for shoreline development by developing local shoreline master programs (SMPs). They are also required to regulate such development through a shoreline permit system for Substantial Development projects.

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

## Chapter 2 — Goals and Policies

### 2.010 Intent:

The goals of the Shoreline Master Program are intended to be comprehensive goal statements. The goals state the broadest principals that establish the intent behind Master Program requirements. These goal statements are intended to ensure consistency as Master Program policies and regulations are applied to various shoreline uses. The following wheel depicts how all the goals are interconnected. Each primary goal group is integrally tied to a master goal. While each goal group is a separate concept, many of the principles within each group are interrelated. It is the intent of the goal wheel to depict this relationship.



### 2.020 Master Goal:

The overall focus of this plan is to protect and restore shoreline resources and ecological functions, increase public access to the shoreline, promote economic development, and accommodate water dependent uses and address climate change adaptation/resiliency. In order to achieve rational, balanced, and responsible use of our irreplaceable shorelines: uses need to be coordinated to ensure that long term over short term benefits result.

### 2.030 General Goals:

Each primary goal is listed in alphabetical order followed by the supporting goals for each group.

#### (a) Circulation Goal:

Enhance the overall mobility of Bremerton residents and visitors to and around shorelines without detracting from habitat function or public access.

- (1) Generally avoid locating new roads, railroads, and bridges within shoreline jurisdiction. When such features must be in shoreline jurisdiction locate them where routes will have the least adverse effect on shoreline function. Great effort should be taken to ensure such facilities do not result in a net loss of shoreline ecological functions or adversely impact existing or planned water dependent uses.
- (2) Where permitted, roads, railroads, and bridges should cross the shoreline area by the shortest most direct route, unless such a route would cause a net loss in shoreline ecological functions.
- (3) Improve facilities such as trails and bicycle lanes for safe pedestrian and non-motorized travel along public roadways in scenic areas.
- (4) Make use of rights of way for public access by encouraging rest areas, view turnout points, and picnic areas. Encourage the improvement of appropriate street ends abutting water bodies for public access.
- (5) Maximize opportunities to jointly use rights of way for roads, utilities, and non-motorized access to ensure the most beneficial use of public spaces.

**(b) Conservation and Restoration Goal:**

Emphasize activities that restore and enhance ecological functions and environmental qualities in order to achieve no net loss of ecological function on both a reach and watershed scale.

- (1) Conserve existing natural resources through regulatory and non-regulatory means such as development standards, ensuring ecologically sound designs, creating restoration programs, and encouraging education programs.
- (2) Critical areas within the shoreline should be managed to achieve protection or restoration of existing and degraded ecological functions and ecosystem wide processes. In protecting and restoring critical areas within the shoreline, the City can integrate the full spectrum of planning and regulatory measures.
- (3) Ensure that uses and activities retain native vegetation, or replace existing non-native vegetation with native species in order to achieve no net loss of ecological functions and ecosystem wide processes performed by native vegetation.
- (4) Encourage developments to integrate shoreline ecological restoration into projects through non-regulatory means.
- (5) Prevent and minimize pollution, sedimentation, and soil erosion through regulatory and non-regulatory means such as surface water management.
- (6) Conservation efforts should focus on protecting and sustaining existing ecological functions for long term success; such protection may be ensured through the use of conservation easements.
- (7) Recognize and monitor the potential effects of sea level riseclimate change as additional scientific information becomes available and encourage shoreline development and redevelopment which will deal with sea level rise in the following order: avoid, retreat protect and accommodate. At the next major update of the Shoreline Master Program consider additional specific policies and regulations based on additional scientific projections.
  - (i) Comprise/Gather information and establish a climate change strategic plan on the impacts of sea level rise on the shoreline and other affected

property; the City should develop plans to address the impacts of sea level rise and climate change in collaboration with impacted property owners, the community, and the Department of Ecology.

- (ii) Consider changes to the character (type of sediment, erosion etc.) of public and private shorelines during future Master Program updates.
- (iii) The City should consider sea level rise impacts as it plans for new development as well as other public and private shoreline projects, consistent with the best available science and the life cycle of the improvements.

(i) \_\_\_\_\_

**(c) Economic Development Goal:**

Encourage development, redevelopment, and infill that will improve ecological functions, restore riparian buffers, and benefit the community. Priority should be given to single family residences, however commercial uses should be developed in the following order of preference: water dependent, water related, water enjoyment, and shoreline mixed uses.

- (1) Plan for reasonable and appropriate shoreline uses, while ensuring that new, redeveloping, and existing use of facilities do not result in a net loss of shoreline ecological functions.
- (2) Classify areas based on use and ecological function. Focus attention on community benefit, ecosystem processes and functions to determine conservation strategies and restoration priorities.
- (3) Reserve areas for future water dependent and water related uses that are compatible with ecological protection and restoration objectives.
- (4) Non-water oriented activities should be located upland, away from the shoreline except where access to the water is not provided or where the non-water oriented use provides for ecological restoration and public access. Locations where there is a bluff or a topographic break the non-water oriented use should be landward of the top of the bluff.
- (5) Elements of a development that do not require location water access such as parking, circulation, or similar elements should be located inland and away from the immediate water's edge and/or from recreational beaches so as not to interfere with access to the shoreline.
- (6) Over-water and in-water uses should be prioritized to provide for public access, multiple use, and expansion of existing facilities rather than the addition of new facilities. Preference should be given to the expansion of existing marinas, shared docks, etc. in order to minimize the consumption of limited shoreline resources.
- (7) All shoreline policies, regulations and development standards should recognize and protect private rights and, to the extent possible, should be designed to protect the rights of adjacent property owners.

**(d) Historical, Cultural, & Educational Goal:**

To protect the public's interest in the conservation, preservation, and restoration of buildings, sites, and areas having historical, cultural, scientific, or educational value.

- (1) Protect and restore shoreline areas having historical and/or cultural significance especially those shorelines that are historically supported by the Suquamish Tribe.

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- (2) Encourage cooperation among public and private groups in the research and study of historical or cultural sites within the City.
- (3) Acknowledge the value to be gained from research of shorelines having historical and/or cultural significance. Support the continuation and expansion of such uses to improve the overall educational value of our shorelines.
- (4) Coordinate with existing organizations and local shoreline programs to ensure availability of ongoing educational programs for residents, landowners, and recreational users.

## **(e) Public Access Goal:**

Improve public access to the shorelines wherever feasible, provided it will not adversely impact ecological functions.

- (1) Ensure shoreline access and recreational areas are designed to provide safe and abundant access to marine environments for all citizens and meet current ADA requirements.
- (2) Encourage water oriented shoreline uses and activities that provide an opportunity for substantial numbers of the public to enjoy City shorelines.
- (3) Incorporate public access into developments (including land division) where possible. Design public access to be as close as possible to the water's edge without impacting safety or habitat function.
- (4) Control development, uses and activities on or near the shoreline so as not to impair or detract from the public's access to the water.
- (5) Preserve and enhance public views from the shoreline. Enhancement of views will not be construed to mean removal of vegetation.
- (6) Ensure publicly owned shorelines include water dependent uses, public recreational uses, or protected open space.
- (7) Maintain, enhance, and preserve physical and visual public access afforded by shoreline street ends, public utilities, and rights-of-way.
- (8) Link public access points with pathway systems for pedestrians and bicyclists. Provide linkages between pathway systems, public transit routes, and activity centers.
- (9) Encourage landowners to maintain existing public access as is protected by RCW 4.24.210-220 which limits liability.

## **(f) Recreation Goal:**

Protect and improve recreational opportunities consistent with community needs through the development of publicly owned shorelines.

- (1) Encourage developments to provide recreational uses and other improvements facilitating public access to shorelines. Locate and design recreational developments to preserve, enhance or create scenic views and vistas.
- (2) Identify shoreline areas with a potential for recreation or public access. Consider acquiring these areas by lease or purchase for incorporation into the Public Park and open space system.
- (3) Ensure recreational development is designed to be consistent with the desired character reflected in the purpose of the designation in which they are located in. Assure maximum recreational opportunities while achieving no net loss of

- shoreline ecological functions and maintaining ecosystem wide processes.
- (4) Encourage linkage of shoreline parks, recreation areas and public access points with linear systems such as hiking paths, bicycle paths, easements and/or scenic drives.
  - (5) Encourage public access to boat launches and other facilities that can improve access to the marine environment.

## **2.040 General Policies:**

### **(a) Buffer and Setback Policies:**

- (1) 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.
- (2) The City should protect critical areas and their existing shoreline ecological functions so they continue to contribute to existing ecosystem wide processes.
- (3) 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.

### **(b) Vegetation Conservation Policies:**

- (1) The City should protect, conserve and establish native vegetation near shorelines in order to protect and restore the ecological functions and ecosystem wide processes performed within riparian and near shore areas which include but are not limited to:
  - Protecting plant and animal species and their habitats;
  - Providing food sources for aquatic and terrestrial species in the form of various insects and benthic macro invertebrates;
  - Providing shade necessary to maintain water temperatures for salmonids, forage fish, and other aquatic biota;
  - Protecting and increasing stability of banks and bluffs;
  - Reducing the hazard of slope failures or accelerated erosion;
  - Reducing the need for structural shoreline stabilization measures;
  - Improving the visual and aesthetic qualities of the shoreline;
  - Protecting and improving water quality through filtration and vegetative uptake of nutrients and pollutants;
  - Providing habitat corridors parallel and perpendicular to the water body.
- (2) The City should implement the Environmental Standards within the Gorst Creek Subarea Plan, including the Gorst Creek Overlay, upon future annexation.

### **(c) Mitigation Sequencing Policy:**

- (1) For all developments, applicants must demonstrate that all alternatives have been examined with the intent to avoid and minimize impacts to shoreline ecological functions.

### **(d) Public Access Policies:**

- (1) Public access, in its variety of forms, should be promoted whenever feasible provided the result is no net loss of the shoreline's ecological function.
- (2) Public access should be provided to the shoreline as a primary use or as development occurs, while protecting private property rights and public safety.
- (3) Public access should not compromise the rights of navigation and space necessary for water-dependent and water-related uses.
- (4) To the greatest extent feasible consistent with the overall best interest of the state and the

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- people generally, the public's opportunity to enjoy the physical and aesthetic qualities of shorelines of the state should be protected.
- (5) Property owners should implement a variety of techniques including acquisition, leases, easements, and design and development innovations to achieve public access goals and to provide diverse public access opportunities.

**(e) Water Quality Policies:**

- (1) Prevent impacts to water quality and stormwater quantity that would result in a net loss of shoreline ecological functions, or a significant impact to aesthetic qualities, or recreational opportunities.
- (2) Ensure mutual consistency between shoreline management provisions and other regulations that address water quality and stormwater quantity, including public health, stormwater, and water discharge standards.
- (3) Protect aquatic resources from non-point pollution, such as water runoff from contaminated surfaces, contaminated groundwater, chemical fertilizers, herbicides, pesticides, and petrochemicals, including, but not limited to discharge from failing onsite septic systems.

**(f) Archaeologically Sensitive Areas Policies:**

- (1) Prevent the destruction of or damage to any cultural resources and any site having historic, cultural, scientific, or educational value as identified by the appropriate authorities, including The Suquamish Tribe, and the Washington State Department of Archaeology and Historic Preservation.
- (2) Land owners should provide access to qualified professionals and the general public if appropriate for the purpose of public education related to a cultural resource identified on a property.

**(g) Lighting Policies:**

- (1) Lighting within shorelines and lands adjacent to shorelines if not properly managed can have an adverse impact on the ecological function, most notably the migration patterns of salmonids and terrestrial species.
- (2) Lighting should be minimized within shorelines, especially within close proximity to the water.
- (3) Development should implement site lighting techniques that minimize the amount of spill-over into riparian and aquatic environments. These techniques should include but are not limited to reduction of pole heights, pole locations, and fixture designs including shading / shielding devices, bulb types and reduced wattages.

**(h) Parking Policies:**

- (1) Parking includes private on-site, public lots/structures and loading areas. Parking within shorelines is a low priority. Converting land within shorelines for the sole use of vehicles is not an efficient land use.
- (2) Parking as a primary use (stand-alone use) within the shoreline jurisdiction should be prohibited.
- (3) Parking should not be allowed between development and the adjacent water body.
- (4) Where surface parking is developed within the shoreline jurisdiction, Low Impact Development techniques should be implemented.
- (5) Lighting for parking areas should be minimized.

**2.045 Aquaculture Policies:**

Aquaculture is the culture, or farming of fish, shellfish or other aquatic plants and animals.

Activities include, but are not limited to the hatching, cultivating, planting, feeding, raising, harvesting, and processing of aquatic plants and animals and the maintenance and construction of necessary equipment, buildings, and growing areas. Cultivation methods include, but are not limited to fish pens, fish hatcheries, shellfish rafts, racks and long lines, seaweed floats, and nets and the culture of clams and oysters on tidelands and sub-tidal areas. Aquaculture does not include the harvest of wild geoduck associated with a state managed wild stock geoduck fishery. Aquaculture is a preferred water-dependent use. It should be encouraged to locate where it will not significantly conflict with navigation and other water dependent uses, and/or result in a net loss of ecological functions, and/or adversely impact eelgrass and microalgae. Harvest of wild stock free swimming fish, and/or harvest of wild stock geoducks on state owned aquatic lands do not require a shoreline Substantial Development permit.

- (a) Aquaculture should not be located in areas where it would result in a net loss of ecological functions.
- (b) Aquaculture should not be permitted in areas where it would significantly conflict with navigation and other water-dependent uses.

## **2.050 Commercial Development Policies:**

Commercial development on the shorelines should be designed to bring large numbers of citizens to the shoreline.

- (a) Commercial development should be designed and constructed in such a manner as to result in no net loss of ecological functions, including implementation of Low Impact Development techniques, to the maximum extent feasible.
- (b) Public access should be provided in all locations, except where it is demonstrated to conflict with the intended use for reasons of safety, or security; or if it adversely impact the ecological function of the shoreline.
- (c) Non-water-oriented commercial uses within the shoreline jurisdiction should be allowed to locate and operate within existing structures.

## **2.055 Forest Practices Policies:**

Forest practices within the City along shorelines would occur as a conversion of forested areas to a certain level of urban development (Class IV – General per the Forest Practices Act, RCW 76.09) or as timber harvest within the City Watershed and City Utility Lands.

- (a) Forested areas within shorelines should be preserved and protected where feasible.

## **2.060 Industrial Development Policies:**

Water-dependent industrial uses are preferred and encouraged within shoreline areas.

- (a) Where necessary depth for industrial uses is adjacent, water-dependent industrial development should be given priority over water-related industrial uses provided, however, that in both instances, they do not conflict with planned or existing public access and habitat restoration.
- (b) Redevelopment of water-dependent industrial facilities and areas should be encouraged, provided it will not create a net loss of shoreline ecological function and processes.

- (c) New water-dependent industrial development should incorporate physical and/or visual public access to the water except when such access causes significant interference with operations or hazards to life or property.
- (d) On upland industrial sites, environmental cleanup and/or remediation should be implemented to serve a variety of future land uses.
- (e) Water-dependent and water-related industrial redevelopment is encouraged.
- (f) Priorities of uses are to be in the following order: Water-dependent uses, water-related uses, and water-enjoyment uses.

## **2.065 Marinas and Boating Facilities Policies:**

Marinas and boating facilities are water-dependent uses and are a preferred use on shorelines. Bremerton has a variety of such facilities that are both privately owned commercial and industrial facilities and those that are available to the general public. Boating facilities can include uses such as marinas, shipping and ferry terminals, transient mooring facilities, boat-ramps, upland dry-stack storage, boat construction, and boat maintenance facilities.

- (a) New or expanded boating facilities should include restoration of ecological functions within the riparian and near-shore environment, especially for migrating salmonids and other aquatic species.
- (b) New or expanded boating facilities should be designed, constructed and managed such that there is no net loss of shoreline ecological function.
- (c) New or expanded boating facilities should provide the maximum amount of public access in a variety of forms. (Trail, view overlooks, transient and hand-carry craft moorage.)
- (d) New boating facilities should be located in areas where other water-oriented uses presently exist or could be established within close proximity.
- (e) New or expanded boating facilities should minimize the amount of associated parking and impervious surface within the shoreline jurisdiction.
- (f) New boating facilities should not include covered moorage and boathouses.
- (g) New boating facilities that require dredging for proper depth and/or removal of contaminated sediments should be consistent with all federal and state requirements for management of contaminated sediments and
- (h) Existing boating facilities, when retrofitted or as upgrades are necessary, should improve the existing ecological function by minimizing impacts to water quality, restoring hydrologic function and maintaining the viability of aquatic organisms.

## **2.070 Recreational Development Policies:**

Water-oriented recreational development can include but is not limited to parks, trails, open spaces, beaches, boat or other watercraft rentals, fishing piers, aquariums, view platforms and over-water boardwalks.

- (a) Water-oriented recreational development is encouraged on shorelines provided it results in no net loss of ecological function and is a preferred use along shorelines

of statewide significance.

- (b) Water-oriented recreational development on the shorelines should be consistent with the Comprehensive Plan and the City of Bremerton Park, Recreation and Open Space Plan in terms of satisfying future demand and design.
- (c) Water-oriented recreational development should take precedence over non-water-oriented recreational uses.
- (d) Wherever possible, shoreline recreational facilities should be linked to other adjacent recreational attractions by pedestrian and/or bicycle trails.
- (e) Recreational development, where applicable, should include interpretive displays describing cultural, historical and scientific information.
- (f) Non-water-oriented recreational development uses should not be located on shorelines.

## **2.075 Residential Development Policies:**

Residential development includes subdivisions of large parcels, multi-family housing, condominiums, and single-family residences. Under the Shoreline Management Act, owner occupied single-family residences are a preferred use on the shorelines. Residential uses, however, can cause significant damage to the shoreline area through cumulative impacts resulting from vegetation loss, shoreline armoring, increased amount of impervious surfaces and resulting stormwater runoff, septic system failure, and additional vehicular trips.

- (a) Development of residential units should result in no net loss of ecological function.
- (b) Any residential development along the shoreline should be set back from steep slopes and eroding shoreline areas so that the shoreline is not further eroded nor structural improvements required to protect property.
- (c) In cases where either large tracts are subdivided into single-family residential parcels or where contiguous individual building sites are developed for single family residences, common public access areas and one joint-use dock, rather than single family docks, should be developed for the use of residents of the subject subdivision.
- (d) Design of residential development should include preservation of existing native vegetation to the greatest extent possible.
- (e) Residential development should be designed to minimize the amount of impervious area and should utilize Low Impact Development techniques to the greatest extent practicable (e.g., permeable pavers, stormwater infiltration and filtration).
- (f) New multi-unit residential development and the subdivision of land into more than ~~five-four~~ parcels should incorporate into the overall design planned public access amenities whenever feasible.

## **2.080 Roads, Railways, and Utilities Policies:**

Roads, railways and utilities are necessary to provide efficient public circulation and the shipment of goods and services. These transportation circuits can include but are not limited to roads, highways and interstates, rail lines and spurs, public service water and sewer mains, power generation, transmission and distribution facilities, and wireless communication facilities.

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- (a) All new roadways, arterials, utilities and railways, including expansions of these systems, should be located and designed to avoid shorelands, unless no feasible alternative is feasible, and should minimize impacts to shoreline ecological functions.
- (b) Location and design of new roadways including arterials should not compromise existing and planned shoreline public access or existing and planned habitat restoration and enhancement.
- (c) New roadways, when necessary within shorelines, should be located and designed in such a manner that the minimum width and length of travel-way for vehicles is provided and appropriate provision made for pedestrian and multi-modal forms of transportation.
- (d) New roadways should be designed and constructed to implement a range of available Low Impact Development techniques.
- (e) New utilities for the delivery of services and products such as, but not limited to public sewer, water and storm mains and services, pipelines, power and transmission facilities should be located outside of shorelines, critical areas and their associated buffers unless intended specifically for a permitted use.
- (f) Whenever feasible, utilities should be co-located within existing right-of-way corridors.
- (g) Installation of utilities, including maintenance and expansion of existing utilities, should improve the project area from its original condition by native vegetation installation and management.
- (h) Utilities should provide public access to the shoreline when practical.

## **2.085 Clearing and Grading Policies:**

Clearing and grading are permitted as an element of development or re-development for an authorized activity or as otherwise allowed in this Title.

- (a) Disturbance to and removal of native soils should be minimized within shorelines.
- (b) Uses and site design should incorporate protection or reestablishment of the maximum amount of native vegetation on a particular site.
- (c) Vegetation that is removed as part of a permitted use should be reestablished within a required buffer.

## **2.090 Docks, Piers, and Other In-Water Structures Policies:**

In-water (marine and freshwater) structures include but are not limited to jetties, pilings, fish ladders, mooring buoys, docks, piers, breakwaters, groins, marine railways, weirs, baffles, and similar structures.

- (a) In-water structures should be designed to minimize impacts to ecological functions of the water body including, but not limited to water quality, anadromous and forage fish habitat, spawning and rearing areas, migration, and passage.
- (b) In-water structures should not adversely affect hydrologic function including light penetration within the photic zone, sediment transport, and current and water circulation patterns.

- (c) The location and planning of in-water structures should give due consideration to the full range of public interests and environmental concerns.
- (d) Analysis of cumulative impacts of in-water structures should be conducted such that the connectivity between habitats for migrating salmonids is maintained and restored where feasible.

## **2.095 Dredging Policies:**

Dredging is the removal of material from a water body. The purposes for dredging might include navigation, remediation of contaminated materials, or material mining. Materials generated from navigational and remedial dredging may be suitable for beneficial reuse (e.g., construction of habitat features or construction of uplands) or may require disposal at appropriate disposal facilities.

- (a) Dredging should be allowed only to accommodate existing navigational uses, remediation of contaminated materials, or approved water-dependent uses and then only when ecological impacts are minimized and mitigation is provided.
- (b) Deposition of dredge spoils waterward of the Ordinary High Water Mark should be allowed only when necessary to support allowed water dependent use, public access, beach restoration or Model Toxics Control act or the Comprehensive Environmental Response Compensation and Liability Act and other water dependent uses that are consistent with this master program or consistent with locations approved by the State Departments of Natural Resources, and the Department of Fish and Wildlife where the alternatives of depositing materials on land is more detrimental to shoreline resources than depositing it in water areas.
- (c) Dredging within aquatic areas for the primary purpose of acquisition of fill material should not be allowed.
- (d) Where dredging occurs within marine waters the result should be suitable for establishment of a variety of aquatic organisms including, where appropriate, salmonids and forage fish.

## **2.100 Flood Hazard Reduction Policies:**

- (a) The City should recognize that seasonal flooding is an essential natural process and minimize alteration of such processes where feasible.
- (b) Flood hazard reduction measures should not result in a net loss of ecological functions associated with the rivers and streams.
- (c) Flood hazard reduction measures should be consistent with comprehensive strategies that recognize the natural hydro-geological and biological processes of water-bodies and should seek to restore ecological functions within frequently flooded areas.
- (d) Development in frequently flooded areas should be prevented or existing development removed when feasible and to maintain or restore a stream system's natural hydrological and geo-morphological processes.
- (e) Bioengineered flood hazard reduction techniques are preferred and should be examined and implemented where feasible rather than structural measures.

## **2.105 Landfill Policies:**

Landfill is the creation of dry upland area by the placement or deposition of sand, soil, gravel or contaminated sediments into a water body.

- (a) Landfills waterward of OHWM should be allowed only when necessary to support, public access, beach restoration, or MTCA / CERCLA restoration projects and other water dependent uses that are consistent with this master program.
- (b) Landfills should be limited in the shoreline and should be the minimum necessary.

## **2.110 Restoration and Conservation Policies:**

Restoration is the improvement or reestablishment of impaired ecological shoreline processes or functions. This may be accomplished through measures including, but not limited to: amending soils, planting native vegetation, removing derelict shoreline structures, removing or treating toxic materials, and restoring the natural configuration of banks within near-shore or riparian areas. Restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions (WAC 173-26). The citywide objective of restoration is to achieve a net gain in ecological function within the watershed.

- (a) The primary objectives of restoration projects should be to protect and restore natural processes controlling environmental factors.
- (b) The Suquamish Tribe, Corps of Engineers, Washington Department of Ecology, the Washington Department of Fish and Wildlife and other appropriate resource agencies should be included at the beginning of the design and development stages of a restoration project or plan.
- (c) The goals of the Restoration Plan should be considered for all restoration and conservation projects.
- (d) Restoration and conservation may take place as a stand-alone project or as a required element of a larger development proposal. In either case the following should be achieved, as feasible:
  - (1) Non-native vegetative species should be controlled and native vegetation established (soil amendments, including mulching, may be required to support native vegetation);
  - (2) Installation of native vegetation should be an appropriate mix of deciduous, conifer, under-story and groundcover species that are capable of achieving substantial water body shading, provide food sources for a variety of species, enhance and connect to habitat corridors and slow movement of groundwater and sheet-flow towards the water body;
  - (3) Introduction of large woody debris to the water body should not adversely impact fish passage or hydrologic function; and
  - (4) Design and implementation of restoration projects that alter the location of the OHWM should not negatively impact abutting or proximate (third party) property owners, compromise the integrity or threaten the loss of existing structures, transportation routes, public access areas or cause significant additional erosion.

## **2.115 Shore Stabilization Policies:**

Shoreline stabilization measures are those mechanisms used to prevent erosion and deterioration of shoreline areas as a result of waves, wind, tidal action, or flooding. Shoreline stabilization measures can include a wide range of works varying from hard armoring to vegetation conservation and anchoring of trees.

- (a) New development should be managed and designed to eliminate the need for shoreline modification or stabilization.
- (b) Replacement of rigid structurally engineered stabilization measures with the same new measures should not occur unless it is associated with a water-dependent use or there is a demonstrated need based on potential loss of a legally permitted primary structure or there is a threat to the viability of an existing water-dependent use.
- (c) Whenever feasible, bioengineered and soft-shore shoreline modifications and stabilization should be explored and implemented before reverting to structurally engineered techniques.

## **2.120 Stormwater Management Facilities Policies:**

Stormwater management (detention and treatment) facilities are necessary elements of development. If designed correctly and managed properly they can produce multiple benefits within the shoreline jurisdiction.

- (a) Stormwater facilities should not be located in areas where there would be an adverse impact to existing shoreline ecological functions.
- (b) Stormwater management facilities should be designed to incorporate Low Impact Development techniques.
- (c) All Shoreline Designations must comply with these requirements including the shoreline isolated locations.

## Chapter 3 - Definitions

The following shall be deemed definitions for the Shoreline Master Program. Where these definitions conflict with other definitions in the Bremerton Municipal Code, these definitions shall prevail for projects within the shoreline jurisdiction. Where they conflict with definitions in the Revised Code of Washington (RCW) or the Washington Administrative Code (WAC) the RCW or WAC provisions shall prevail. This list of definitions is not exhaustive; all definitions in RCW 90.58.030, WAC 173-26-020, BMC 20.42 and BMC 20.14.200 shall be deemed definitions for this title. Words not defined within any of these codes shall be as defined in Webster's Third New International Dictionary, latest edition.

**Accessory Use:** A use that is demonstrably subordinate and incidental to the principal use and which functionally supports its activity.

**Act:** The -Shoreline Management Act of 1971, Chapter 90.58 RCW. [WAC 173-27-030(1)]

**Adjacent Lands:** Property which is immediately bordering or abutting lands under shoreline permit jurisdiction. (RCW90.58.340)

**Agriculture:** Agricultural uses and practices include, but are not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant; conducting agricultural operations; and maintaining agricultural lands under production or cultivation as defined in WAC 173-27-020. This excludes activities typically associated with single family residences, such as gardening and does not include fish hatcheries which are listed under aquaculture.

**Alteration:** Any human activity which results or is likely to result in a significant impact upon the existing condition of a site. Alterations include, but are not limited to grading, filling, dredging, draining, channelizing, applying any hazardous substance, discharging pollutants except stormwater, paving, constructing, applying gravel, modifying surface water management purposes, cutting, pruning, topping, trimming, relocating or removing vegetation or any other human activity which results or is likely to result in a significant impact to existing vegetation, hydrology, wildlife, or wildlife habitat. Alterations do not include walking, fishing, or any other passive recreation or other similar activities.

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

**Appurtenance:** Development necessarily connected to the use and enjoyment of a single family residence and located landward of the perimeter of an associated wetland and landward of the Ordinary High Water Mark. Normal appurtenances include a garage, deck, driveway, utilities solely servicing a subject single family residence, and grading which does not exceed 250 cubic yards.

**Aquaculture:** The culture, or farming of fish, shellfish, or other aquatic plants and animals. Activities include, but are not limited to the hatching, cultivating, planting, feeding, raising, harvesting, and processing of aquatic plants and animals and the maintenance and construction of necessary equipment, buildings and growing areas. Cultivation methods include, but are not limited to fish pens, fish hatcheries, shellfish rafts, racks and long lines, seaweed floats and nets and the culture of clams and oysters on tidelands and sub-tidal areas. Aquaculture does not include the harvest of wild geoduck associated with a state managed wild stock geoduck fishery.

**Associated Wetlands:** Those wetlands which are in proximity to and either influence or are influenced by tidal waters or a lake or stream subject to the Shoreline Management Act.

**Average Grade Level:** The average of the natural or existing topography of the portion of the lot, parcel, or tract of real property which will be directly under the proposed building or structure: In the case of structures to be built over water, average grade level shall be the elevation of the Ordinary High Water Mark. Calculation of the average grade level shall be made by averaging the elevations at the center of all exterior walls of the proposed building or structure. [WAC 173-27-030(3)]

**Beach:** The zone of unconsolidated material that is moved by waves, wind, and tidal currents, extending landward to the coastline.

**Bluff:** A steep headland, promontory, broad faced bank, or cliff running adjacent to and rising up from the shoreline. For the purpose of measuring buffers and setbacks from the top of a bluff the following shall apply: A bluff rises up from the OHWM to the first significant break in slope. The first significant break in slope is a bench at least thirty (30) feet wide. The top of a bluff is the point where the first significant break in slope occurs.

**Boat Ramp:** Graded slopes, slabs, pads, planks, or rails used for launching boats by means of a trailer, hand, or mechanical device.

**Buffer:** 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.

**Bulkhead:** A solid or open pile wall erected generally parallel to and near the ordinary high water mark for the purposes of protecting adjacent uplands from waves or current action.

**City:** The City of Bremerton.

**Clearing:** The removal of vegetation.

**Conditional Use:** A use or development which is classified as a conditional use or is not classified within the Master Program, or materially interferes with the normal public use of the water or shorelines of the state.

**Conservation Easement:** A legal agreement that the property owner enters into a restricted use 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.

**Covered Moorage:** Boat moorage, with or without walls, that has a solid roof to protect the vessel and is attached to the dock itself or the substrate of the water body. Overwater boat houses are a type of covered moorage.

**Critical Areas:** 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 RCW 36.70A and BMC 20.14.

**Critical saltwater habitat:** Means all kelp beds, eelgrass beds, spawning and holding areas for forage fish, such as herring, smelt and sandlance; subsistence, commercial, and recreational shellfish beds; mudflats, intertidal habitats with vascular plants, and areas with which priority species have a primary association.

**Development:** A use, consisting of the construction or exterior alteration of structures; dredging; drilling, dumping; filling; removal of any sand, gravel or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this program at any state of water level. This does not include dismantling or removing structures if there is no other associated development or re-development. [RCW 90.58.030(3d)]

**Docks:** A fixed structure in the water or a structure floating upon the water that provides moorage for vessels, or for transfer of materials between a vessel and the shore, or for other services to a vessel such as fueling, maintenance and repair.

**Dredging:** The removal of earth, sand, sludge or other materials from the bottom of a stream, river, lake, bay or other water body.

**Drift Cell, drift sector, or littoral cell:** A particular reach of marine shore in which littoral drift may occur without significant interruption and which contains any natural sources of such drift and also accretion shore forms created by such drift.

**Ecology:** The State of Washington Department of Ecology.

**Ecological Function or Shoreline Functions:** The work performed or role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline's natural ecosystem. (WAC 173-26-020(13)).

**Ecological Restoration:** An intentional activity that initiates or accelerates the recovery of an ecosystem with respect to its health, integrity and sustainability. Restoration attempts to return an ecosystem to its historic trajectory. Frequently, the ecosystem that requires restoration has been degraded, damaged, transformed or entirely destroyed as the direct or indirect result of human activities. In some cases, these impacts to ecosystems have been caused or aggravated by natural agencies, such as wildfire, floods, storms, or volcanic eruption, to the point at which the ecosystem cannot recover its pre-disturbance state or its historic developmental trajectory. In cases where a historic trajectory cannot be determined one should use a combination of knowledge of the damaged ecosystem's pre-existing structure, composition and functions rather than the historic trajectory.

**Emergency:** An unanticipated and/or imminent threat to public health, safety, or the

environment that requires immediate action within a time too short to allow full compliance with the Master Program. Emergency construction is defined as that necessary to protect property and facilities from the elements. All emergency construction shall be consistent with the SMA and the Master Program (see RCW 90.58.030(3eiii)).

**Enhancement:** The manipulation of the physical, chemical, or biological characteristics of a feature to heighten, intensify, or improve specific ecological function(s) or to change the growth stage or composition of the vegetation present. Enhancement is undertaken for specified purposes such as water quality improvement, flood water retention, or wildlife habitat. Enhancement results in a positive change in ecological function but does not result in an increase in the area of the feature. Examples are planting vegetation, controlling non-native or invasive species, and modifying site elevations to alter hydro-periods.

**Erosion:** The process whereby wind, rain, water, and other natural agents mobilize and transport particles.

**Estuary:** The zone or area of water in which freshwater and saltwater mingle and water is usually brackish due to daily mixing and layering of fresh and saltwater.

**Exempt development:** Development listed in WAC 173-27-040 as exempt from the definition of "Substantial Development," and, therefore, exempt from the Substantial Development permit process of the SMA. An activity that is exempt from the substantial development provisions of the SMA must still be carried out in compliance with policies and standards of the SMA and the Master Program. Conditional use and/or variance permits may still be required even though the activity does not need a Substantial Development permit (RCW 90.58.030(3e)).

**Extreme Low Tide:** The lowest line on the land reached by a receding tide. [RCW 90.58.030(2a)]

**Fair Market Value:** The expected price at which the development can be sold to a willing buyer. For developments which involve nonstructural operations, such as dredging, drilling, dumping, or filling, the fair market value is the expected cost of hiring a contractor to perform the operation, or where no such value can be calculated, the total of labor, equipment use, transportation, and other costs incurred for the duration of the permitted project. [WAC 173-27-030(8)]

**Feasible:** Actions that meet all of the following conditions:

- (a) The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;
- (b) The action provides a reasonable likelihood of achieving its intended purpose; and
- (c) The action does not physically preclude achieving the project's primary intended legal use.

In cases where these guidelines require certain actions unless they are infeasible, the burden of proving infeasibility is on the applicant. In determining an action's infeasibility, the City may weigh the action's relative public costs and public benefits, considered in

short- and long-term time frames.

**Fill:** The addition of soil, sand, rock, gravel, sediment, earth retaining structure, or other material to an area that increases the natural surface elevation. For wetlands this includes areas waterward of the OHWM, or on shorelands in a manner that raises the elevation or creates dry land.

**Floating Home:** ~~A structure designed and operated substantially as a permanently based structure and not as a vessel and is typically characterized by permanent utilities, a semi-permanent anchorage/moorage design, and by the lack of adequate self-propulsion to operate as a vessel. A single-family dwelling unit constructed on a float, that is moored anchored, or otherwise secured in waters, and is not a vessel, even though it may be capable of being towed.~~

**Floating On-Water Residence.** Any floating structure other than a floating home, as defined in this chapter that (a) is designed or used primarily as a residence on water and has detachable utilities; and (b) whose owner or primary occupant has held an ownership interest in space in a marina, or has held a lease or sublease to use space in a marina, since a date prior to July 1, 2014.

**Floats (Rafts):** Floating structures that are moored, anchored, or otherwise secured in the water that are not directly connected to the shoreline.

**Floodway:** For purposes of determining the jurisdiction of the Shoreline Master Program in conjunction with the definition of "shoreland," "floodway" means the area, as identified in a Master Program, that either: (i) Has been established in federal emergency management agency flood insurance rate maps or floodway maps; or (ii) consists of those portions of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition, topography, or other indicators of flooding that occurs with reasonable regularity, although not necessarily annually. Regardless of the method used to identify the floodway, the floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state. (RCW 90.58.030 and WAC 173-26-020(18))

**Forage fish:** Small, schooling fish which serve as an important source of food for other fish species, birds, and marine mammals. Examples of forage fish species are herring, smelt, anchovies, and sardines.

**Geotechnical Report:** A scientific study or evaluation conducted by a qualified professional that includes a description of ground and surface hydrology and geology, the affected land form and its susceptibility to mass wasting, erosion, and other geologic hazards or processes, conclusions and recommendations regarding the effect of the proposed development on geologic conditions, the adequacy of the site to be developed, the impacts of the proposed development, alternative approaches to the proposed development, and measures to mitigate potential site specific and cumulative geological and hydrological impacts of the proposed development, including the potential adverse impacts to adjacent and down-current properties. Geotechnical reports shall conform to accepted technical standards and must be prepared by a qualified professional engineer or geologist who has professional expertise about the

regional and local shoreline geology and processes.

**Grading:** The movement or redistribution of the soil, sand, rock, gravel, sediment, or other material on a site in a manner that alters the natural contour of the land.

**Grubbing:** 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.

**Houseboat:** A vessel used for living quarters but licensed and designed substantially as a mobile structure by means of detachable utilities or facilities, anchoring, and the presence of adequate self-propulsion to operate as a vessel.

**Height:** The distance measured from the average grade level to the highest point of a structure: Television antennas, chimneys, and similar appurtenances shall not be used in calculating height.

**Hydraulic Project Approval (HPA):** A permit issued by the Washington Department of Fish and Wildlife for modifications to waters of the State in accordance with RCW 77.55.011.

**Invasive:** 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.

**In-Water Structure:** A structure located waterward of the ordinary high water mark.

**Littoral drift:** The mud, sand, or gravel materials moved parallel to the shoreline in the nearshore zone by waves and currents.

**Marina:** A water dependent facility that provides wet and/or dry moorage for over ten (10) boats, and related accessory boat launching facilities and supplies and services for small commercial and/or pleasure craft. Marinas may be designated for temporary day-use only or for permanent (long-term) moorage.

**May:** The action is acceptable provided it conforms to the provisions of the Program.  
Denotes the use of discretion by the Director in making a decision, provided the action conforms to the provisions of the Program and the WAC. (WAC 173-26-03(21))

**Mean Higher High Water (MHHW):** The tidal elevation obtained by averaging each day's highest tide at a particular location over a period of nineteen years. It is measured from the mean lower low water = 0.0 tidal elevation.

**Mooring Buoy:** A floating object anchored to the bottom of a water body that provides tie up capabilities for vessels, often containing loops or chains attached to the top and float on the water. Mooring buoys are regulated separately from docks and piers.

**Mixed-Use Commercial:** Mixed-use commercial developments are shoreline developments which combine more than one separate but related activity into a coordinated package. Activities usually include one or more water-dependent uses with non-water dependent uses, and feature high amenity public access or recreational uses. The public benefit will be evaluated and weighed against the impact of the project in review of a mixed-use commercial development proposal.

**Modification:** An action that modifies the physical configuration or qualities of the shoreline area, usually through the construction of a physical element such as a

breakwater, dock, boat launch ramp, or other shoreline structures. A shoreline modification also can consist of other activities such as dredging and filling.

**Must:** A mandate; the action is required.

**Nonconforming Development:** ~~A shoreline use, site, or structure which was lawfully constructed or established prior to the effective date of the Shoreline Management Act or the Bremerton Shoreline Master Program or amendments thereto, but which does not conform to present regulations or standards of the Master Program or policies of the Act. [WAC 173-14-040(1b)]~~

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

**Nonconforming Structure:** ~~A building or structure that does not comply with the required setbacks, height, lot coverage and other development requirements of the Shoreline Master Program or Zoning Code, but was lawfully constructed prior to the effective date of the Zoning Code and/or Shoreline Master Program or subsequent amendments thereto, and was continually maintained as defined in this chapter.~~

**Nonconforming Use:** ~~Any activity, development or condition that is not permitted outright or as an accessory use, or is not permitted by a Conditional Use Permit or other special permitting process by the provisions of the Shoreline Master Program or Zoning Code; but was lawfully created prior to the effective date of the Shoreline Master Program or Zoning Code, or subsequent amendments thereto, and was continually maintained as defined in this chapter. A nonconforming use may or may not involve buildings or structures and may involve part of or all of a building or property.~~

**No Net Loss:** No Net Loss of ecological functions is the maintenance of existing shoreline ecological processes and functions at the level that existed at the time of approval of the major update to the shoreline master program in 2012 and reflected in the shoreline inventory and characterization dated December of, 2010, or for a development project, the conditions that existed prior to initiation of use or alterations of the shoreline that result in adverse impacts on ecological processes and functions.

On a Citywide basis No Net Loss means that the ecological processes and functions are maintained within a watershed or other functional catchment area. Regulations may result in localized cumulative impacts or loss of some localized ecological processes and functions, as long as the ecological processes and functions of the system are maintained. Maintenance of system ecological processes and functions may require compensating measures that offset localized degradation.

On a project basis, no net loss means that a permitted use or alteration of a shoreline will not result in deterioration of the existing condition of shoreline ecological functions. No net loss is achieved both through avoidance and minimization of adverse impacts as well as compensation for impacts that cannot be avoided. Compensation may include on-site or off-site restoration of ecological functions to compensate for localized degradation.

**Non-Water Oriented Use:** A use which does not require or depend on a location on or near the waterfront, and which is neither a water-dependent, water-related, or water-enjoyment use as defined herein.

**Ordinary High Water Mark (OHWM):** The mark on all lakes, streams, and tidal waters which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation, as that condition exists on June 1 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department ([WAC 173-22-030](#)). Provided that in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water. (RCW 90.58.030)

**Photic Zone:** The upper layer of a body of water delineated by the depth to which enough sunlight can penetrate to permit photosynthesis.

**Pier:** A fixed, pile-supported structures extending over the water.

**Primary Structure:** Any permanent building, road, bridge or utility requiring a permit or approval which is necessary to support the primary use of a site.

**Public Access, Limited (physical or visual):** Access with restrictions that are deemed necessary to protect the health, safety or welfare of the public OR to protect and maintain a particular site. Restrictions may limit times of use, or allow access only to certain users. [A limitation to restrict access may not be based on race, sex, color, creed, age or physical disability.] For example, such restrictions may limit public use to daylight hours, limit use to residents of a private community, or restrict use of tidelands used for shellfish production.

**Public Access, Physical:** Unobstructed access with public use improvements which are available to the general public extending from the public right-of-way to the OHWM or to the wetland directly abutting the OHWM. This includes access to the navigable waters of any water body and to tidelands in marine waters.

**Public Access, Visual:** Access with public use improvements available to the general public which provide a view of the shoreline or water but do not allow physical public access to the shoreline.

**Qualified Professional:** ~~A person with experience and training in the pertinent scientific discipline whose expertise is appropriate for the relevant critical area and meets the following criteria:~~

~~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 applicable to the scope of the project. AND~~

~~A qualified professional proposing a structural solution, such as a bulkhead or retaining wall, must be a civil engineer, geotechnical engineer, or geologist with experience in the field and must be licensed in the State of Washington.~~

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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.

**RCW:** Revised Code of Washington.

**Reach:** A longshore segment of a shoreline where influences and impacts, such as wind direction, wave energy, littoral transport, etc. mutually interact.

**Rehabilitation:** The manipulation of the physical, chemical, or biological characteristics of a site with the goals of repairing natural or historic functions and processes of a degraded wetland. Rehabilitation results in a gain in wetland function but does not result in a gain in wetland acres. Activities could involve breaching a dike to reconnect wetlands to a floodplain or returning tidal influences to a wetland.

**Restore, Restoration, or ecological restoration:** The reestablishment or upgrading of impaired ecological shoreline processes or functions. This may be accomplished through measures including, but not limited to re-vegetation, removal of intrusive shoreline structures and removal or treatment of toxic materials. Restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions.

**Sea Level Rise:** An increase in the elevation of marine waters associated with changes in the state of the climate which can be identified by changes in the mean and/or variability of its properties and that persists for decades or longer.

**Setback:** For the purposes of this chapter, the setback is the horizontal distance required between the finished exterior wall of a structure and the buffer line. Setbacks are further also defined in BMC 20.42

**Shall:** A mandate; an the action that must be done is required.

**Should:** A particular action that is required unless there is a demonstrated, compelling reason, based on policy of the Shoreline Management Act and this program against taking the action.

**Shorelands or Shoreland Areas:** Those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the Ordinary High Water Mark; floodways and contiguous floodplain areas landward two hundred feed from such

floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter; the same to be designated as to location by the Department of Ecology.

**Shoreline jurisdiction:** ~~All shorelines of the state and shorelands as defined in RCW 90.58.030; in Bremerton this includes shorelands and water bodies waterward of OHWM out to the middle of Sinclair Inlet and Port Orchard Bay, all of Port Washington Narrows, Ostrich Bay, Oyster Bay, Phinney Bay and Mud Bay, the portion of Kitsap Lake within the Bremerton City limits, Union Reservoir, Twin Lakes, one mile of Gorst Creek and one mile of Union River.~~

**Shoreline Environment Designations:** The categories of shorelines established by the City's Master Program in order to provide a uniform basis for applying policies and use regulations within physically distinct shoreline areas. The City's Shoreline Master Program classifies shorelines into the following environment designations: Aquatic, aquatic conservancy, commercial, downtown waterfront, industrial, isolated, multi-family residential, recreation, single family residential and urban conservancy.

**Shoreline Jurisdiction:** Those lands extending landward for 200' in all directions as measured on a horizontal plane from the OHWM; floodways and 100 year floodplains; and all wetlands and river deltas associated with the streams, lakes, tidal waters and all other areas as defined by RCW 90.58.030. ~~In Bremerton these include shorelands and water bodies waterward of the OHWM out to the middle of Sinclair inlet and Port Orchard Bay, all of Port Washington Narrows, Ostrich Bay, Oyster Bay, Phinney Bay and Mud Bay, the portion of Kitsap Lake within the City limits, Union Reservoir, Twin Lakes, one mile of Gorst Creek and one mile of Union River.~~

**Shoreline Master Program:** The general term for shoreline comprehensive plans and regulations prepared under the jurisdiction of the Shoreline Management Act.

**Shoreline Permit:** A Substantial Development, conditional use, revision, or variance permit or any combination thereof. [WAC 173-27-13)

**Shorelines:** All of the water areas of the State, including reservoirs and their associated wetlands, together with the lands underlying them, except:

- (a) Shorelines of state-wide significance (sub-tidal Puget Sound);
- (b) Shorelines on segments of streams upstream of a point where the mean annual flow is twenty (20) cubic feet per second 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 Statewide Significance:** Shorelines designated by the State of Washington that are major resources from which all people in the state derive benefit. Shoreline areas in the City that are designated as shorelines of statewide significance are portions of the Puget Sound adjacent to the city limits.

**Shoreline Substantial Development:** Any development of which the total cost, or fair market value, whichever is higher, exceeds ~~\$5,000 \$7,047 or as adjusted for inflation every five (5) years by the Office of Financial Management (WAC 173-27-040)~~, or any development which materially interferes with the normal public use of the water or shorelines of the state.

**State Master Program:** The cumulative total of all Shoreline Master Programs approved or adopted by the Department of Ecology.

**Structure:** A permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above, or below the surface of the ground or water, except for vessels. (WAC 173-27-030).

**Tender Dock:** A dock structure whose purpose is to provide temporary moorage to a small watercraft used to access an offshore location, such as a mooring buoy.

**Tidelands:** Land on the shore of marine water bodies between the line of ordinary high tide and the line of extreme low tide.

**Topography, Natural or Existing:** The surface including the relief and position of natural or manmade features of the lot, parcel, or tract of real property immediately prior to any site preparation or grading, including excavation or filling.

**Upland:** Generally the area above and landward of the Ordinary High Water Mark.

**Variance:** A permit for the limited purposes of granting relief to specific bulk, dimensional, or performance standards set forth in the City's Shoreline Master Program.

**Vessel:** A ship, boat, barge, or any other floating craft which is designed and used for navigation and does not interfere with the normal public use of the water.

**WAC:** Washington Administrative Code.

**Water Dependent Use:** A use or portion of a use which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations. Examples of water-dependent uses may include cargo terminal loading areas, ferry and passenger terminals, marinas, and sewer outfalls.

**Water-Related Use:** A use or portion of a use which is not intrinsically dependent on a waterfront location but whose operation cannot occur economically without a shoreline location. Examples of water-related uses may include warehousing of goods transported by water, seafood processing plants, or log storage. (Also see Non-water-oriented Use.)

**Water-Enjoyment Use:** A recreational use such as a park, pier, or other use facilitating public access as a primary character of the use; or, a use that provides for passive and active interaction of a large number of people with the shoreline for leisure and enjoyment as a general character of the use and which, through location, design and operation, assure the public's ability to interact with the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the public and most if not all of the shoreline oriented space in the facility must be devoted to the specific aspects of the use that foster shoreline interaction. Water-enjoyment uses include, but are not limited to restaurants, museums, and mixed-use commercial, provided that such use conforms to the above requirements and the provisions of the Master Program.

**Water Oriented Use:** Any combination of water dependent, water related, and/or water enjoyment uses. Non-water oriented serves to describe those uses which have little or no relationship to the shoreline. Examples of non-water oriented uses include professional office, automobile sales or repair shops, mini storage facilities, multifamily residential development, department stores, and gas stations.

**Wetlands:** 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-

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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.

**Will:** Used to express a command and/or an inevitability.

## Chapter 4 – Shoreline Maps and Designations

- 4.010 – Intent
- 4.020 – Maps
- 4.030 – Designations
- 4.040 – Shorelines of Statewide Significance

### **4.010 Intent:**

City shorelines are classified into specific environment designations. These designations are based on existing physical, biological and development characteristics of the shorelines. These are separate from the Comprehensive Plan and the Zoning code in Title 20. Properties within any shoreline designation are required to comply with all applicable standards including provisions from both the more general zoning regulations and the shoreline specific requirements of the Shoreline Master Program. The local Shoreline Master Program is a function of the Shoreline Management Act, which represents statewide concerns and protects the rights of the people of the State of Washington. Therefore, in the case of a discrepancy between the local Comprehensive Plan, Zoning code or other development standard and the Shoreline Master Program, the Shoreline Master Program shall take precedence.

### **4.020 Maps:**

The following maps are the official maps of the Shoreline Master Program depicting shorelines of the state. The following includes shorelands and water bodies waterward of OHWM out to the middle of Sinclair Inlet and Port Orchard Bay, all of Port Washington Narrows, Ostrich Bay, Oyster Bay, Phinney Bay and Mud Bay, the portion of Kitsap Lake within the Bremerton City limits, Union Reservoir, Twin Lakes, one mile of Gorst Creek and one mile of Union River.

## 4.030 Designations:

Shoreline designations are listed in alphabetical order.

### (a) Aquatic

**Purpose:** The Aquatic designation is intended to protect, restore, and manage the unique characteristics and resources of the areas waterward of the Ordinary High Water Mark. This designation applies to those area waterward of the Ordinary High Water Mark of all shorelines of the state, (which may include; streams, marine water bodies, and lakes) together with their underlying lands and their water column, other than those lands designated Aquatic Conservancy. This environment does not include associated wetlands and other shorelands shoreward of the Ordinary High Water Mark.

**Policies:** The following management policies should apply to all shorelines in the Aquatic environment:

- (1) Allowed uses are those within the adjacent upland shoreline designation limited to water dependent use or public access.
- (2) New uses and over water structures should be allowed only for water dependent uses, public access, or ecological restoration and only when no net loss of ecological functions will result.
- (3) The size of new over water structures should be limited to the minimum necessary to support the structures intended use. In order to reduce the impacts of shoreline development and increase effective use of water resources, multiple use of over water facilities is encouraged.
- (4) All developments and uses on navigable waters or their beds should be located and designed to minimize interference with surface navigation, to consider impacts to public views, and to allow for the safe, unobstructed passage of fish and wildlife, particularly those species dependent on migration.
- (5) Shoreline uses and modifications should be designed and managed to prevent degradation of water quality, minimize alteration of natural conditions and processes, and result in no net loss of ecological functions.
- (6) Uses and modification of public aquatic land should incorporate public access and ecological enhancement, except where inconsistent with the operation of water dependent uses.
- (7) Fish and wildlife resource enhancement, including aquaculture related to fish propagation should be allowed and encouraged.

### (b) Aquatic Conservancy

**Purpose:** The Aquatic Conservancy designation is intended to preserve marine tidelands and waters whose existing natural state is relatively free of human influence, or whose resources, biological diversity, or other features are particularly sensitive to human activity. The Aquatic Conservancy designation should be applied to those areas of marine water bodies, waterward of the Ordinary High Water Mark such as tidal lagoons, salt marshes and mudflats, as well as marine vegetation areas that support a significant community of kelp, eelgrass and/or other vegetation that provides special marine habitat value.

**Policies:** The following management policies should apply to all shorelines in the Aquatic Conservancy designation:

- (1) Uses and activities which would potentially degrade or significantly alter the natural character of the shoreline should be severely restricted or prohibited.
- (2) Access should be limited to scientific, historical, educational, and low intensity recreational purposes, provided that no significant, adverse impact on the areas will result.
- (3) Physical alterations should be considered only when they serve to protect significant, unique, or highly valued features which might otherwise be degraded or destroyed.
- (4) Uses and activities adjacent to shorelines designated Aquatic Conservancy should be compatible with and not compromise the integrity of the Aquatic Conservancy environment.
- (5) Native vegetation zones should be preserved, enhanced or established to protect the functions and characteristics of the areas.

## **(c) Commercial**

**Purpose:** This Commercial designation is intended to accommodate high intensity business districts, light industry, and various commercial operations located in the shoreline jurisdiction. The designation is suitable for existing and future high intensity water oriented uses and water oriented commercial uses. The designation encourages commercial development that could enhance visual and physical public access to the shoreline. A primary goal is to provide a setting for commercial operations that will be of economic benefit while protecting and/or restoring ecological functions in areas that have been previously degraded.

**Policies:** The following management policies should apply to all shorelines in the Commercial environment:

- (1) Priority should be given to water dependent uses. Second priority should be given to water related and water enjoyment uses. Non-water oriented uses should not be allowed except in limited situations where they do not conflict with or limit opportunities for water oriented uses or on sites where there is no direct access to the shoreline and where public access and ecological restoration are provided.
- (2) Policies and regulations should assure no net loss of shoreline ecological functions as a result of new development. Where applicable, new development shall include environmental cleanup and restoration of the shoreline in accordance with any relevant State and Federal laws.
- (3) Visual and/or physical public access should be required as a condition of development.
- (4) Aesthetic objectives should be implemented by means such as sign control regulations, appropriate development siting, screening and architectural standards, and maintenance of natural vegetative buffers.

## **(d) Downtown Waterfront**

**Purpose:** The Downtown Waterfront designation is a commercial designation for the downtown shoreline area that is subject to the Downtown Sub Area Plan. The intent of this designation is to encourage development of the downtown waterfront into a vital, attractive water oriented area that maximizes opportunities for large numbers of people to

interact passively and actively with the shoreline for leisure and enjoyment uses. The designation provides for an array of uses related to the water, multimodal transportation facilities, residential, mixed uses, increased building height, and pedestrian orientation, while maintaining view corridors and encouraging public access to the water.

**Policies:** The following management policies should apply to all shorelines in the Downtown Waterfront environment:

- (1) First priority should be given to water dependent uses. Second priority should be given to water related and water enjoyment uses. Non-water oriented uses should be permitted only when they do not conflict with or limit opportunities for water oriented uses or on sites where there is no direct access to the shoreline and where public access and ecological restoration are provided.
- (2) Policies and regulations should assure no net loss of shoreline ecological functions as a result of new development. Where applicable, new development should include environmental cleanup and restoration of the shoreline in accordance with any relevant State and Federal laws.
- (3) Visual and/or physical public access should be required as a condition of development.
- (4) Aesthetic objectives should be implemented by means such as sign control regulations, appropriate development siting, screening and architectural standards, and maintenance of natural vegetative buffers.

**(e) Industrial**

**Purpose:** This Industrial designation is intended to provide for efficient utilization of suitable shoreline areas for water dependent commerce and industry consistent with the Shoreline Management Act. The Industrial designation is appropriate for high intensity uses related to manufacturing, transportation, or navigation, or suitable and planned for high intensity water oriented uses.

**Policies:** The following management policies should apply to all shorelines in the Industrial environment:

- (1) Priority should be given to water dependent industrial uses. Second priority should be given to water related and water enjoyment uses. Non-water oriented uses should not be allowed except in limited situations where they do not conflict with or limit opportunities for water oriented uses or on sites where there is no direct access to the shoreline and where public access and ecological restoration are provided.
- (2) Policies and regulations should assure no net loss of shoreline ecological functions as a result of new development. Where applicable, new development should include environmental cleanup and restoration of the shoreline in accordance with any relevant State and Federal laws.
- (3) Visual and/or physical public access should be required as a condition of development.
- (4) Aesthetic objectives should be implemented by means such as sign control regulations, appropriate development locations, screening and architectural standards, and maintenance of natural vegetative buffers.

## (f) Isolated

**Purpose:** The objective of the Shoreline Isolated designation is to recognize that there are areas that are within 200' of the shoreline, but are isolated from the shoreline by intervening elements such as roads. In these areas the development standards outlined in the SMP, such as buffers, are not appropriate. This designation is appropriate for lands that are inherently isolated from the shoreline, however should the obstruction be removed so that the area is no longer isolated, the designation of isolated-Isolated should also be removed.

**Policies:** In these specific areas, the development standards of the SMP shall not be applied; however mandatory permit requirements of the Shoreline Management Act do apply. It is the intent that this area will be governed by underlying provisions of the zoning code, Critical Area Ordinance, Subdivision standards and stormwater requirements. Local, State and Federal regulations are applicable.

## (g) Multi-Family Residential

**Purpose:** This Multi-Family Residential designation is intended for areas which are currently primarily multi-family residential or intended for multi-family residential use. These areas are to maintain existing character in terms of open space, bulk, scale, and intensity of use within the guidelines of the zoning code. An additional purpose is to provide appropriate public access and recreational uses for public enjoyment.

**Policies:** The following management policies should apply to all shorelines in the Multi-Family Residential environment:

- (1) Standards for density, minimum width, setbacks, building bulk, lot coverage, buffers, shoreline stabilization, vegetation conservation, critical area protection, and water quality should be set to maintain no net loss of shoreline ecological functions.
- (2) New multi-family residential developments should provide public access and joint use community recreational facilities where appropriate.
- (3) Access, utilities, and public services should be available and adequate to serve existing needs and/or planned future development.

## (h) Recreation

**Purpose:** The Recreation designation is intended to provide recreational and public access opportunities along Bremerton's shorelines. It is an appropriate designation for areas occupied by recreational purposes such as parks and marinas. An additional purpose is to maintain and restore ecological functions to the area and preserve open space within the City.

**Policies:** The following management policies should apply to all shorelines in the Recreation designation:

- (1) Both to the goal of recreational use and the goal of ecological stewardship ensuring no net loss of ecological function should be implemented in all development.
- (2) Development should be related primarily to expanding recreational opportunities in the area. These activities include but are not limited to boating, swimming, walking, hiking, and recreational sports. Priority should be given to those developments related to a water dependent activity such as swimming or boating.

- (3) Recreational opportunities should be accessible to all demographic populations in the City.
- (4) Park management should encourage ecological stewardship as outlined in the Restoration Plan. This includes, but is not limited to such measures as setting picnic areas away from the water's edge, planting and maintaining native vegetation buffers along the water, and making floodplain connections where feasible.

## **(i) Single Family Residential**

**Purpose:** The Single Family Residential designation is intended for areas which are currently primarily single family residential, are planned, or are platted for single family residential use. These areas are to maintain existing character and be consistent with that character in terms of open space, bulk, scale, and intensity of use within the guidelines of the zoning code. An additional purpose is to provide appropriate public access and recreational uses for public enjoyment.

**Policies:** The following management policies should apply to all shorelines in the Single Family Residential environment:

- (1) Standards for density or minimum frontage width, setbacks, lot coverage limitations, buffers, shoreline stabilization, vegetation conservation, critical area protection, and water quality should be set to maintain no net loss of shoreline ecological functions.
- (2) New single family residential developments should provide public access and joint use community recreational facilities where appropriate.
- (3) Access, utilities, and public services should be available and adequate to serve existing needs and/or planned future development.

## **(j) Urban Conservancy**

**Purpose:** The Urban Conservancy designation is intended to protect and restore ecological functions of lands within the shoreline jurisdiction. These areas are identified as having biological or physical limitations or other unique or hazardous characteristics that are incompatible with intense development. Activities permitted in these areas are intended to have minimal adverse impacts upon the shoreline. These areas are not generally suitable for intensive water dependent uses.

**Policies:** The following management polices apply to all shorelines in the Urban Conservancy environment:

- (1) Primary allowed uses and their associated development standards should preserve the natural character of the area or promote preservation of open space, floodplain or sensitive lands where they exist in urban and developed settings, either directly or over the long term. Uses that result in restoration of ecological functions should be allowed if the use is otherwise compatible with the purpose of the environment and the setting.
- (2) Standards should be established for shoreline stabilization measures, vegetation conservation, water quality, and shoreline modifications within the urban conservancy designation. These standards should ensure that new development does not result in a net loss of shoreline ecological functions or further degrade other shoreline values.

- (3) Public access and public recreation objectives should be implemented whenever feasible and where significant ecological impacts can be mitigated.

## **4.040 Shorelines of Statewide Significance:**

**Purpose:** The Shoreline Management Act of 1971 designated certain shoreline areas as "Shorelines of Statewide Significance". These shorelines are important to the entire state because they are a major resource from which all people in the state derive benefit. This Master Program gives preference to uses which favor public and long-range goals.

In the City of Bremerton, the portions of Puget Sound, lying seaward from the line of extreme low tide, are Shorelines of Statewide Significance. Accordingly, this Master Program shall give preference to uses which meet the principles outlined below in order of preference for these locations:

- (a) Recognize and protect the Statewide interest over local interest through the use of the following measures:
  - (1) Solicit comments and opinions from groups and individuals representing statewide interests by circulating the Master Program, Master Program amendments and requests for Substantial Development permits on Shorelines of Statewide significance to state agencies, adjacent jurisdictions, and applicable interest groups.
  - (2) Recognize and take into account state agencies' policies, programs, and recommendations in developing and administering use regulations.
- (b) Preserve the natural character of the shoreline through the following measures:
  - (1) Designate and administer shoreline environments and use regulations to minimize manmade intrusions on shorelines;
  - (2) Upgrade and redevelop those areas where intensive development already exists in order to reduce their adverse impact on the environment and to accommodate future growth, rather than allowing high intensity uses to extend into low intensity use or underdeveloped areas.
- (c) Ensure long-term over short-term benefits through the following measures:
  - (1) Preserve the shorelines for future generations. For example, actions that would convert resources into irreversible uses or detrimentally alter natural conditions characteristic of shorelines of statewide significance should be severely limited;
  - (2) Evaluate the short-term economic gain or convenience of developments in relationship to long-term and potentially costly impairments to the natural environment;
  - (3) Actively promote aesthetic considerations when contemplating new development, redevelopment of existing facilities or for the general enhancement of shoreline areas.
- (d) Protect the resources and ecology of the shorelines through the following measures:
  - (1) Leave undeveloped those areas which contain a unique or fragile resource;
  - (2) Prevent erosion and sedimentation that would alter the natural function of the water system. In areas where erosion and sediment control practices will not be effective, severely limit excavations or other activities which increase erosion;
  - (3) Restrict public access onto areas which cannot be maintained in a natural condition under human uses.

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- (e) Increase public access to publicly owned areas of the shorelines through the following measures:
  - (1) Preserve the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state consistent with the overall best interest of the people of the state;
  - (2) Plan for a system of public access facilities that recognize existing facilities, constraints, and opportunities. Identify appropriate public access provisions for specific shoreline reaches;
  - (3) Improve pedestrian access to the shoreline through paths and trails to shoreline areas, linear access along the shorelines, and by developing connections to other trails and facilities;
  - (4) Develop upland parking to serve public access areas where appropriate;
  - (5) Design development to provide opportunities for public access compatible with other uses;
- (f) Increase recreational opportunities for the public on the shorelines through the following measures:
  - (1) Plan for and encourage development of public facilities for recreational use of the shorelines;
  - (2) Integrate water-dependent recreation uses wherever possible as part of multiple use of private shoreline development.

## 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
- [5.100 – Special Procedures for WSDOT Projects](#)

### **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, (Ord. 5327 (exh B) (part), 2017: Ord. 4965 Section 7 (part) 2006)), 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;
    - (iii) BMC 20.14.155 Reasonable Use Exception;
    - (iv) BMC 20.14.330(f) & (g) ~~& (h)(3)~~ Standard Wetland Buffers Widths;
    - (v) 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

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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) **Local review exceptions:** Requirements to obtain a Substantial Development Permit, Conditional Use Permit, Variance, letter of exemption, or other review to implement the Shoreline Management Act do not apply to the following:
  - (1) Remedial actions. Pursuant to RCW 90.58.355, any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW. Periodic Review Checklist Guidance 6 September 2019
  - (2) Boatyard improvements to meet NPDES permit requirements. Pursuant to RCW 90.58.355, any person installing site improvements for storm water treatment in an existing boatyard facility to meet requirements of a national pollutant discharge elimination system storm water general permit.
  - (3) WSDOT facility maintenance and safety improvements. Pursuant to RCW 90.58.356, Washington State Department of Transportation projects and activities meeting the conditions of RCW 90.58.356 are not required to obtain a Substantial Development Permit, Conditional Use Permit, Variance, letter of exemption, or other local review.
  - (4) Projects consistent with an environmental excellence program agreement pursuant to RCW 90.58.045.
  - (5) Projects authorized through the Energy Facility Site Evaluation Council process, pursuant to chapter 80.50 RCW.
- (h) **Federal Jurisdiction:** Areas and uses in those areas under exclusive federal jurisdiction and are established through federal or state statutes are not subject to RCW 90.58. The Shoreline Management Act and Shoreline Master Program do not apply to Bremerton's federal lands including, but not limited to the Naval Base Kitsap- Bremerton, Naval Hospital and Puget Sound Naval Shipyard and Intermediate Maintenance Facility.

**(e)(i) 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.

**(e)(ii) 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, as amended. 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- seven-thousand and forty-seven dollars 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,

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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

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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

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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:
  - (A) Twenty-two thousand five hundred dollars (\$22,500) for docks that are constructed to replace existing docks, are of equal or lesser square footage than the existing dock being replaced; or
  - (B) Eleven thousand two hundred (\$11,200) dollars for all other docks constructed in fresh waters.
  - (C) However, if subsequent construction occurs within five years of completion of the prior construction, and the combined fair market value of the subsequent and prior construction exceeds the amount specified above, the subsequent construction shall be considered a substantial development for the purpose of this chapter.

~~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 Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:

(13)(12)

- (i) The activity does not interfere with the normal public use of the surface;
- (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)(13) 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)(14) 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

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- (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)(15) Consistent with WAC 173-27-040, A public or private project that is designed to improve fish or wildlife habitat or fish passage (including restoration of native kelp and eelgrass beds and restoring native oysters), that conforms to the provision of RCW 77.55.181. 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)(e).

(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.~~

~~(17)(16)~~ The external or internal retrofitting of an existing structure with the exclusive purpose of compliance with the American with Disabilities Act of 1990 (42 U.S.C. 12101 et. seq.) or to otherwise ~~provide~~ provide physical access to the structure by individuals with disabilities.

## 5.020 Permit Application Types:

- (a) A permit for any action in shoreline jurisdiction not requiring a Shoreline Substantial Development Permit, Conditional Use Permit or Variance will be processed as a Type I permit pursuant to BMC 20.02, Chapter 90.58 RCW and Chapter 173-27 WAC. A Shoreline Exemption issued by the City is required for all such exempt activities. All uses and developments within the shoreline jurisdiction shall be carried out in a manner that is consistent with this Program and the policy of the Act as required by RCW 90.58.140(1), regardless of whether a permit, exemption, variance, or conditional use permit is required. The policies and provisions of chapter 90.58 RCW, including the permit system, shall apply statewide to all nonfederal developments and uses undertaken on federal lands and on lands subject to nonfederal ownership, lease, or easement, even though such lands may fall within the external boundaries of a federal ownership.
- (b) All permits shall be submitted to the Department of Community Development and shall comply with the submittal requirements of BMC 20.02.
- (c) A Shoreline Substantial Development Permit application shall be processed as a Type II permit pursuant BMC 20.02 and as otherwise required by Chapter 90.58 RCW and Chapter 173-27. Permits may be approved, approved with conditions or denied by the Director.
- (d) A Shoreline Conditional Use Permit shall be processed as either a Type II or Type III permit depending on project scope. Permits shall be processed pursuant to BMC 20.02 or as otherwise required by Chapter 90.58 RCW and Chapter 173-27 WAC. Permits may be approved, approved with conditions, or denied by the Director or Administrative Hearing Examiner respectively.
- (e) A Variance permit shall be processed as a Type III permit pursuant to BMC 20.02 and as otherwise required by Chapter 90.58 RCW and Chapter 173-27 WAC. Permits may be approved, approved with conditions, or denied by the Administrative Hearing Examiner.

## 5.030 Noticing Requirements:

When a notice of application is required, the following shall apply:

- (a) **Timeline:** The notice shall be provided within fourteen (14) days after the determination of completeness is issued.
  - (b) **Content:** The notice of application shall include the following:
    - (1) The file number assigned;
    - (2) The date of application, date of the notice of completeness, and the date of the notice of application;
    - (3) A description of the proposed project action and a list of permits included with the application and, if applicable, a list of requested studies;
    - (4) Identification of known permits not included with the application;
    - (5) Identification of existing environmental documents that evaluate the proposal;
    - (6) The location where the application and any studies can be reviewed;
    - (7) A statement of the public comment period and which shall not be less than thirty (30) days;
    - (8) A statement of the rights of any person to comment on the application, receive notice of and participate in any hearings, request a copy of the decision and any appeal rights;
  - (9) Any other information determined appropriate by the City.
- 
- (c) **Legal Notice:** Notice shall be provided in the following manner as applicable:
    - (1) Mail. The notice shall be sent by email, first class or higher mail to the following:
      - (i) The applicant;
      - (ii) Affected City Departments;
      - (iii) State, federal, tribal, and local agencies with jurisdiction;
      - (iv) For Type III Permits mailed notice shall also be sent to all property owners of real property (as shown by the records of the Kitsap County Assessor's Office) within three hundred (300) feet of the subject property. Where any portion of a property abutting the subject property is owned, controlled, or under the option of purchase by the applicant, all property owners within a three hundred (300) foot radius of the total ownership interest shall be notified; and
      - (v) Any person who requests such notice in writing to the Department.
    - (2) **Posting of the Property:** Notice shall be posted according to the following:
      - (i) At least one (1) location on or adjacent to the subject property and that shall be clearly visible and legible from an adjacent street or public area;
      - (ii) The Director shall determine the specifications to the construction and installation of the notice boards.
    - (3) **Publishing Notice:** A published notice in the City's official newspaper of general circulation within the City boundaries is required. The content shall include the following:
      - (i) Project location;

- (ii) Project description;
  - (iii) Type of permit(s) required;
  - (iv) Comment period and dates;
  - (v) Location where the complete application may be viewed.
- (d) **Integration of Notices:** The City will integrate the notice of application with SEPA review whenever possible. Notification for a notice of application should be combined with the notification for threshold determination and the scoping for a determination of significance whenever possible.
- (e) **Issuance of Decisions:** Except for a threshold determination, the City may not issue a decision or a recommendation on a permit until the expiration of the public comment period.
- (f) **Public Comments:** Comments shall be as specific as possible. Comments shall be received by the last day of the comment period specified in the notice. If no comments are received by the date specified it is presumed that those notified have no comments.

## 5.040 Criteria of Approval:

- (a) **Shoreline Substantial Development Permits:**
- (1) A Shoreline Substantial Development Permit shall be granted only when the development proposed is consistent with:
    - (i) The policies and procedures of the Shoreline Management Act RCW 90.58; and the provisions of the Shoreline Guidelines WAC 173-26 and WAC 173-27, and
    - (ii) This Shoreline Master Program, as well as the Comprehensive Plan and Zoning Regulations, to the extent that they are consistent with the Shoreline Master Program.
  - (2) The City may attach conditions to the approval of permits as necessary to assure consistency of the project with the act and this Shoreline Master Program.
  - (3) Any ruling on an application for a Shoreline Substantial Development Permit under authority of this Master Program, whether it is an approval or denial, shall, with the transmittal of the ruling to the applicant, be filed concurrently with Ecology and the Attorney General by the Director. Filing shall occur in accordance with RCW 90.58.140(6) and WAC 173-27-130 [for shoreline substantial development permits, shoreline exemptions are not required to be filed with Ecology unless Environmental review is required.](#)
- (b) **Conditional Use Permits:**
- (1) Conditional Use Permits are issued for proposed Substantial Development activities when the activity is classified as a Conditional Use or is an unlisted use in the Shoreline Use/ Activity Matrix (Table 20.16.690). The purpose of the Conditional Use Permit is to allow greater flexibility in the application of the Shoreline Master Program. Conditional Use Permits are processed as an Administrative Type II Director's decision, but can at any point in the permit process be elevated to a [Nonadministrative](#) Type III Hearings Examiner decision

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when the Director determines:

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

application must be reviewed and approved by Ecology.

## 5.050 Appeals:

- (a) **Applicability:** Any person aggrieved by the granting, denying, or rescinding of a permit on shorelines of the state pursuant to RCW 90.58.140 may, except as otherwise provided in chapter 43.21B RCW, seek review from the Shorelines Hearings Board by filing a petition for review within twenty-one days of the decision as provided for in RCW 90.58.140(6).
- (b) **Type II Decisions:** Type II decisions on Shoreline Substantial Development Permits, Conditional Use Permits, and revisions to shoreline permits may be appealed to the Administrative Hearing Examiner pursuant to Chapter 20.02 BMC within fourteen (14) calendar days of the date of the decision, provided that the applicant agrees to this local appeal. In the case of a Conditional Use Permit the Director may request that Ecology delay action in the approval until the local appeal process has been completed. In lieu of an appeal to the Administrative Hearing Examiner, or in the case where the applicant does not agree to a local appeal, an appeal of the local shoreline permit decision shall be heard by the Shorelines Hearings Board (SHB). Any person may file a Petition for Review to the SHB within twenty-one (21) calendar days of the date of filing of the decision with Ecology and the Attorney General pursuant to RCW 90.58.180(1).
- (c) **Type III Decisions and Decisions on Appeals:** Type III decisions, and decisions on appeal of Type II decisions may be appealed to the Shorelines Hearings Board by filing a Petition for Review within twenty-one (21) calendar days of the date of filing of the decision with Ecology and the Attorney General pursuant to RCW 90.58.180(1).
- (d) **Ecology Approval:** An appeal of a Conditional Use Permit or Variance by Ecology shall be filed with the Shoreline Hearings Board within twenty one (21) calendar days of notice of the Ecology Decision, pursuant to RCW 90.58.180(1).
- (e) **Shoreline Master Program Adoption and Amendments.** The decision of Ecology pertaining to the adoption of, or amendment to, the Shoreline Master Program may be appealed to the Central Puget Sound Growth Management Hearing Board per Chapter 36.70A RCW.

## 5.060 Time Periods:

- (a) **Type II Permits:** No construction pursuant to such permit shall begin or be authorized and no building, grading or other construction permits or use permits shall be issued by the City until 21 days from the date a Shoreline Substantial Development Permit was filed with Ecology and the Attorney General, or until all review proceedings are completed as were initiated within the twenty one (21) days of the date of filing. Filing shall occur in accordance with RCW 90.58.140(6) and WAC 173-27-130.
- (b) **Type III Permits or Type II Conditional Use Permits:** No permits and construction shall begin or be authorized until 21 days from the date of notification of approval by Ecology, or until all review proceedings are completed as were initiated within the twenty one (21) days of the date of filing. Filing shall occur in accordance with RCW

90.58.140(6) and WAC 173-27-130.

- (c) **Expiration:** Unless a different time period is specified in the shoreline permit as authorized by RCW 90.58.143, construction activities, or a use or activity for which a permit has been granted pursuant to this Master Program, must be commenced within ~~two (2) years~~ five (5) years of the effective date of a shoreline permit, or the shoreline permit shall terminate and a new permit shall be necessary. ~~except for projects also requesting a shoreline variance. The Director may authorize a single extension for a period not to exceed one year based on reasonable factors if an extension request is a request for extension has been filed with the City within thirty days of the permit expiry before the expiration date and. A notice of the proposed extension shall be forwarded to parties of record and Ecology. is given to parties of record and Ecology. Construction activities or commencement of construction means that construction applications must be submitted, permits must be issued, and foundation inspections must be approved and completed.~~
- (d) **Extensions:** A permit authorizing construction shall extend for a term of no more than five (5) years ~~from commencement of construction activities to project completion~~ after the effective date of a shoreline permit, unless a longer period has been specified pursuant to RCW 90.58.143, or as authorized above. If an applicant files a request for an extension prior to expiration of the shoreline permit, the Director shall review the permit and upon a showing of good cause may authorize a single extension of the shoreline permit for a period of up to one year. Otherwise said permit shall terminate. Notice of the proposed permit extension shall be given to parties of record and Ecology. To maintain the validity of a shoreline permit, it is the applicant's responsibility to maintain valid construction permits in accordance with adopted Building Codes.
- (e) **Reductions:** If it is determined that standard time requirements of subsections c and d should not be applied, the Hearing Examiner, upon a finding of good cause, may establish shorter time limits, provided that as a part of action on a conditional use or variance permit the approval of Ecology shall be required. "Good cause" means that the time limits established are reasonably related to the time actually necessary to perform the development on the ground and complete the project that is being permitted.
- (f) **Timing:** For purposes of determining the life of a shoreline permit, the effective date of a Shoreline Substantial Development Permit, shoreline conditional use permit, or shoreline variance permit shall be the date of filing as provided in RCW 90.58.140(6). The permit time periods do not include the time during which a use or activity was not actually pursued due to the pendency of appeals or legal actions, or due to the need to obtain any other government permits and approvals for the development that authorize the development to proceed.
- (g) **Responsibility:** It is the responsibility of the applicant to inform the director of other permit applications filed with agencies other than the City and of any related administrative or legal actions on any permit or approval.
- (h) If an appeal is filed, construction may not commence until disposition of the appeal unless otherwise established by the Shoreline Hearings Board pursuant to RCW 90.58.140(5)(b).

## **5.070 Violations and Penalties:**

- (a) Any person who fails to conform to the terms of a Shoreline Substantial Development Permit, conditional use permit, variance or other permit issued under the Shoreline Master Program, or who undertakes a development or use on shorelines of the state without first obtaining a permit, or violates any other provision of the Shoreline Master Program, or who fails to comply with a cease and desist order or notice of violation issued under Chapter 1.04 BMC may be subject to enforcement and penalties as follows:
- (b) Any violation, as noted above, constitutes a civil violation under Chapter 1.04 BMC, as currently enacted or hereinafter amended, for which a monetary penalty may be assessed and enforcement may be required, as provided therein.
- (c) In addition to or as an alternative to any other penalty provided herein or by law, any person who commits a violation, as noted above, shall be guilty of a gross misdemeanor pursuant to RCW 90.58.220.
- (d) In lieu of or in addition to the above, the City may utilize the enforcement procedures and remedies, including requiring appropriate correction action, contained in WAC 173-27-240 through 173-27-300.
- (e) Any person subject to the regulatory program of this Master Program who violates any provision of this Master Program or the provisions of a permit issued pursuant thereto shall be liable for all damages to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to such violation. If a suit is pursued the City Attorney shall bring suit for damages under this subsection on behalf of the City. Private persons shall have the right to bring suit for damages under this subsection on their own behalf and on behalf of all persons similarly situated. If liability has been established for the cost of restoring an area affected by violation the Court shall make provision to assure that restoration will be accomplished within a reasonable time at the expense of the violator. In addition to such relief, including monetary damages, the Court in its discretion may award attorney's fees and costs of the suit to the prevailing party.

## **5.080 Shoreline Moratorium:**

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

## **5.090 Restoration Project Relocation of Ordinary High Water Mark:**

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

- (a) A shoreline restoration project causes, or would cause, a landward shift in the ordinary high water mark, resulting in the following:
  - (1) Land that had not been regulated under this chapter prior to construction of the restoration project is brought under shoreline jurisdiction; or
  - (2) Additional regulatory requirements apply due to a landward shift in required shoreline buffers or other regulations of the applicable Shoreline Master

- Program; and
- (3) Application of Shoreline Master Program regulations would preclude or interfere with use of the property permitted by local development regulations, thus presenting a hardship to the project proponent.
  - (b) The proposed relief meets all of the following criteria:
    - (1) The proposed relief is the minimum necessary to relieve the hardship; and
    - (2) After granting the proposed relief, there is net environmental benefit from the restoration project; and
    - (3) Granting the proposed relief is consistent with the objectives of the shoreline restoration project and consistent with the Shoreline Master Program; and
    - (4) Where a shoreline restoration project is created as mitigation to obtain a development permit, the project proponent required to perform the mitigation is not eligible for relief under this section.
  - (c) If approved by the city, the application for relief must be submitted to Ecology for written approval or disapproval.
    - (1) This review must occur during Ecology's normal review of a shoreline Substantial Development Permit, conditional use permit, or variance. If no such permit is required, then the department shall conduct its review when the local government provides a copy of a complete application and all supporting information necessary to conduct the review consistent with submittal and decision procedures of WAC 173-27-215.
    - (2) Except as otherwise provided in subsection d of this section, Ecology shall provide at least 20-day notice to parties that have indicated interest to the department in reviewing applications for relief under this section, and post the notice on to their website.
    - (3) The Department shall act within 30 calendar days of close of the Public Notice period, or within 30 days of receipt of the proposal from the local government if additional public notice is not required.
  - (d) The public notice requirements of subsection c of this section do not apply if the relevant shoreline restoration project was included in a Shoreline Master Program or shoreline restoration plan as defined in WAC 173-26-201, as follows:

The restoration plan has been approved by the department under applicable Shoreline Master Program guidelines; and the shoreline restoration project is specifically identified in the Shoreline Master Program or restoration plan or is located along a shoreline reach identified in the Shoreline Master Program or restoration plan as appropriate for granting relief from shoreline regulations; and the Shoreline Master Program or restoration plan includes policies addressing the nature of the relief and why, when, and how it would be applied.

## 5.100 Special Procedures for WSDOT projects

## **ATTACHMENT B**

- (a) Permit review time for projects on a state highway. Pursuant to RCW 47.01.485, the Legislature established a target of 90 days review time for local governments.
- (b) Optional process allowing construction to commence twenty-one days after date of filing. Pursuant to RCW 90.58.140, Washington State Department of Transportation projects that address significant public safety risks may begin twenty-one days after the date of filing if all components of the project will achieve no net loss of shoreline ecological functions.

## Chapter 6 - Nonconforming Provisions

6.010 – Intent

6.020 – Establishment of a Legal Nonconformity and Applicability

6.030 – Annexations

6.040 – DefinitionsSubstantial Destruction

6.050 – Nonconforming Lots

6.060 – Nonconforming Structures

6.070 – Unsuitable Structure for Uses

6.07080 – Unlawful Uses and Structures

### 6.010 Intent:

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

### 6.020 Establishment of a Legal Nonconformity and Applicability:

- (a) A party asserting the existence of a lawfully established nonconforming lot, use or structure has the burden of proof that the lot, use or structure was not substandard in meeting the requirements of the Shoreline Master Program or Zoning Code that were in effect at its creation.
- (b) The rules of this chapter are applied by first reviewing which provisions are applicable to the nonconformity. When a combination of nonconforming lot, structure or use exists, each segment of the nonconformity is reviewed independently of the others.
- (c) Subject to the provisions of this Chapter, a use, lot, or structure lawfully existing prior to the effective date of this Shoreline Master Program or any amendment thereto, which is rendered nonconforming by this Shoreline Master Program may continue and may also be repaired, remodeled, and/or restored in the manner and to the extent that it existed upon the effective date of this Shoreline Master Program.

(b)

### 6.030 Annexation:

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

### 6.040 DefinitionsSubstantial Destruction:

- (a) Nonconforming Lots: A lot that does not meet the lot area, width or street

~~frontage requirements of the Shoreline Master Program or Zoning Code, but was lawfully created prior to the effective date of the adoption of the Shoreline Master Program and/or Zoning Code or subsequent amendments thereto.~~

(b) ~~Nonconforming Use: Any activity, development or condition that is not permitted outright or as an accessory use, or is not permitted by a Conditional Use Permit or other special permitting process by the provisions of the Shoreline Master Program or Zoning Code; but was lawfully created prior to the effective date of the Shoreline~~

~~Master Program or Zoning Code, or subsequent amendments thereto, and was continually maintained as defined in this chapter. A nonconforming use may or may not involve buildings or structures and may involve part of or all of a building or property.~~

(c) ~~Nonconforming Structure: A building or structure that does not comply with the required setbacks, height, lot coverage and other development requirements of the Shoreline Master Program or Zoning Code, but was lawfully constructed prior to the effective date of the Zoning Code and/or Shoreline Master Program or subsequent amendments thereto, and was continually maintained as defined in this chapter.~~

(d)(a) **Substantial Destruction:** For the purpose of this chapter, "substantial destruction" means the repair or replacement of a building or structure which exceeds one of the following:

(1) Seventy five percent (75%) of the assessed value of the structure as determined by the Kitsap County Assessor. An appraised value may be substituted for the assessed value at the request of the applicant and at the as deemed appropriate by the Director's discretion.

(2) For accessory structures which are typically not assessed (such as decks, sheds, garages, bulkheads, docks, 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. This does not include in-water structures as they are addressed in SMP section 6.070(d) of the SMP.

(3) For both 1 and 2 above, all repair and maintenance work conducted within a five (5) year period on the structure shall be included in the calculation.

## 6.050 Nonconforming Lots:

(a) **Continuation and Development:** A nonconforming lot may be developed for any use allowed by the Shoreline Master Program and Zoning Code provided the development meets, through design or by an approved variance the applicable development standards within.

(b) **Illegal Lot Modifications or Split:** The following is applicable to all lots:

(1) No lot may be modified, divided or adjusted in a manner that would violate the dimensional or area requirements of the Shoreline Master Program or Zoning Code.

(2) A government agency may lawfully modify a lot in a manner that would result in nonconformity, if portions of a lot are acquired for a public use or

purpose, or is allowed otherwise by law.

## 6.060 Nonconforming ~~uses~~Uses:

- (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 Shoreline Master Program and Zoning Code; or
  - (2) Another nonconforming use; provided, that all of the following criteria are met:
    - (i) A Shoreline Conditional Use Permit is approved pursuant to Chapter 5, and
    - (ii) The existing nonconforming use was not discontinued as prescribed in subsection (d) or (e) of this section (see below under discontinuation / damage and destruction); and
    - (iii) The new use is clearly a reduction in the nonconformity and intensity of the existing nonconforming use; and
    - (iv) There is no net loss of ecological processes and functions resulting from the change in use.
- (c) **Use Expansion:** A nonconforming use may be expanded or enlarged only in the following circumstances:
  - (1) If the existing nonconformity is not utilizing the entire structure, it may be expanded to other portions of the structure provided the enlargement is within the existing physical space of the building or use and all of the following criteria are met:
    - (i) There is no increase outside the building walls of noise, light and glare and other proximity impacts that may adversely affect adjacent uses or elements of the natural environment; and
    - (ii) There is no net loss of ecological processes and functions resulting from the alteration; and
    - (iii) The expansion or enlargement does not restore the structure from substantial destruction.
  - (2) Residential dwellings may have the building area expanded if all of the following criteria are met:
    - (i) The number of dwelling units is not increased; and
    - (ii) There is no decrease in the number of off-street parking spaces below the minimum requirements of the current code and the addition complies with all applicable development standards; and
    - (iii) There is no expansion into an area designated as a critical area or shoreline buffer or building setback; and
    - (iv) There is no net loss of ecological processes and functions resulting from the expansion.
  - (3) Acquisition of additional accessory off-street parking may be allowed

provided the additional parking is not located in the shoreline buffer.

- (d) **Discontinuation:** A nonconforming use that is discontinued pursuant to the items below shall have its legal nonconforming status terminated and any subsequent use of the property or building shall be that of a use that conforms to all applicable development standards. A nonconforming use is determined to be discontinued if any of the following circumstances apply:
- (1) The nonconforming use is changed to a conforming use; or
  - (2) Another nonconforming use is approved pursuant to subsection (b)(2) of this section; or
  - (3) The nonconforming use has ceased for a period of more than twelve (12) consecutive months or for twelve (12) months during a two-year period one (1) year.
  - (4) Aquaculture occurring on nonconforming aquaculture sites is not considered discontinued until the use has ceased for a period of more than 5 years.
- (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 either of the following circumstances:
- (1) The structure has suffered substantial destruction as a result of fire or other casualty not intentionally caused by the owner and a complete building permit application is filed within one (1) year of such fire or other casualty; or
  - (2) The nonconforming use is a detached or attached single-family dwelling located in a zone in which they are prohibited. The use may be re-established provided a complete building permit application is filed within one (1) year of substantial destruction.
- (f) **Repair and Maintenance:** A building or structure containing a nonconforming use may be repaired and maintained, if the work does not restore it from substantial destruction.

## 6.070 Nonconforming Structures:

- (a) **Continuation:** Any legally established nonconforming structure may be continued until such time that it experiences substantial destruction. If a structure experiences substantial destruction it shall constitute a discontinuation of the nonconforming structure and have its nonconforming status terminated. Any repair or reconstruction of the structure shall comply with the requirements of the Shoreline Master Program and the Zoning Code, except as follows:

— 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/parties of interest,  
and a A complete building permit application shall be is filed within one (1) year.of such fire or other casualty.

(1)

(b) **Expansion:** A nonconforming structure may be enlarged or extended, provided the enlargement complies with the applicable setback, height, lot coverage, and other site development requirements of the Shoreline Master Program and the Zoning Code, and provided that such work does not restore the structure from substantial destruction. Such expansions shall comply with the following:

- (1) ~~Expansions located outside of the setback and or buffer, but within the shoreline jurisdiction, may have a footprint expansion of up to five hundred (500) square feet without being required to provide vegetation enhancement per Vegetation Management Plan per SMP section 7.020. However, such an addition must comply with all other applicable development standards, including mitigation sequencing and tree retention requirements.~~
- (2) ~~Expansions located outside of the setback and or buffer but within the shoreline jurisdiction with a footprint larger than five hundred (500) square feet may be permitted provided the existing buffer is densely vegetated with a native plant community. Should the vegetation within the buffer not be a dense community of native vegetation, enhancement shall be provided as follows per the Vegetation Management Plan required in SMP section 7.020. (These provisions are not applicable to that portion of a water dependent use which requires direct access to the shoreline.)~~
- (i) ~~A native community of vegetation shall be provided on the waterward twenty five percent (25%) of the required buffers width, with a minimum required width of ten feet (10').~~
- (ii) ~~The area to be planted shall comply with the vegetation management plan requirements of the SMP section 7.20.~~
- (3) ~~There is no net loss of ecological processes and functions resulting from the alteration.~~
- (4)(1) Expansions, including expansion of and structures meeting substantial destruction status, located within the setback/buffer may be permitted provided:
- (i) Such expansion is located no further waterward than the existing foundation. In the case that no foundation exists, the expansion shall not exceed the existing building line.
- (ii) The expansion shall be limited to a footprint of two hundred and fifty (250) square feet.
- (iii) At least fifty percent (50%) of the required buffer shall be restored with natural vegetation per the requirements of Chapter 7 section 020 SMP section 7.020; if the buffer is not currently characterized by a dense community of native vegetation. The Director may approve the natural vegetation as required in SMP section 7.020 of 50% of the distance between the structure and the shoreline. All proposed vegetation shall be located as close to the shoreline as possible.
- (iv) Natural vegetation to be planted must comply with the requirements for vegetation management plans as established in SMP section 7.020 for the portion of the buffer to be planted.

- (v) There is no net loss of ecological processes and functions resulting from the alteration.
- (vi) These expansion provisions do not apply to overwater homes, including but not limited to floating homes and floating on-water residences.
- (c) **Repair and Maintenance:** Normal repair and maintenance of a nonconforming structure and vacant nonconforming structures which are not vacant for twelve (12) consecutive months or a total of twelve (12) months during a two-year period, may be performed that maintains continued safe and sanitary conditions, provided such work does not restore the structure from substantial destruction as defined above in SMP section 6.040.
- (d) **Repair and Maintenance of in-water structures:**
- (1) When repairing and maintaining in-water structures, each component type (decking, pilings, or structural members) shall be reviewed independently for compliance with the “substantial destruction” criteria, as the replacement of each component must comply with current regulations when replacing more than 75% of that component. For example, the replacement of more than 75% of the decking on a dock requires that the new decking material provide light penetration as outlined in SMP section 8.060.
  - (2) The use of creosote, arsenic and pentachlorophenol treated materials commonly used for in-water structures shall be prohibited. All new or replaced boards, piers, structural members etc. must comply with this prohibition regardless of the total percent of the structure being replaced, due to the long term impacts to water quality.

## **6.080 Unsuitable Structures for Uses:**

- (a) An existing structure constructed for a use no longer allowed by the Shoreline Master Program or Zoning Code, which has lost its legal nonconforming status, and is not suited for other uses permitted by the Shoreline Master Program or Zoning Code, may have its use re-established if a shoreline Conditional Use Permit is approved pursuant to Chapter 5; provided the applicant demonstrates that:
- (1) The remaining life of the structure is adequate to warrant the proposed use of the structure; and
  - (2) An use that is allowed in the zone and shoreline designation cannot be established; and
  - (3) There is a demand for the use in the community or region that provides a public benefit; and
  - (4) The use and renovation to the structure is not inconsistent with the goals and policies of the Shoreline Master Program and Comprehensive Plan; and
  - (5) The Critical Area/Shoreline buffers are restored with native vegetation to the extent feasible, as established by a qualified professional, as provided in vegetation management plan requirements (see section 7.20); and
  - (6) There is no net loss of ecological processes and functions resulting from the use.

### **6.0890 Unlawful Uses and Structures:**

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

## **Chapter 7 – General Standards and Regulations**

- 7.010 – Buffers and Setbacks
- 7.020 – 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 and Modifications 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, (Ord. XXXX Section X (Exh X) (part), 2020; Ord. 5327 Section 3 (Exh B) (part), 2016; Ord. 4965 Section 7 (part). 2006), 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 20.14.330(f) Category III and IV Wetlands
  - ~~BMC 20.14.330(g) Category IV Wetlands; and~~
  - ~~BMC 20.14.330(h)(3) Reducing Wetland Buffer Widths; and~~
  - BMC 20.14.730(d)(5) Buffer Reductions

#### **(b) Shoreline Buffers and Setbacks:**

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(1) The following table (Figure 7.010 (a)) defines required shoreline 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.

**Figure 7.010 (a): Shoreline Buffers and Setbacks**

DESIGNATION	Standard <u>Shoreline</u> Buffer Width	Minimum Building Setback
URBAN CONSERVANCY	175 feet	15 feet beyond buffer
SINGLE-FAMILY & MULTI-FAMILY RESIDENTIAL		
Lot depth less than 125'	20% of lot depth <u>(Minimum of 10 feet)</u>	5 feet beyond buffer
Lot depth 125' to 199'	20% of lot depth	10 feet beyond buffer
Lot depth greater than 200'	30% of lot depth <u>(Maximum of 100')</u>	15 feet beyond buffer
RECREATIONAL	100 feet	15 feet beyond buffer
COMMERCIAL/ INDUSTRIAL/ DOWNTOWN WATERFRONT	50 feet	15 feet beyond buffer
ISOLATED	None	None

Please note: For all designations, setbacks and buffers listed above the following shall apply  
The following additional notes apply to all designations unless specifically listed:

1. Where parallel designations exist, the buffer for the waterward designation shall not apply to the landward designation. The buffer for the landward designation would be measured from the OHWM.
2. Where lot depth is less than 150 feet on lots within the Commercial or Recreational designations lots, the buffers listed above may be reduced to 20% of the lot depth, but in no case less than 10', with an approved Habitat Management Plan per subsection (5) below.
3. In no case shall a buffer be less than 10' or greater than 100' in the Shoreline Residential Designation under shoreline setback reduction options per subsection (6) below and listed in Figure 7.010(b)
4. Buffers are measured from the Ordinary High Water Mark (OHWM).
5. The standard buffers may be reduced by averaging the existing development setbacks on neighboring properties per subsection (6) below.
- 4.6. Water-dependent uses do not require shoreline buffers. Apply mitigation sequencing to avoid and minimize adverse impacts during development siting.

- (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 the shoreline, as outlined in the table above. Refuse, garbage, or debris shall not be placed in the buffers or on the beach.

(3) **Interrupted buffer:** When a buffer contains an existing legally established public or private road, the Director may allow development on the landward side of the road provided that the development will not have a detrimental impact to the shoreline. The applicant may be required to provide a report to describe the potential impacts. In determining whether a report is necessary, the City shall consider the extent and permanence of the buffer interruption and potential impact on shoreline ecological functions.

(3)(4) **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)(5) **Habitat Management Plans:** Within shoreline jurisdiction, the requirements for a Habitat Management Plan as provided in BMC 20.14.730(e) and depicted within Table 2: Wildlife Habitat Conservation Areas shall be determined on a case-by-case basis only as needed to incorporate Fish & Wildlife Conservation Areas not addressed by the requirements of 7.030 Mitigation Sequencing for No Net Loss of Ecological Functions. The provisions of the Critical Area Ordinance (BMC 20.14.740) relating to Habitat Management Plans may also be used required to justify a reduction in the width of a standard 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)(6) **Setback and Buffer Averaging Reduction:** The Director may grant modifications to the Fish and Wildlife Habitat Conservation Area standard shoreline 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 The nearest adjacent like structure on either side of the subject property are setback less than the required standard buffer/setback required by the SMP. The average total setback of the like structures may be used as a modified reduced buffer for the proposal; and
- (ii) In addition to the reduced buffer, a minimum of a 5' building setback shall be required for the proposed structure; and
- (iii) No new structure may have a reduced buffer of less than ten (10') feet; -
- (iv) A Vegetation Management Plan is prepared per SMP section 7.020 and includes a native community of vegetation on the waterward twenty five percent (25%) of the reduced buffer width, with a minimum required width of ten feet (10');
- (v) One or more shoreline setback reduction options must be considered under a development proposal under Figure 7.010 (b);  
(iv)

## **Figure 7.010 (b): Shoreline Buffer Reduction Options**

### **Shoreline Setback Reduction Options**

- (i) Removal of at least 50 percent of an existing hard structural shoreline stabilization measure and subsequent shoreline restoration to a natural or semi-natural state.

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(ii) <u>Setting back at least 50 percent of an existing bulkhead a minimum of 10 horizontal feet based on feasibility of existing conditions and sloped a maximum three (3) vertical: one (1) horizontal to provide a dissipation of wave energy.</u>
(iii) <u>Removal of creosote piling</u>
(iv) <u>Installation of biofiltration/infiltration mechanisms in lieu of piped discharge, such as mechanisms that infiltrate or disperse surface water on the surface of the subject property. These mechanisms shall be sized to store a minimum of 70 percent of the annual volume of runoff water from the subject property, for sites with poor soils, or 99 percent of the annual volume of runoff water from the subject property, for sites with well-draining soils. The mechanisms shall be designed to meet the requirements in the City's current surface water design manual.</u>
(v) <u>Any alternative jointly agreed upon by the Director and the Washington Department of Fish &amp; Wildlife</u>

(4)

(7) **Fences:** Fences are allowed within shoreline buffers and setbacks according to the following conditions:

- (i) Fences to be erected in the side yard ~~abutting the fish and wildlife conservation area buffer, but are prohibited~~ may be permitted within the buffer, subject to subsection (iv).
- (ii) Fences may also be erected upland of the buffer including within the shoreline setback area.
- (iii) General development standards for fences are located in BMC 20.464.020. Guardrails Safety or hand rails may be erected in association with pedestrian access areas provided they do not function as a fence and comply with the International Building Code.
- (iv) A fence may be constructed within the outer half of the shoreline buffer when the fence has wildlife passable gaps or reductions to 42" in height every 100' linear feet within the buffer.

(6)

(a) **Exemptions:** The following development activities are not subject to fish and wildlife habitat area-shoreline 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:

- (2) 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;
- (3) 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.
- (4) Underground utilities;
- (5) 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:

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- (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.
- (6) 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,SMP section 8.090.
- (7) Stairs, ADA ramps, and walkways not greater than 5 feet in width or 18 inches in height above grade, not including railings.
- (8) 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.
- (9) Water enjoyment elements associated with an approved upland use that result in less than fifty (50) square feet of development footprint within the buffer.

## 7.020 Vegetation Conservation:

### Policies:

- ~~(3) The City should protect, conserve and establish native vegetation near shorelines in order to protect and restore the ecological functions and ecosystem wide processes performed within riparian and near shore areas which include but are not limited to:~~
- ~~• Protecting plant and animal species and their habitats;~~
  - ~~• Providing food sources for aquatic and terrestrial species in the form of various insects and benthic macro invertebrates;~~
  - ~~• Providing shade necessary to maintain water temperatures for salmonids, forage fish, and other aquatic biota;~~
  - ~~• Protecting and increasing stability of banks and bluffs;~~
  - ~~• Reducing the hazard of slope failures or accelerated erosion;~~
  - ~~• Reducing the need for structural shoreline stabilization measures;~~
  - ~~• Improving the visual and aesthetic qualities of the shoreline;~~
  - ~~• Protecting and improving water quality through filtration and vegetative uptake of nutrients and pollutants;~~
  - ~~• Providing habitat corridors parallel and perpendicular to the water body.~~

### Regulations:

- (a) **Vegetation Management Plan:** A plan shall be submitted for all new development and redevelopment within the shoreline jurisdiction. Development proposed exclusively outside the buffer must provide a plan, to scale, documenting existing native vegetation within the buffer and Notice to Title provisions per SMP 7.020(a)(8) below to protect this existing native vegetation. Development that is proposed within a shoreline buffer shall submit a Vegetation Management Plan that provides for substantial enhancement of shoreline ecological functions and no net loss and provides the maximum ecological functions feasible, in accordance with the following:

- (1) The plan shall preserve, enhance or establish native vegetation within the entire specified

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~~critical area~~ buffer. Vegetation management Unless otherwise specified, plans shall be prepared by a qualified professional and ~~shall~~ describe actions that will be implemented to ensure that buffer areas provide ecological functions equivalent to a naturally occurring a dense native vegetation community on the shoreline, to the maximum extent feasible. The Director may waive the requirement for a qualified professional for minor single-family development.

- (2) The ~~p~~Plan shall depict provide for planting of native trees, shrubs, and ground cover to a sufficient density to provide effective canopy cover and erosion control purposes throughout the in the buffer. The Director may allow for the trees and shrubs to be placed positioned and spaced in natural groups to allow for view preservation and a shoreline access trail.
- (3) The Plan plan shall include a sheet depicting existing vegetation conditions, including specify the predevelopment quantity, species type, distribution, approximate height of native vegetation, tree diameter/drip lines at four (4) feet in height, general successional stage of overall vegetative cover, potential native vegetation types, soil type + characteristics, and any existing hazard trees on the entire site. Said information shall be indicated and represented on a site plan drawn to scale and shall be reflected on an accompanying species and count matrix.
- (4) Identify existing deletion of native vegetation to be removed and protected as a result of the proposal must be shown on the site plan, as well as any noxious vegetation onsite. See tree replacement standards per subsection (b)(3) below.
- (5) At least 25% of new New evergreen trees shall be a minimum height of four (4) feet and new deciduous trees shall have a two (2) inch minimum caliper. Shrubs shall be of at least four different varieties.
- (6) Methodology shall be identified for removal of noxious vegetation and for long term maintenance. The Director, as a condition of approval, may require the removal of all noxious species.
- (7) A financial surety (an assignment of funds or surety bond with no expiration date) shall be provided that accounts for 150% of the cost for improvements such as installation of plantings or other features identified in the plan. The Director may waive this requirement for single-family residential development where the cost of such improvements is less than five thousand (\$5,000) dollars. The financial surety is intended to ensure implementation of a five year maintenance performance and monitoring plan that ensures a survival rate of 100% for trees and 85% for all other vegetation. The five year maintenance and monitoring period shall begin at the time the required native vegetation has been installed, and verified by a representative from the Department of Community Development. Monitoring shall consist of site inspection documentation surveys and photographs taken by the applicant yearly indicating to indicate the continued survival of the plant survivals. The Said documents surveys and photos shall be submitted at the end of the 5 years to the City Department of Community Development for release of the financial surety.
  - (i) Civil violations are not exempt from bonding requirements.
  - (ii) Single-family proposals that do not request a buffer reduction or vegetation alteration in the buffer are not required to provide the financial surety.
  - (iii) Failure to comply with a required plan shall result in a code violation. The City

will may not issue active permits or land use requests on the subject property.

- (8) Required vegetation shall be maintained over the life of the use and/or development. In order to ensure such maintenance, prior to permit issuance a recorded conservation easement or a Notice to Title shall be placed on the deed of the property identifying the buffer area and required plantings and remain in perpetuity, so that a record of the plan is available to all future property owners. The Notice to Title shall be recorded with the Kitsap County Auditor's Office. prior to issuance of the permit.
- (9) ~~Repair, maintenance, and minor expansions of existing development may not be required to provide a vegetation management plan dependent upon the scope of the project. Please review section 6.70 to evaluate the requirements for expanding a nonconforming structure.~~
- (9) ~~Removal of or alteration of native vegetation within the shoreline jurisdiction is strictly prohibited unless such activity is required for a permitted use or is determined to be hazardous by a qualified professional.~~
- (10) 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.

**(b) Existing Landscaping:**

- (1) In the absence of a development proposal requiring a permit, existing landscaping and gardens within the buffer may be maintained in their existing condition including but not limited to mowing lawns, weeding, removal of noxious and invasive species, harvesting and replanting of garden crops, pruning and replacement planting of ornamental vegetation or indigenous native species to maintain the condition and appearance of such areas as they existed prior to adoption of this code.
- (2) Removal of or alteration of native vegetation within the shoreline jurisdiction is strictly prohibited unless such activity is required for a permitted use or is determined to be hazardous by a qualified professional.
- (3) Tree removal and replacement. Removal of trees greater than 6 inches in diameter at four (4) feet in height shall be replaced according to the following:
- (i) at a ratio of 3:1 with native species. For trees removed within a shoreline buffer, replacement and shall be re-established occur within any required the buffer on the project site at a ratio of 3:1 with native species.
- (ii) For new development located outside of the shoreline buffer, tree replacement shall occur onsite within shoreline jurisdiction at a 2:1 ratio with native species for all trees removed outside the proposed building footprint.
- (iii) For trees removed outside of the shoreline buffer which are not associated with a new development proposal, replacement shall occur onsite within shoreline jurisdiction at a 2:1 ratio with native species
- (iv) All replacement trees shall be a minimum of five-gallon or two-inch caliper in size at the time of planting.

**7.030 Mitigation Sequencing for No Net Loss of Ecological Functions:**

Policy: For all developments, applicants must demonstrate that all alternatives have been examined with the intent to avoid and minimize impacts to shoreline ecological

functions.

## **Regulations:**

- (a) Shoreline use, development, and re-development shall be carried out in a manner that prevents or mitigates adverse impacts to ensure no net loss of ecological functions and processes in all developments and uses. Permitted uses shall be designed and conducted to minimize, in so far as practical, any resultant damage to the ecology and environment. Shoreline ecological functions that shall be protected include, but are not limited to, fish and wildlife habitat, food chain support, and water temperature maintenance. Shoreline processes that shall be protected include, but are not limited to, water flow; erosion and accretion; infiltration; ground water recharge and discharge; sediment delivery, transport, and storage; large woody debris recruitment; organic matter input; nutrient and pathogen removal; and stream channel formation/maintenance.
- (b) Mitigation Requirement. If a proposed shoreline use or development is entirely addressed by specific, objective standards (such as, but not limited to, setback distances, structural dimensions, or materials requirements) contained in this Master Program, then the mitigation sequencing analysis described in subsection (c) is not required. In the following circumstances, the applicant must provide a mitigation sequencing analysis as described in subsection (c):
  - (1) If a proposed shoreline use or development is addressed in any part by discretionary standards (such as standards requiring a particular action “if feasible”, requires the minimization of development size, or includes the reduction of a standard buffer) contained in this Master Program, then the mitigation sequencing analysis is required for the discretionary standard(s); or
  - (2) When an action requires a Shoreline Conditional Use Permit or Shoreline Variance Permit; or
  - (3) When specifically required by regulations contained in this Master Program;
- (c) When required. An application for any permit or approval shall demonstrate all reasonable efforts have been taken to provide sufficient mitigation such that the activity does not result in net loss of ecological functions. Mitigation shall occur in the following prioritized order:
  - (1) Avoiding the adverse impact altogether by not taking a certain action or parts of an action, or moving the action outside the shoreline area;
  - (2) Minimizing adverse impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology and engineering, or by taking affirmative steps to avoid or reduce adverse impacts;
  - (3) Rectifying the adverse impact by repairing, rehabilitating, or restoring the affected environment;
  - (4) Reducing or eliminating the adverse impact over time by preservation and maintenance operations during the life of the action;
  - (5) Compensating for the adverse impact by following the mitigation sequence outlined herein;
  - (6) Monitoring the adverse impact and taking appropriate corrective measures.

~~(e)(d)~~ Applicants for permits have the burden of proving that the proposed development is consistent with the criteria set forth in the Shoreline Master Program and the Act, including demonstrating that all reasonable efforts have been taken to provide sufficient mitigation such that the activity does not result in net loss of ecological functions.

## 7.040 Public Access:

Public access includes the ability of the general public to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline from adjacent locations.

### Policies:

- ~~(a) Public access, in its variety of forms, should be promoted whenever feasible provided the result is no net loss of the shoreline's ecological function.~~
- ~~(b) Public access should be provided to the shoreline as a primary use or as development occurs, while protecting private property rights and public safety.~~
- ~~(c) Public access should not compromise the rights of navigation and space necessary for water-dependent and water-related uses.~~
- ~~(d) To the greatest extent feasible consistent with the overall best interest of the state and the people generally, the public's opportunity to enjoy the physical and aesthetic qualities of shorelines of the state should be protected.~~
- ~~(e) Property owners should implement a variety of techniques including acquisition, leases, easements, and design and development innovations to achieve public access goals and to provide diverse public access opportunities~~

### Regulations:

- (a) **Applicability:** Public Access shall be incorporated into a development in all of the following circumstances:
  - (1) New development that will generate a demand for one or more forms of public access,
  - (2) Water-dependent uses and developments that:
    - (i) Increase public use of the shorelines and public aquatic lands, or
    - (ii) Impair existing legal access opportunities, or
    - (iii) Utilize public harbor or aquatic lands, or
    - (iv) Are developed with public funding or other public resources.
  - (3) Non-water-oriented commercial and industrial uses,
  - (4) Non-single family development or use, or more than four (4) single-family residential lots or single-family dwelling units, including subdivision, within a proposal or a contiguously owned parcel,
  - (5) Any development located on public aquatic lands, except as related to single-family residential use of the shoreline,
  - (6) Publicly financed or subsidized flood control and shoreline stabilization facilities or measures.
- (b) **Location and Design Criteria:** Required public access shall incorporate the following location and design criteria:

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(1) **Proximity to water's edge:** Design of public access shall provide the general public with opportunity to reach, touch, view, and enjoy the water's edge and shall be as close to the shoreline's edge as feasible; provided that public access does not adversely affect sensitive ecological features or lead to an unmitigated reduction in ecological functions.

(2) **Public access inside the buffer:** Public access may be located inside the buffer provided the applicant demonstrates compliance with the mitigation sequencing requirements established above in SMP section 7.030. Walkways shall be buffered from sensitive ecological features and may provide limited and controlled access to sensitive features and the water's edge where appropriate. Fencing no taller than four (4) feet in height may be provided to control damage to plants and other sensitive ecological features where appropriate.

Trails shall be constructed of permeable materials for example non-treated elevated wooden walkways and limited to six (6) feet in width. The Director may consider public access alternatives with an approved report demonstrating no net loss and adherence to the Public Access policies in SMP section 2.040, to reduce impacts to ecologically sensitive resources.

(2)(3) **Public access locations outside of buffers shall include:**

- (i) Not less than ten (10) percent of the developed area within the shoreline jurisdiction or three thousand (3,000) square feet, whichever is greater. Water dependent uses are exempt from this requirement; and
- (ii) Public access shall extend along the entire water frontage, unless such access will interfere with the functions of water-dependent uses. The minimum width of public access facilities shall be ten (10) feet and shall be constructed of materials consistent with the design of the development.

(3)(4) **General Design Criteria:** The entire public access area shall be:

- (i) Landscaped, preserving and enhancing native vegetation where feasible, and maintained by the property owner;
- (ii) Connected to a nearby public street, an adjacent existing public walkway, or a future walkway; and
- (iii) Compliant with the requirements of the American's with Disabilities Act and other applicable standards for barrier free for the physically disabled, where feasible.
- (iv) The dedicated area shall generally be open to public access 24 hours a day unless specific exceptions are granted. If an exception is granted, access hours shall not be restricted from 10:00 a.m. to dusk (one-half hour after sunset) each day. Changes in access hours must meet the criteria of SMP Chapter 7 Section section 7.040(c).
- (v) A submittal shall include specific design features of the walkway, landscaping, signs and other features as applicable.

(5)(7) **Access Requirements for Overwater Structures:** Public access is required on over-water structures that are located on public aquatic lands. Access shall include common use of walkway areas in accordance with all applicable requirements within this section. For instances triggering public access requirements, refer to applicability section 7.040(a).

(c)(f) **Modification of Public Access:** Public access requirements may be modified only

when one or more of the following criteria are met:

- (1) Unavoidable health or safety hazards to the public will occur which cannot be prevented by any practical means;
- (2) Inherent security requirements of the use cannot be satisfied through the application of alternative design features or other reasonable solutions;
- (3) Unacceptable environmental harm will result from the public access that cannot be mitigated;
- (4) Significant undue and unavoidable conflict between any access provisions and the proposed use and/or adjacent uses would occur and cannot be mitigated;
- (5) Significant unavoidable environmental impacts will result from the public access.
- (6) Should any one of the abovementioned criteria impede the ability to provide public access the applicant must demonstrate that all reasonable alternatives have been pursued, including but not limited to:
  - (i) Providing “limited public access” to protect specific identified features or limiting hours of use;
  - (ii) Designing separation of uses and activities (e.g. terracing, use of one-way glazing, hedges, landscaping, etc.) to provide security for and protect adjacent sites from unreasonable intrusions into their privacy; and
  - (iii) Providing for specific facilities for public visual access, including viewing platforms that may be physically separated from the water’s edge. Viewing platforms shall be utilized only if access adjacent to the water is not possible.

| **(g) (d) Public Access Easements:** Access easements are required for all developments requiring a Shoreline Substantial Development Permit, Shoreline Conditional Use Permit, or Shoreline Variance and shall meet the following standards:

- (1) Size and Design: Public access easements along shorelines are to be waterward of the Ordinary High Water Mark (OHWM) to allow for improved lateral beach access and shall be a minimum of thirty (30) feet in width.
- (2) Easements: Public access easements should connect to the nearest right-of-way through an easement of no less than ten (10) feet.
- (3) Minimum Width Exception: When the applicant demonstrates that undue hardship would result from minimum width standards, easement width may be reduced only to the minimum extent necessary to relieve the hardship.
- (4) Recording: Public access easements and permit conditions shall be recorded on the deed of title. Recording with the Kitsap County Auditor's Office shall occur prior to permit approval.
- (5) Signs: The sign(s) that indicate the public's right of access and hours of access shall be constructed, installed and maintained by the property owner in conspicuous locations at public access sites and at the nearest connection to an off-site public right of way. These sign(s) shall identify the public right of access and hours of access.
- (6) Occupancy: Required public access sites shall be fully developed and available for public use prior to occupancy of the use or activity.

- (7) No diminution: Future actions by the applicant or other parties shall not diminish the usefulness or value of the public access provided.

| **(h) (e) View Corridor Requirements:** View corridors shall apply to proposals within the shoreline environment for multi-family and commercial development between Evergreen Park and the Puget Sound Naval Shipyard and shall include the following:

- (1) View Corridors are applicable only on sites with over 100 feet in width as measured parallel to the shoreline.
- (2) The View Corridor shall be no less than 20% of the building site width for buildings equal to or less than 40 feet in height.
- (3) The View Corridor shall be no less than 30% of the building site width for buildings greater than 40 feet in height.
- (4) View Corridors may contain structures no higher than 10 feet and may include parking areas and landscaping, if topography permits.
- (5) The Director, at their discretion, may require ~~T~~he view corridor ~~must~~ to remain be in one continuous piece.

## 7.050 Water Quality, Stormwater, and Non-Point Pollution:

### **Policies:**

- (a) ~~Prevent impacts to water quality and stormwater quantity that would result in a net loss of shoreline ecological functions, or a significant impact to aesthetic qualities, or recreational opportunities.~~
- (b) ~~Ensure mutual consistency between shoreline management provisions and other regulations that address water quality and stormwater quantity, including public health, stormwater, and water discharge standards.~~
- (c) ~~Protect aquatic resources from non-point pollution, such as water runoff from contaminated surfaces, contaminated groundwater, chemical fertilizers, herbicides, pesticides, and petrochemicals, including, but not limited to discharge from failing onsite septic systems.~~

### **Regulations:**

- (a) Development within the City's shoreline shall conform to all requirements of the most current version of the Bremerton Stormwater Management Plan and the most current Stormwater Management Manual for Western Washington.
- (b) The construction of new outfalls into water bodies and improvements to existing facilities shall comply with all appropriate Federal, State, and City regulations for water quality.
- (c) Pesticides applied using aerial spraying techniques within the shoreline jurisdiction, including over water bodies or wetlands, shall be prohibited unless specifically permitted under the Washington Departments of Agriculture and Ecology.

## 7.060 Archaeologically Sensitive Areas:

### Policies:

- (a) ~~Prevent the destruction of or damage to any cultural resources and any site having historic, cultural, scientific, or educational value as identified by the appropriate authorities, including The Suquamish Tribe, and the Washington State Department of Archaeology and Historic Preservation.~~
- (b) ~~Land owners should provide access to qualified professionals and the general public if appropriate for the purpose of public education related to a cultural resource identified on a property.~~

### Regulations:

- (a) The City will work with tribal, state, federal, and other local governments as appropriate to identify significant cultural resources and local historical, cultural, and archaeological sites, in observance of applicable state and federal laws protecting such information from general public disclosure. Detailed cultural assessments may be required in areas with undocumented resources based on the probability of the presence of cultural resources.
- (b) Owners of property containing identified historical, cultural, or archaeological sites should coordinate well in advance of application for development to assure that appropriate agencies such as the Washington State Department of Archaeology and Historic Preservation, the Suquamish Tribe Archaeology and Historic Preservation program, and historic preservation groups have ample time to assess the site and identify the potential for cultural resources.
- (c) Upon receipt of an application for a development in an area of known cultural resources, the City shall require a site assessment by a qualified professional archaeologist or historic preservation professional and ensure review by qualified parties including the Washington State Department of Archaeology and Historic Preservation, and the Suquamish Tribe Archaeology and Historic Preservation Program.
- (d) If historical, cultural, or archaeological materials, sites or artifacts are discovered in the process of development, work on that portion of the site shall be stopped immediately, the site secured and the find reported as soon as possible to the City. Upon notification of such find, the property owner shall notify the Washington State Department of Archaeology and Historic Preservation and the Suquamish Tribe Archaeology and Historic Preservation Program. The reviewing official shall provide for a site investigation by a qualified professional and may provide for avoidance, or conservation of the resources, in coordination with appropriate agencies.

## 7.070 Lighting Requirements:

### Policies:

- (a) ~~Lighting within shorelines and lands adjacent to shorelines if not properly managed can have an adverse impact on the ecological function, most notably the migration patterns of salmonids and terrestrial species.~~
- (b) ~~Lighting should be minimized within shorelines, especially within close proximity to the water.~~
- (c) ~~Development should implement site lighting techniques that minimize the amount of spill-over into riparian and aquatic environments. These techniques should include but are not~~

~~limited to reduction of pole heights, pole locations, and fixture designs including shading + shielding devices, bulb types and reduced wattages.~~

## **Regulations:**

- (a) Development proposals requiring a permit within shorelines shall include a lighting plan that provides and or meets the following standards:
  - (1) The location of all outdoor lighting and building security lighting and associated wattages;
  - (2) Pole heights shall not exceed 20 feet in height;
  - (3) Fixture designs for all outdoor lighting shall shield the source or bulb of the light; and
  - (4) A Photometric plan is required and shall not exceed a strength of 1 foot-candle at the property lines or OHWM.
- (b) Where lighting is required for new streets, driveways or public access features, the lowest level lighting possible shall be used.
- (c) The lighting plan is required with the permit application and shall be reviewed as a component of the shoreline permit.

## **7.080 Parking Requirements:**

### **Policies:**

- (a) ~~Parking includes private on-site, public lots/structures and loading areas. Parking within shorelines is a low priority. Converting land within shorelines for the sole use of vehicles is not an efficient land use.~~
- (b) ~~Parking as a primary use (stand-alone use) within the shoreline jurisdiction should be prohibited.~~
- (c) ~~Parking should not be allowed between development and the adjacent water body.~~
- (d) ~~Where surface parking is developed within the shoreline jurisdiction, Low Impact Development techniques should be implemented.~~
- (e) ~~Lighting for parking areas should be minimized.~~

### **Regulations:**

- (a) Parking as a primary or stand-alone use shall not be permitted within the shoreline jurisdiction of a property.
- (b) Parking shall not be located between shorelines and development unless no other location is feasible and it can be demonstrated that it will have no negative impact on ecological functions.
- (c) Parking facilities shall minimize the amount of impervious surface within the shoreline jurisdiction and should not disrupt planned public access or habitat restoration objectives.
- (d) Required parking for a permitted use on shorelines shall not be permitted between the development and the adjacent shoreline with the exception of parking that is required for water-dependent uses. Loading and unloading zones that are an inherent element of a water-dependent or a water-related use are allowed between the shoreline and the use area when it is adjacent to the shoreline but, when feasible, should not be adjacent to a required buffer.

- (e) Parking ratios for all uses within the shoreline shall follow BMC 20.48 parking standards. The applicant may provide a parking analysis that demonstrates the parking need for the use. This analysis shall include examples of other existing similar uses and how the parking demand has been met in those locations and/or in other jurisdiction.
- (f) When surface parking areas for permitted uses are designed and constructed, they shall achieve the following objectives:
  - (1) Landscape screening around the perimeter and within the parking area to soften edges and break up large parking areas;
  - (2) Implementation of Low Impact Development techniques for stormwater management; and
  - (3) Located as far from a required shoreline or critical area buffer as possible.

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

- (a) Use and Modifications Matrix: The table-Figure 7.090 (a) 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.

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**Figure 7.090 (a): Use and Modifications Matrix**

KEY:	Urban Conservancy	Single Family Residential	Multi-Family Residential	Recreation	Commercial	Downtown Waterfront	Industrial
	X= Prohibited P= Permitted CU= Conditional Use						
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, TRANSPORTATION &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	P	P	P	X
<b>SHORELINE MODIFICATIONS</b> (All uses must meet applicable code criteria see Ch. 9)							
Boat Launch	CU	CU	CU	CU	CU	CU	CU

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KEY: X= Prohibited P= Permitted CU= Conditional Use	Urban Conservancy	Single Family Residential	Multi-Family Residential	Recreation	Commercial	Downtown Waterfront	Industrial
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
Flood Hazard Reduction	P	P	P	P	P	P	P
Mooring Buoys	P	P	P	P	P	P	P
Marinas	CU	CU	CU	CU	CU	CU	CU
Stabilization - New and Replacement	P	P	P	P	P	P	P
Stormwater Management Facilities	P	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

- (b) Height restrictions: Figure 7.090 (b) 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.
- (c) 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.

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

ENVIRONMENT DESIGNATION	HEIGHT
Commercial	35 feet
Downtown Waterfront*	175 feet
Industrial	35 feet

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ENVIRONMENT DESIGNATION	HEIGHT
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.

\* Heights in the Downtown Waterfront. Within the MFR 1 Waterfront Overlay Zone of the Sheridan/Harrison Center Subarea plan, maximum height shall be calculated from an average of the existing grade on Washington Avenue from the front property line of each parcel.

\*\* Public Bridges. Height restrictions do not apply to public bridges; compliance with all other code provisions shall apply.

(1) Heights in the commercialCommercial, & industrialIndustrial, and Multi-Family designationsdistricts may be increased outright to the to the zoning district height limit through a Conditional Use Permit pursuant to the following provided criteria:

- (i) The increase does not substantially block views from a substantial number of upland residential properties, per RCW 90.58.320.
- (ii) Greater height is demonstrated to be needed for an essential element of an allowed use.
- (iii) The project may be required to include compensating elements that substantially enhance the visual and physical public access to the shoreline.
- (iv) It is demonstrated that No Net Loss of habitat function will be achieved.

(iv)

—(2) 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.

(3) Exceptions: The following structures listed below may be erected above the height limits established in Figure 7.090 (b):

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- (i) Cranes, gantries, mobile conveyors and similar equipment necessary for the functions of marinas, marine manufacturing, permitted commercial, industrial or port activities and servicing vehicles.
- (ii) Flagpoles or masts, transmission towers, chimneys, smokestacks, aerials or stairwells, when part of a permitted use.
- (iii) Belfries, monuments, spires or steeples, transmission towers, provided such structures must be designed to minimize obstruction of views.

## **Chapter 8 – Shoreline Use Regulations**

- 8.010 – Intent
- 8.020 – Aquaculture
- 8.030 – Commercial Development
- 8.040 – Forest Practices
- 8.050 – Industrial Development
- 8.060 – Marinas and Boating Facilities
- 8.070 – Recreational Development
- 8.080 – Residential Development
- 8.090 – Roads, Railways, and Utilities

### **8.010 Intent:**

The policies and regulations within this chapter shall apply to the specific common uses and types of development to the extent they occur within the shoreline jurisdiction. These policies and regulations are intended to achieve no net loss of shoreline ecological function. Each use or development type includes a brief explanation and examples of the subject use, policies which are intended to guide and interpret the accompanying regulations, and then the regulations themselves.

### **8.020 Aquaculture:**

~~Aquaculture is the culture, or farming of fish, shellfish or other aquatic plants and animals. Activities include, but are not limited to the hatching, cultivating, planting, feeding, raising, harvesting, and processing of aquatic plants and animals and the maintenance and construction of necessary equipment, buildings, and growing areas. Cultivation methods include, but are not limited to fish pens, fish hatcheries, shellfish rafts, racks and long lines, seaweed floats, and nets and the culture of clams and oysters on tidelands and sub-tidal areas. Aquaculture does not include the harvest of wild geoduck associated with a state managed wild stock geoduck fishery. Aquaculture is a preferred water-dependent use. It should be encouraged to locate where it will not significantly conflict with navigation and other water-dependent uses, and/or result in a net loss of ecological functions, and/or adversely impact eelgrass and microalgae. Harvest of wild stock free swimming fish, and/or harvest of wild stock geoducks on state owned aquatic lands do not require a shoreline Substantial Development permit.~~

#### **Policies:**

- (a) ~~Aquaculture should not be located in areas where it would result in a net loss of ecological functions.~~

~~Aquaculture should not be permitted in areas where it would significantly conflict with navigation and other water-dependent uses.~~

#### **Regulations:**

- (a) Aquaculture shall not be located in areas where it would result in the net loss of ecological functions., especially in near-shore areas where water quality, aquatic vegetation and co-occupying species habitats and migration corridors could be

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- impacted.
- (b) Aquaculture shall meet all applicable State and Federal requirements including, but not limited to: Federal Clean Water Act, Section 401, and the Washington State Water Pollution Control Act (RCW 90.48), local health codes and the applicable requirements of the Washington State Department of Fish and Wildlife for said facilities.
  - (c) Aquaculture shall not be detrimental to visual access of the water body. Aquaculture shall not significantly impact the aesthetic qualities of the shoreline.
  - (d) Aquaculture shall not significantly conflict with navigation.
  - (e) The proponent shall demonstrate that the proposed location is suitable for aquaculture with little or no modification to the shoreline environment. Aquaculture shall not displace native plant or animal communities important to the food chain, particularly surf smelt spawning beaches, or areas important to the rearing of threatened or endangered species.
  - (f) Aquaculture sites may be required to be separated from other aquaculture sites to prevent cumulative impacts upon shoreline processes. Appropriate separation shall be determined by the City in consultation with State and federal agencies, and tribal interests, based upon attributes such as water body characteristics, drift cell patterns, and upland development patterns.
  - (g) Harvest activities shall be conducted in a manner that minimizes turbidity and the risk of impacts to aquatic vegetation and the intertidal bed by complying with State water quality standards and permit requirements. If a State water quality permit is not required, harvest activities must utilize the following methods:
    - (1) Where water pumps are used, they must be placed on floating rafts and shall only be temporarily anchored to ensure water depths that avoid grounding.
    - (2) Pump intakes shall be screened to minimize the capture of marine organisms.
    - (3) Harvest activities within fine-grained beaches that are susceptible to sediment transport may be required to utilize sediment containment methods such as fencing or cloth tubes.
  - (h) The installation of submerged or intertidal structures, or over-water structures shall be allowed only when the applicant demonstrates that no alternative method of operation is feasible and must comply with the view protection requirements below in Chapter 8, Section 020 subsection (j).
  - (i) Navigational access must be guaranteed for floating or submerged aquaculture structures. The applicant must provide evidence that the proposal will not interfere with general navigation lanes and traffic and that all structures remain shoreward of principal navigation channels.
  - (j) View Protection: Aquaculture structures and equipment, EXCEPT navigation aids, shall be designed, operated, and maintained to blend into their surroundings through the use of appropriate colors and materials.
    - (1) Over-water aquaculture structures shall be constructed of materials that blend in with the shoreline environment.
    - (2) Storage of necessary tools and apparatus seaward of the OHWM shall be limited

- to containers of not more than three feet in height, as measured from the surface of the raft or dock; except as permitted through a variance.
- (3) Materials which are not necessary for the immediate and regular operation of the facility shall not be stored seaward of the OHWM.
  - (4) The applicant shall submit a visual impact analysis assessing the aesthetic, light, and glare impacts on adjacent uses and may condition a project to mitigate impacts or may deny a project if adverse impacts cannot be feasibly mitigated.
  - (k) Aquaculture development shall control nuisance factors, such as noise and odor, and shall comply with all applicable regulations. No garbage, wastes or debris shall be allowed to accumulate at the site of any aquaculture operation.
  - (l) Structures or activities associated with aquaculture that are not water-dependent, such as an office, shall be located upland, away from the shoreline and shall comply with all buffers and setback requirements.
  - (m) Equipment, structures, and material shall not be abandoned in the shoreline or wetland area. The City may require that a bond be posted to help to ensure that this regulation is implemented.
  - (n) All commercial aquaculture requires a Shoreline Conditional Use Permit. All new commercial geoduck aquaculture or conversions from existing non-geoduck aquaculture to geoduck aquaculture requires a Conditional Use Permit and will be administered consistent with WAC 173-26-241(3)(b)(ii), (iii), and (iv). Included with the CUP application, a complete baseline description of existing conditions, including characteristics of the water, substrate, vegetation and aquatic species, shall be provided by the applicant. This analysis shall include a monitoring plan establishing how the proposal will not negatively impact existing ecological functions.
  - (o) All aquaculture proposals shall comply with the public access requirements found in Chapter 7 Section SMP section 7.040.
  - (p) The applicant shall coordinate with the Suquamish Tribe regarding treaty rights to ensure the proposal does not negatively impact the tribes Usual and Accustomed areas.

## 8.030 Commercial Development:

~~Commercial development on the shorelines should be designed to bring large numbers of citizens to the shoreline.~~

### ~~Policies:~~

- (d) ~~Commercial development should be designed and constructed in such a manner as to result in no net loss of ecological functions, including implementation of Low Impact Development techniques, to the maximum extent feasible.~~
- (e) ~~Public access should be provided in all locations, except where it is demonstrated to conflict with the intended use for reasons of safety, or security, or if it adversely impact the ecological function of the shoreline.~~

(f) ~~Non-water-oriented commercial uses within the shoreline jurisdiction should be allowed to locate and operate within existing structures.~~

## **Regulations:**

- (a) Priority of uses shall be in the following order: Water-dependent uses, water-related uses, water-enjoyment uses, and non-water related uses.
- (b) Water-dependent commercial development shall not interfere with or compromise the operation of existing adjacent water-oriented development or decrease opportunities for the general public to access adjacent shorelines.
- (c) Water-related uses shall not be approved if they displace existing water-dependent uses and must comply with the following:
  - (1) All water-related uses shall be reviewed to ensure that the use has a functional requirement for a waterfront location, or the use provides a necessary service supportive of the water-dependent uses, and/or the proximity of the use to its customers makes its services less expensive and/or more convenient.
  - (2) ~~Mixed use development within 100 feet of the OHWM that incorporates water-dependent use may not include non-water-oriented uses at the ground level within 100 feet of the OHWM.~~
  - (3)(2) Allowed water-related commercial uses shall be evaluated in terms of whether the use facilitates a community wide interest, including increasing public access and public recreational opportunities in the shoreline.
- (d) Water-enjoyment uses may not be approved if they displace existing water-dependent or water-related use. The applicant must demonstrate that the use will provide for the public's ability to enjoy the physical and aesthetic qualities of the shoreline as a primary characteristic of the proposal and must include the following:
  - (1) The water-enjoyment use must be open to the general public.
  - (2) The shoreline-oriented space within the project must be devoted to specifically foster shoreline enjoyment for a substantial number of people.
  - (3) Development within 100 feet of the OHWM that incorporates water-enjoyment use may not include non-water-oriented uses on the ground floor within 100' of the OHWM.
- (e) Non-water-oriented uses can be located in the shoreline jurisdiction when:
  - (1) The site is physically separated from the shoreline by another private property or a public right-of-way such that access for water-oriented use is precluded. Such conditions must be lawfully established prior to the effective date of this Program.
  - (2) A site where navigability is severely limited.
  - (3) The developable portion of the site is physically separated from the shoreline in such a way access is infeasible, or
  - (4) The use is part of a mixed-use project that includes water-dependent uses; and
  - (5) In cases (2), (3 or (4) directly above, when the use provides significant public benefit with respect to the objectives of the Act by:

- (i) Restoring the ecological functions both in aquatic and upland environments that provide native vegetation buffers as specified in SMP section 20.16.6107.010 and in accordance with the Restoration Element of this plan.
- (ii) The balance of the water frontage not devoted to ecological restoration and associated buffers shall be provided as public access where feasible.
- (f) All development shall provide opportunities for the public to access the shoreline adjacent to the subject use. Where public access has already been provided as part of a prior project or action, the said use shall be designed and constructed to be oriented towards the shoreline. ('Oriented towards the shoreline' means that the active space for customers and passersby is facing or directed towards the shoreline. Active space does not include service entries or load / unload areas.) Where physical access is unfeasible, visual access is required.
- (g) Parking shall be upland of the associated use whenever possible, and located, designed and screened so as to have minimum visual impact.
- (h) When parking or circulation elements must be located adjacent to the shoreline, they shall be designed to enable pedestrian access to and along the shoreline.
- (i) All development shall implement a range of Low Impact Development techniques as feasible to minimize the impacts on riparian, near-shore and upland areas.

## 8.040 Forest Practices:

~~Forest practices within the City along shorelines would occur as a conversion of forested areas to a certain level of urban development (Class IV—General per the Forest Practices Act, RCW 76.09).~~

**Policy:** ~~Forested areas within shorelines should be preserved and protected where feasible.~~

### **Regulations:**

- (a) A forest practice that only involves timber harvesting is not a development under the Act and does not require a substantial development permit or a shoreline exemption. A forest practice that includes activities other than timber cutting may be a development under the Act and may require a substantial development permit, as required by WAC 222-50-020.
- (b) Conversion of forested areas to urban development shall implement the mitigation sequencing as specified in Chapter 7, SMP section 7.030040.
- (c) Forest practices for the sole purpose of timber harvesting shall not be allowed in the shoreline jurisdiction, except within the City Watershed and City Utility Lands.
- (d) Any forest practice activity on shorelines of statewide significance shall comply with RCW 90.58.150.

## 8.050 Industrial Development:

~~Water-dependent industrial uses are preferred and encouraged within shoreline areas.~~

## **Policies:**

- (g) Where necessary depth for industrial uses is adjacent, water-dependent industrial development should be given priority over water-related industrial uses provided, however, that in both instances, they do not conflict with planned or existing public access and habitat restoration.
- (h) Redevelopment of water-dependent industrial facilities and areas should be encouraged, provided it will not create a net loss of shoreline ecological function and processes.
- (i) New water-dependent industrial development should incorporate physical and/or visual public access to the water except when such access causes significant interference with operations or hazards to life or property.
- (j) On upland industrial sites, environmental cleanup and/or remediation should be implemented to serve a variety of future land uses.
- (k) Water-dependent and water-related industrial redevelopment is encouraged.
- (l) Priorities of uses are to be in the following order: Water-dependent uses, water-related uses, and water-enjoyment uses.

## **Regulations:**

- (a) Water-dependent and water-related industrial development shall not degrade the ecological function of the shorelines or disrupt existing or proposed public access amenities.
- (b) Water-dependent development shall not interfere with or compromise the operation of existing adjacent water-oriented development or decrease opportunities for the general public to access adjacent shorelines.
- (c) Industrial uses proposed over the water shall be limited to water-dependent uses, limited to the smallest feasible dimensions and shall require a Conditional Use Permit.
- (d) Non-water-oriented uses may be located in the shoreline jurisdiction when:
  - (1) The site is physically separated from the shoreline by another private property or a public right-of-way such that access for water-oriented use is precluded. Such conditions must be lawfully established prior to the effective date of this Program.
  - (2) A site where navigability is severely limited.
  - (3) The developable portion of the site is physically separated from the shoreline in such a way access is infeasible or
  - (4) The use is part of a mixed-use project that includes water-dependent uses; and
  - (5) In all cases (2), (3) and (4) directly above, when the use provides significant public benefit with respect to the objectives of the Act by:
    - (i) Restoring the ecological functions both in aquatic and upland environments that provide native vegetation buffers as specified in section 20.16.610SMP section 7.010 and in accordance with the Restoration Element of this plan.
    - (ii) The balance of the water frontage not devoted to ecological restoration and

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associated buffers shall be provided as public access where feasible.

- (e) Water-dependent and water-related industrial uses shall provide public access to the shoreline per the standards in Chapter 7, Section 060-SMP section 7.040 provided said access does not compromise the integrity or operation of the use, does not threaten the safety and welfare of the general public, does not interfere with an existing adjacent use and does not compromise existing ecological functions.
  - (1) If a property is a designated EPA Superfund site, it may be considered exempt from public access requirements.
- (f) Any type of industrial development on shorelines shall implement a range of Low Impact Development techniques to minimize the impacts on riparian and near-shore environments and upland areas.
- (g) Areas between industrial development and adjacent land uses and public access areas shall be located and landscaped so as to provide a transitional area as required for visual landscaped screening in BMC 20.50.050.
- (h) Ports with water-dependent and/or water-related uses shall also comply with the sections in this Master Program including, but not limited to: Transportation Facilities; Utilities; Water Access and Moorage Facilities.
- (i) Only water-dependent features shall be located on the shoreline within the buffer. All other features associated to an industrial use including, but not limited to waste treatment facilities, utilities, and transportation facilities not associated with water dependent elements of industrial shall be located as far away from the water's edge and recreational beaches as practical and must meet setbacks and buffers.
- (j) Outdoor storage is prohibited within shoreline jurisdiction, except by approval of a Shoreline Conditional Use permit. The applicant must demonstrate that the exterior storage is essential to the use and will not significantly impact shoreline views.
- (k) All proposed uses shall demonstrate that no spill or discharge to surface waters will result. The application must include a specific program to contain and clean up spills or discharges of pollutants associated with the activity.
- (l) Offshore log storage shall be allowed only to serve a processing use and shall be located where:
  - (1) Water depth is sufficient without dredging; and
  - (2) Water circulation is adequate to disperse polluting wastes; and
  - (3) Log storage will not provide habitat for salmonid predators.
- (m) If a property is designated an EPA Superfund Site, shoreline armoring may be utilized as a means to prevent chemicals from leaching into the waterbody.
  - (3)

## 8.060 Marinas and Boating Facilities:

~~Marinas and boating facilities are water dependent uses and are a preferred use on shorelines. Bremerton has a variety of such facilities that are both privately owned commercial and industrial facilities and those that are available to the general public. Boating facilities can include uses such as marinas, shipping and ferry terminals, transient mooring facilities, boat ramps, upland dry stack storage, boat construction, and boat~~

maintenance facilities.

## Policies:

- (f) New or expanded boating facilities should include restoration of ecological functions within the riparian and near shore environment, especially for migrating salmonids and other aquatic species.
- (g) New or expanded boating facilities should be designed, constructed and managed such that there is no net loss of shoreline ecological function.
- (h) New or expanded boating facilities should provide the maximum amount of public access in a variety of forms. (Trail, view overlooks, transient and hand carry craft moorage.)
- (i) New boating facilities should be located in areas where other water-oriented uses presently exist or could be established within close proximity.
- (j) New or expanded boating facilities should minimize the amount of associated parking and impervious surface within the shoreline jurisdiction.
- (k) New boating facilities should not include covered moorage and boathouses.
- (l) New boating facilities that require dredging for proper depth and/or removal of contaminated sediments should be consistent with all federal and state requirements for management of contaminated sediments and
- (m) Existing boating facilities, when retrofitted or as upgrades are necessary, should improve the existing ecological function by minimizing impacts to water quality, restoring hydrologic function and maintaining the viability of aquatic organisms.

## Regulations:

- (a) Boating facilities shall be designed to provide opportunities for aquatic ecological functions to establish and succeed. In order to do so, boating facilities shall be designed and located in areas that are previously disturbed or where impacts to existing ecological function can be avoided or minimized.
- (b) Boating facilities should be managed consistent with the Department of Ecology document titled "Resource Manual for Pollution Prevention in Marinas," May 1998, Revised August 2009, Publication #9811.
- (c) Dry upland boat storage is preferred rather than over-water facilities in order to protect shoreline ecological functions, efficiently use shoreline space, and minimize consumption of public water surface areas unless:
  - (1) No suitable upland locations exist for such facilities, or
  - (2) It is demonstrated that wet moorage would result in fewer impacts to ecological functions, or
  - (3) It is demonstrated that wet moorage would enhance public use of the shoreline.
- (d) New or expanded marinas shall be permitted only when the applicant has demonstrated that a specific need exists and there is not adequate supply in current facilities, permitted facilities, or facilities planned by public agencies, including Port Districts. Consideration of facilities shall include boat launching facilities and upland boat storage for smaller boats.
- (e) Marinas shall be permitted only on sites where it is demonstrated that:

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- (1) That they will not result in a net loss of ecological functions and specifically will not interfere with natural geomorphic processes including delta formation, water quality; water circulation and flushing or adversely affect native and anadromous fish.
- (2) Shoreline armoring is not required.
- (3) Future dredging is not required to accommodate navigability.
- (4) Shallow water embayments with poor flushing action or areas with extensive tidelands should not be considered.
- (f) Breakwaters constructed for protection of boating facilities shall be designed to allow public access along the top, where feasible. Pile or floating breakwater designs shall be used unless the proponent demonstrates that there are specific safety considerations that warrant alternative approaches. A Conditional Use Permit shall be required for any boating facility that utilizes any construction other than piles or floating breakwaters.
- (g) Accessory uses at boating facilities shall be limited to those which are water-dependent, necessary for operation, or which provide physical or visual shoreline access to substantial numbers of the general public. Accessory uses shall be consistent in scale and intensity with surrounding boating uses.
- (h) New covered moorage is prohibited. Removal of existing covered moorage may be required as a condition of expansion or reconstruction of existing boating facilities.
- (i) Extended moorage is restricted on waters of the State except as allowed by applicable State regulations and unless a lease or permission is obtained from the State.
- (j) Boating facilities shall be permitted only when it is demonstrated that:
  - (1) A specific need exists and there is not adequate supply in current facilities, permitted facilities, or facilities planned by public agencies, including Port Districts.
  - (2) They will not result in a net loss of ecological functions and specifically will not interfere with natural geomorphic processes including processes including erosion, transport, and deposition of materials, water quality and adverse impacts on aquatic species. Areas with extensive tidelands should not be considered
  - (3) They are served by adequate access over a public road that will not adversely impact residential uses; shall provide adequate on-site parking, including trailer parking, to assure that parking spillover does not occur on adjacent streets and uses; and shall be served by adequate utilities and public facilities, including restrooms.
  - (4) Over water facilities, such as docks, shall be limited to the size and configuration needed to serve the boat launch function.
- (k) **Application Materials:** The following must be adequately addressed with the permit application submittal for a boating facility:
  - (1) Provide adequate onsite parking as provided in BMC 20.48 and [Chapter 6, Section 080, SMP section 7.080.](#)
  - (2) Provide adequate Utilities,
  - (3) Address existing adjacent water-oriented uses, ensure new structures will not

- impact such uses.
- (4) Provide documentation showing that the use will not impair block or introduce a hazard to existing or potential public access along beaches.
  - (5) Ensure the use will not unreasonably impair shoreline views from upland residences and adjacent uses.
  - (6) Include multiple uses such as dock fishing, boat lunching, and wet dry boat storage, and hand carry craft storage, as applicable for the boating facilities size and scope.
  - (7) For marinas over forty (40) slips pump-out, holding, and waste treatment facilities and services shall be provided.
  - (8) Provide public access as outlined in Chapter 6, Section 040SMP section 7.040. A public access plan is required and must address both visual and physical access and may be required to provide the following:
    - (i) All marinas using public aquatic lands shall provide public access over at least twenty (20) percent of structures over aquatic lands, not including individual slips.
    - (ii) Public restroom facilities shall be provided on marinas with more than 40 slips.
  - (9) Address operational procedures for fuel handling and storage in order to minimize accidental spillage and to provide satisfactory means for handling spills that may occur.

## **8.070 Recreational Development:**

~~Water-oriented recreational development can include but is not limited to parks, trails, open spaces, beaches, boat or other watercraft rentals, fishing piers, aquariums, view platforms and over-water boardwalks.~~

### **Policies:**

- (g) ~~Water-oriented recreational development is encouraged on shorelines provided it results in no net loss of ecological function and is a preferred use along shorelines of statewide significance.~~
- (h) ~~Water-oriented recreational development on the shorelines should be consistent with the Comprehensive Plan and the City of Bremerton Park, Recreation and Open Space Plan in terms of satisfying future demand and design.~~
- (i) ~~Water-oriented recreational development should take precedence over non-water-oriented recreational uses.~~

- (f) Wherever possible, shoreline recreational facilities should be linked to other adjacent recreational attractions by pedestrian and/or bicycle trails.
- (g) Recreational development, where applicable, should include interpretive displays describing cultural, historical and scientific information.
- (h) Non-water oriented recreational development uses should not be located on shorelines.

## **Regulations:**

- (a) Water-oriented recreation facilities shall be located and designed such that there is no net loss of shoreline ecological function.
- (b) Recreation activities are allowed when they do not displace water-dependent uses and are consistent with existing water-related and water-enjoyment uses. State-owned shorelines shall be recognized as particularly adapted to providing wilderness beaches, ecological study areas, and other recreational uses for the public in accordance with RCW 90.58.100(4).
- (c) Development of water-oriented recreation facilities shall comply with the mitigation sequencing specified in [Chapter 7, Section SMP section 7.030](#).
- (d) Development of recreation facilities shall implement, where applicable, the elements within the City of Bremerton Park, Recreation and Open Space Plan.
- (e) Recreational development shall be oriented towards the shoreline and shall provide the maximum possible amount of public access to the shoreline as follows:
  - (1) Water-dependent recreation such as fishing, swimming, boating, and wading should be located on the shoreline.
  - (2) Water-related recreation as picnicking, hiking, and walking should be located near the shoreline.
  - (3) Non-water-related recreation facilities shall be located inland. Recreational facilities with large grass areas, such as golf courses and playing fields, and facilities with extensive impervious surfaces shall observe critical area buffers and vegetation conservation standards providing for native vegetation buffer areas along the shoreline.
- (f) New over-water structures for recreation use shall be allowed only when:
  - (1) They allow opportunities for substantial numbers of people to enjoy the shorelines of the state.
  - (2) They are not located in or adjacent to areas of exceptional ecological sensitivity, especially aquatic and wildlife habitat areas.
  - (3) They are integrated with other public access features, particularly when they provide limited opportunities to approach the water's edge in areas where public access is set back to protect sensitive ecological features at the water's edge.
  - (4) No net loss of ecological functions will be achieved.
  - (5) The specific location and design is approved as a Shoreline Conditional Use.
- (g) Location and design of recreation facilities shall meet the following criteria:
  - (1) The development shall provide parking and other necessary facilities to handle the designed public use.

- (2) Accessory facilities, such as restrooms, recreational halls and gymnasiums, commercial services, access roads and parking areas, shall be set back from the OHWM and shall meet ~~Critical Area~~ buffers unless it can be shown that such facilities are shoreline dependent. These areas may be linked to the shoreline by pedestrian walkways.
- (3) The development shall be located and designed to minimize detrimental impact on existing and planned use of nearby property.
- (4) The proposal will not create a net loss of ecological functions.
- (h) Street-end parks, where developed to serve community needs, shall be limited to walking on the beach, carry craft boat launching, waterfront viewing, swimming, or fishing, and shall be designed so as not to interfere with privacy of adjacent residential uses.
- (i) Private recreation uses and facilities that exclude the public from public aquatic lands are permitted only when the following additional criteria are met:
  - (1) Reasonable public access shall be provided to the shoreline at no fee for sites providing recreational uses that are fee supported, including access along the water's edge where appropriate. In the case of facilities on public aquatic lands, no-fee access shall be provided to the public in common with any private use.
  - (2) The development is located and designed to have no substantial detrimental impact on existing and planned use of nearby property.
- (j) Motorized vehicular access including the use of all-terrain and off-road vehicles in the shoreline area is prohibited, EXCEPT for boat launching and maintenance activities and EXCEPT where specific areas for such use are set aside and controlled, and then only when it can be demonstrated that demand is sufficient to warrant such activity. Provided that the exceptions above shall not apply to beaches, bars, spits, and streambeds.
- (k) Signs indicating the public's right of access to shoreline areas shall be installed and maintained in conspicuous locations at the point of access and the entrance.

## **8.080 Residential Development:**

~~Residential development includes subdivisions of large parcels, multi-family housing, condominiums, and single family residences. Under the Shoreline Management Act, owner occupied single family residences are a preferred use on the shorelines. Residential uses, however, can cause significant damage to the shoreline area through cumulative impacts resulting from vegetation loss, shoreline armoring, increased amount of impervious surfaces and resulting stormwater runoff, septic system failure, and additional vehicular trips.~~

### **Policies:**

- ~~(g) Development of residential units should result in no net loss of ecological function.~~

- (h) Any residential development along the shoreline should be set back from steep slopes and eroding shoreline areas so that the shoreline is not further eroded nor structural improvements required to protect property.
- (i) In cases where either large tracts are subdivided into single family residential parcels or where contiguous individual building sites are developed for single family residences, common public access areas and one joint-use dock, rather than single family docks, should be developed for the use of residents of the subject subdivision.
- (j) Design of residential development should include preservation of existing native vegetation to the greatest extent possible.
- (k) Residential development should be designed to minimize the amount of impervious area and should utilize Low Impact Development techniques to the greatest extent practicable (e.g., permeable pavers, stormwater infiltration and filtration).
- (l) New multi-unit residential development and the subdivision of land into more than five parcels should incorporate into the overall design planned public access amenities whenever feasible.

## **Regulations:**

- (a) **Single Family Use Priority:** Single family residential development is a priority use on the shoreline when developed in a manner consistent with control of pollution and prevention of damage to the natural environment
- (b) **Multi-Family Use Priority:** Multi-family residential use is not a priority for location on the shoreline under the Shoreline Management Act and is subject to the preference for water-dependent and water-oriented use and must provide for meeting the requirements for ecological productivity and public access.
- (c) **Water-Dependent Use Priority:** Multi-family development may not be approved if it displaces existing water-dependent uses. Multi-family development is preferred as part of mixed used development including water-dependent, water-related and water-enjoyment use. Multi-family development uses may be permitted only where it provides significant public benefit with respect to the objectives of the Act by:
  - (1) Restoration of ecological functions, both in aquatic and upland environments, shall provide native vegetation buffers according to the standards provided for critical areas or in accordance with the Restoration Element of this document.
  - (2) Provision of public access in accordance with [Chapter 7, Section 040-SMP section 7.040](#)- Public Access.
- (d) **Over-Water Homes:** Over-water residences and floating homes are prohibited. Existing floating on-water residences legally established and moored within a marina within the City of Bremerton prior to July 1, 2014 are considered a conforming use and should be accommodated through reasonable permit conditions, or mitigation that will not effectively preclude maintenance, repair, replacement, and remodeling of existing floating on-water residences and their moorages by rendering these actions impracticable.
- (e) **Shore Stabilization:** New residential development shall not require shoreline stabilization. Prior to approval, a qualified professional must provide a site analysis establishing that shoreline stabilization is unlikely to be necessary for each new lot to

support intended development during the life of the development.

- (f) **Fills:** New residential development shall meet all critical area provisions of this program. Filling of, or into, water bodies or their associated wetlands for the purpose of subdivision or multi-family construction shall not be permitted.
- (g) **Public Access:** Residential developments, including subdivisions, and planned unit developments, of five (5) or more lots/units shall provide "improved public access" for all residents of the development and the general public, in compliance with public access standards contained in Chapter 7, Section SMP section 7.040 - Public Access.
- (h) **Private Docks:** All new subdivisions shall record a prohibition on new private individual docks on the face of the plat in accordance with Chapter 9, Section SMP section 9.030 - Docks, Piers, and In-Water Structures. An area reserved for shared moorage may be designated if it meets all requirements of this Program.
- (i) **Low Impact Development:** Residential development shall be designed to minimize the amount of impervious area and shall utilize Low Impact Development techniques to the greatest extent feasible (e.g., permeable pavers, stormwater infiltration and filtration).
- (j) **Residential Subdivision:** All subdivisions that create a new lot on the shoreline shall comply with applicable standard shoreline buffer and setbacks. In all cases, all new lots on the shoreline shall fully populate the standard buffer area with native vegetation, however, planting may be accomplished after final plat at the time the lot is developed; in these instances conditions shall be placed on the face of the recorded final subdivision document specifying conditions of approval.

~~(k) Application Requirements:~~ Applications for development of subdivisions and multi-family developments shall include the following information (at minimum) in addition to other submittal requirements:

- (1) Details (graphic and textual) of any proposed alteration in the natural character of the shoreline;
- (2) Provisions for lot owner or occupant access to the water body;
- (3) Provisions for public access to the water body.

## 8.090 Roads, Railways, and Utilities:

~~Roads, railways and utilities are necessary to provide efficient public circulation and the shipment of goods and services. These transportation circuits can include but are not limited to roads, highways and interstates, rail lines and spurs, public service water and sewer mains, power generation, transmission and distribution facilities, and wireless-communication facilities.~~

### Policies:

- ~~(i) All new roadways, arterials, utilities and railways, including expansions of these systems, should be located and designed to avoid shorelands, unless no feasible alternative is feasible, and should minimize impacts to shoreline ecological functions.~~
- ~~(j) Location and design of new roadways including arterials should not compromise existing and planned shoreline public access or existing and planned habitat.~~

~~restoration and enhancement.~~

- (k) ~~New roadways, when necessary within shorelines, should be located and designed in such a manner that the minimum width and length of travel way for vehicles is provided and appropriate provision made for pedestrian and multi-modal forms of transportation.~~
- (l) ~~New roadways should be designed and constructed to implement a range of available Low Impact Development techniques.~~
- (m) ~~New utilities for the delivery of services and products such as, but not limited to public sewer, water and storm mains and services, pipelines, power and transmission facilities should be located outside of shorelines, critical areas and their associated buffers unless intended specifically for a permitted use.~~
- (n) ~~Whenever feasible, utilities should be co-located within existing right of way corridors.~~
- (o) ~~Installation of utilities, including maintenance and expansion of existing utilities, should improve the project area from its original condition by native vegetation installation and management.~~
- (p) ~~Utilities should provide public access to the shoreline when practical.~~

## **Regulations:**

- (a) **Ecological Function:** New roadways, utilities and railways shall mitigate their impacts such that the result is a no net loss of shoreline ecological function.
- (b) **Location Priority:** New or substantially expanded roads, railroads and bridges may be located within shoreline jurisdiction only if:
  - (1) The facility is needed within the shoreline jurisdiction to support permitted shoreline activities.
  - (2) No feasible upland alternative exists based on analysis of system options that assess the potential for alternative routes outside shoreline jurisdiction or set back further from the land/water interface.
- (c) **Transportation Facilities:** Transportation facilities shall be located and designed to avoid significant natural, historic, archaeological or cultural sites to the maximum extent feasible, and mitigate unavoidable impacts to result in no net loss of ecological processes and functions.
- (d) **Design Criteria:** Where permitted, transportation facilities shall meet the following design criteria:
  - (1) Roads, railroads, and bridges shall cross the shoreline area by the shortest most direct route, unless such route would cause substantial environmental damage.
  - (2) The project shall be located and designed to fit the existing topography as much as possible, thus minimizing alterations to the natural environment.
  - (3) Facilities located within critical areas, particularly in wetlands areas, should be designed to avoid the resource and may be permitted only if in compliance with standards for those areas.

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- (4) Construction of facilities shall be designed to protect the shoreline against erosion, uncontrolled or polluting drainage and other factors detrimental to the environment, both during and after construction.
  - (5) All debris, cut and fill material, overburden, and other waste materials from construction shall be disposed of in such a way as to prevent their entry by erosion from drainage into any water body.
  - (6) Facilities shall provide for passage of high flows, flood waters, debris, fish passage, and wildlife movement by providing bridges with the longest span feasible and the greatest height feasible. When bridges are not feasible, culverts or other features shall be utilized that are large enough to provide for these functions.
  - (7) The project shall provide the minimum width and length of travel-way for vehicles and provide facilities for safe pedestrian and other non-motorized travel along all public integrated with trail and bicycle systems along shorelines to the maximum extent feasible. When public roads will afford scenic vistas, viewpoint areas shall be provided.
  - (8) New roadways should be designed and constructed to implement Low Impact Development techniques.
  - (9) Landscape planting is required along all shoreline roads, parking, and turnout facilities to:
    - (i) Provide buffers between pedestrian and auto users;
    - (ii) Enhance the shoreline driving experience; and
    - (iii) Enhance and complement potential views of shoreline areas.
- (10) Height restrictions do not apply to public bridges. Compliance with all other code provisions shall apply.
- (e) **Unused ROW:** ~~In order to improve public access to the shoreline~~ ~~T~~he City should ~~aquire and/or~~ retain abandoned or unused road or railroad rights-of-way for public access to and/or along the water to improve public shoreline access.
  - (f) **Road Ends:** Road ends abutting water bodies shall be reviewed for potential use and development for public access to the water, and be incorporated into the City's Comprehensive Public Access Plan as appropriate.
  - (g) **Vacations:** The City shall not vacate any public right-of-way in a shoreline location until adopting a Comprehensive Public Access plan for the area showing that the subject right-of-way cannot be used as a contributing element in that plan. The City shall vacate public right-of-way abutting a body of salt or fresh water only in compliance with RCW 35.79.035 which allows vacations of streets abutting bodies of water pursuant to state law criteria, or as amended, only when:
    - (1) The vacation will enable aquisition of the property for public purposes;
    - (2) The street or alley is not suitable for certain purposes (e.g. port, park, education); or
    - (3) The vacation will enable implementation of a public access plan.

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- (h) **Utility Location Criteria:** New or substantially expanded utilities may be located within shoreline jurisdiction only if:
  - (1) The facility is needed within the shoreline jurisdiction to support permitted shoreline activities;
  - (2) No feasible upland alternative exists based on analysis of system options that assess the potential for alternative routes outside shoreline jurisdiction or is set back further from the land/water interface; and
  - (3) Facilities will not degrade or obstruct scenic views.
- (i) **Utilities:** Utilities shall be located and designed to avoid significant natural, historic, archaeological or cultural sites to the maximum extent feasible, and mitigate unavoidable impacts to result in no net loss of ecological processes and functions.
- (j) **Utility Design Criteria:** Utilities, where permitted, shall meet the following design criteria:
  - (1) Facilities should occupy as little of the shoreline as feasible. Utility installation parallel to the shoreline should be avoided to the maximum extent feasible. Utilities shall cross the shoreline area by the shortest most direct route, unless such route would cause substantial environmental damage.
  - (2) Utilities shall be located and designed to fit the existing topography as much as possible, thus minimizing alterations to the natural environment.
  - (3) Facilities shall be located and designed to minimize obstruction of scenic views.
  - (4) Utility crossings of water bodies shall be attached to bridges or located in other existing facilities, if feasible. If new installations are required to cross water bodies or wetlands, they should avoid disturbing banks and streambeds and shall be designed to avoid the need for shoreline stabilization. Crossings shall be tunneled or bored where feasible. Installations shall be deep enough to avoid failures or need for protection due to exposure due to stream bed mobilization, aggregation or lateral migration. Underwater utilities shall be placed in a sleeve if feasible to avoid the need for excavation in the event of the need for maintenance or replacement.
- (k) **Architectural Compatibility:** Facilities involving buildings, such as pump stations, electrical substation, or other facilities, shall be architecturally compatible and landscaped to assure compatibility with natural features, public access facilities, and adjacent uses.
- (l) **Construction Practices:** Construction shall be designed to protect the shoreline against erosion, uncontrolled or polluting drainage and other factors detrimental to the environment, both during and after construction.
- (m) **Easements:** Access easements to utility installations shall be no wider than needed to construct, maintain, or repair the utility.
- (n) **Public Access:** Utility development shall provide for compatible, multiple use of sites and rights-of-way through coordination with local government agencies. Such uses include shoreline access points, trail systems, and other forms of recreation and transportation, providing that public access will not unduly interfere with utility operations, endangers public health and safety, or create a significant and

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- disproportionate liability for the owner.
- (o) **Landscape Restoration/Maintenance Projects:** Upon completion of installation of projects on shorelines, disturbed non-impervious areas shall be restored to pre-project configuration, replanted with native species, and provided maintenance care until the newly planted vegetation is established. A landscape restoration plan is required.
  - (p) **Storm Drainage/Sewer Outfalls:** Storm drainage and sewer outfalls are encouraged to locate shall be located beyond the extreme low tide line/mean low lower water. However, at the discretion of Director on a case-by-case basis storm facilities may locate above the extreme low tide line in order to mitigate maintenance and sediment infill for the City.
  - (q) **Applications:** All applications for installation of utility facilities shall include the following information prepared by a qualified professional:
    - (1) Reason why facility must be located in a shoreline area;
    - (2) Alternative locations considered, including the feasibility of location within existing utility right-of-way, and reasons for their rejection;
    - (3) Location of other facilities near the proposed project and if the location is to include other types of facilities;
    - (4) Proposed method of construction and plans to control erosion and turbidity during construction;
    - (5) Plans for reclamation of areas disturbed during construction;
    - (6) Any other information deemed necessary.

## Chapter 9 – Shoreline Modifications

- 9.010 – Intent
- 9.020 – Clearing and Grading
- 9.030 – Docks, Piers, and In-Water structures
- 9.040 – Dredging
- 9.050 – Flood Hazard Reduction
- 9.060 – Landfills
- 9.070 – Restoration and Conservation
- 9.080 – Shoreline Stabilization
- 9.090 – Stormwater Control Management Facilities

### **9.010 Intent:**

These policies and regulations relate to land use proposals that are typically accessory and in support of primary land uses. Shoreline modifications should ensure no net loss of ecological functions and should be as natural as feasible.

### **9.020 Clearing and Grading:**

~~Clearing and grading are permitted as an element of development or re-development for an authorized activity or as otherwise allowed in this Title.~~

#### **Policies:**

- (a) Disturbance to and removal of native soils should be minimized within shorelines.
- (b) Uses and site design should incorporate protection or reestablishment of the maximum amount of native vegetation on a particular site.
- (c) Vegetation that is removed as part of a permitted use should be reestablished within a required buffer.

#### **Regulations:**

- (a) Clearing, grading, and shoreline native vegetation protection and removal shall comply with the standards in the general policies standards section (Chapter 7).
- (b) Disturbance to soils shall adhere to the following standards:
  - (1) Land clearing, filling, and grading activities that are associated with a permitted use below the OHWM that shall be allowed only between May 1 and October 1 unless the City or Department of Fish and Wildlife extends or shortens the allowable work time window per on a case by case basis based on actual weather conditions as applied in BMC 20.14.700, which requires shoreline erosion control measures and a qualified professionals according to an approved report prepared by a qualified professional.
  - (2) Filling or grading including excavation within or modification to a critical area is permitted only as part of an approved activity subject to the applicable requirements within this Title.
  - (3) The soil duff layer (the matted, partly decomposed organic surface layer of forest

- soils) shall remain undisturbed to the maximum extent possible. Where feasible any soil disturbed shall be redistributed to other areas of the project site.
- (4) The moisture holding capacity of the topsoil layer shall be maintained by minimizing soil compaction or reestablishing natural soil structure and infiltration capacity on all areas of the project area not covered by impervious surfaces.
- (5) Erosion control shall comply with the requirements in BMC 15.04.

## **9.030 Docks, Piers, and Other In-Water Structures:**

~~In-water (marine and freshwater) structures include but are not limited to jetties, pilings, fish ladders, mooring buoys, docks, piers, breakwaters, groins, marine railways, weirs, baffles, and similar structures.~~

### **Policies:**

- (e) ~~In-water structures should be designed to minimize impacts to ecological functions of the water body including, but not limited to water quality, anadromous and forage fish habitat, spawning and rearing areas, migration, and passage.~~
- (f) ~~In-water structures should not adversely affect hydrologic function including light penetration within the photic zone, sediment transport, and current and water circulation patterns.~~
- (g) ~~The location and planning of in-water structures should give due consideration to the full range of public interests and environmental concerns.~~
- (h) ~~Analysis of cumulative impacts of in-water structures should be conducted such that the connectivity between habitats for migrating salmonids is maintained and restored where feasible.~~

### **Regulations:**

#### **(a) Ecological Function:**

- (1) New in-water structures shall be designed and constructed such that the result is no net loss of shoreline ecological function. New in-water structures shall not adversely affect hydrologic function, ability for light to penetrate within the photic zone, sediment transport and water-circulation patterns.
- (2) Piers and docks, including those accessory to single-family residences, shall be designed and constructed to avoid, or if that is not possible, to minimize and mitigate the impacts to ecological functions, critical areas resources such as eelgrass beds and fish habitats and processes such as currents and littoral drift.
- (3) Creosote, arsenic and pentachlorophenol treated materials used for in-water structures shall be prohibited.

#### **(b) Light Penetration:** All piers and docks and bridges must achieve light penetration by grating or other means unless it would pose a public safety or environmental risk, as follows:

- (1) Grating must be provided over at least (40%) forty percent of the pier or float area and must be provided over at least 60 percent of the structure(s) within 30 feet of the OHWM. Areas blocked by objects underneath, such as floatation devices shall not be counted toward the 40% forty percent total.

(2) Grating must have at least 60 percent open area. The grating must be oriented to maximize the amount of light passage. This can be accomplished by orienting the lengthwise direction of the grate openings in the east-west direction.

(3) To ensure that light transmission is not impeded, grating must not be covered or blocked (on the surface or underneath) with any objects, such as, but not limited to buildings, planters, storage sheds or boxes, nets, carpets, boards, tables, lawn furniture, traction devices or other items that will block sunlight.

(4) Light penetration standards do not apply to public bridges.

(c) **Navigation:**

(1) In-water structures shall not impair or obstruct existing navigation channels or the public's use of surface water or shoreline areas as required by the Coast Guard.

(2) Piers, docks and moorage shall be prohibited where navigation may be impaired significantly at entrances to bays, channels, or coves. Piers and docks are prohibited in the channel between Ostrich Bay and Oyster Bay, as depicted in [Chapter 4, Section SMP section 4.420-020](#) map M. In addition, to protect sensitive aquatic environment, docks and piers are prohibited within the Aquatic Conservancy designation (mooring buoys are not prohibited).

(3) Piers and docks shall project the minimum distance necessary to service the appurtenant vessels and shall not create a hazard to navigation. When State harbor lines have been designated, piers and docks shall be located shoreward of the outer harbor line.

(d) **Use Priority:** New in water structures shall be allowed only for water-dependent uses, and public access. Water-related and water-enjoyment uses may be allowed as part of mixed-use development on over-water structures where they are clearly auxiliary to and in support of water-dependent uses, provided the minimum size requirement needed to meet the water-dependent use is not violated.

(e) **Joint Use:** Joint-use facilities are preferred over new single use piers, docks and floats. Easements ensuring adequate access for all users of the joint-use facility shall be required and recorded with the Kitsap County Auditor. In order to develop new moorage, an applicant must demonstrate that existing facilities (public and private marinas or shared moorage) are not reasonably available to meet demand. In cases where new moorage is approved, multiple use and/or expansion of existing piers, wharfs and docks may be required (in lieu of the proliferation of new facilities) in order to minimize the consumption of limited shoreline resources and cumulative impacts on ecological resources.

(f) **Subdivisions:** New subdivisions with shoreline frontage shall provide community or shared docks if any docks are proposed. New subdivisions shall contain a restriction on the face of the plat prohibiting individual docks. A site for community or shared moorage shall be designated on the plat and owned in undivided interest by property owners within the subdivision. Shared moorage facilities shall be available to property owners in the subdivision for community access and may be required to provide public access depending on the scale of the facility. Approval shall be subject to the following criteria:

(1) The applicant shall demonstrate that there is no reasonably available public or

- private moorage that can serve the moorage needs of the subdivision.
- (2) Shared moorage to serve new development shall be limited to the amount of moorage needed to serve lots with water frontage. One moorage space per lot may not be presumed.
- (3) Development of more than one dock shall include documentation that a single dock would not accommodate the need or that adverse impacts on ecological functions would result from the size of dock required.
- (4) The size of a dock must consider the use of mooring buoys for some or all moorage needs and the use of all or part of the dock to allow tender access to mooring buoys.
- (5) Public access shall be provided in association with all shared docks utilizing public aquatic lands that accommodate five (5) or more vessels.
- (6) If a community or shared dock is not developed at the time of subdivision, a community association shall be established with the authority to levy assessments within the subdivision to construct and maintain a community dock in the future. The failure of a subdivision to develop a community or shared dock shall not affect the prohibition on individual docks.
- (g) **Commercial & Industrial Docks:** Permits for docks or piers serving single commercial or industrial enterprises shall not be granted unless it is demonstrated that the facility serves a water-dependent use and adjacent commercial and/or industrial enterprises are not willing to cooperatively develop a joint-use facility.
- (1) Non-Residential Piers and Docks shall be the minimum size feasible to serve the proposed water-dependent use.
- (h) **Multi-Family & Commercial Moorage:** Multi-family residences, hotels, motels, and other commercial developments proposing to provide moorage facilities shall meet the criteria for a marina. Use of the moorage must be open to the general public on the same basis as residents or occupants and shall provide public access. If approved, no more than one joint-use moorage facility may be provided.
- (i) **Single Family Docks:** No more than one (1) private noncommercial single-use dock is permitted per platted shoreline lot or un-platted shoreline tract on a residentially designated area (this does not apply to subdivisions approved on or after the adoption date of this code; for such subdivisions see subsection f, above). The dock must be designed and intended as a facility for access to watercraft. An applicant shall demonstrate that:
- (1) A mooring buoy is not feasible to provide moorage. A mooring buoy may be approved in conjunction with an individual or shared tender dock to provide small boat access to the buoy.
- (2) There is no shared moorage available, and there is no homeowners association or other corporate entity capable of developing shared moorage.
- (j) **Single Family Dock Size Limitations:** Residential piers and/or docks shall be limited to the minimum necessary to meet the need for moorage and are limited to the following sizes:
- (1) **Length:** Maximum length of a residential pier or dock shall be the minimum necessary to accomplish moorage for the intended boating uses, and shall be only so long as to obtain a depth of ten (10) feet of water as measured at Mean Lower

Low Water Line (MLLW) in marine shorelines or as measured at Ordinary High Water (OHWM) in fresh water shorelines. Any dock proposed to be sixty (60) feet in length or greater must demonstrate that a mooring buoy in conjunction with a shorter tender dock to provide small boat access to the buoy is not feasible.

(2) **Width:**

- (i) The Landing area, particularly over shallower areas, should be built in the north-south direction, if at all possible to avoid shading effects that would occur with east-west orientation.
- (ii) The float shall have a maximum width of eight (8) feet. Single Use floats shall be no longer than thirty (30) feet. Joint Use floats shall be no longer than sixty (60) feet.
- (iii) Pier or walkway maximum width: Four (4) feet;

(k) **Community Piers and Docks Size Limitations:**

- (1) **Maximum Width and Length:** To be determined by the City on a case-by-case basis based on the minimum dimensions feasible.
- (2) **Density:** No more than one (1) forty foot (40') moorage space per dwelling unit or lot with direct shoreline frontage.

(l) Public Piers and Docks Size Limitations:

- (1) **Maximum Width and Length:** To be determined by the City on a case-by-case basis based on the minimum dimensions feasible.

(m) **Side Yard Setbacks:** Docks shall be set back a minimum of ten (10) feet from side property lines. Exception: Community piers and docks may be located adjacent to or upon a side property line when mutually agreed to by contract/covenant with the owners of the adjacent property, a copy of which must be recorded with the County Auditor and filed with the application for permit.

(n) **Floats & Buoys:** Recreation floats and mooring buoys shall be located no further seaward than existing floats and mooring buoys or no further seaward than necessary to achieve minimum feasible depths and shall be readily discernible under normal conditions to the unaided eye at a minimum distance of 100 yards. The size and design must comply with the following:

- (1) Floats must be built so that the deck surface is no more than two (2) feet above the water's surface and must have reflectors for nighttime visibility.
- (2) Single property owner recreational floats shall be no larger than sixty-four (64) square feet.
- (3) Joint-use floats shall be no larger than ninety-six (96) square feet.

(o) **Marine Rails:** Boat launching ramps and marine railways shall be designed as to not obstruct longshore drift. Residential launch ramps or marine railways are prohibited.

## 9.040 Dredging:

~~Dredging is the removal of material from a water body. The purposes for dredging might include navigation, remediation of contaminated materials, or material mining. Materials~~

~~generated from navigational and remedial dredging may be suitable for beneficial reuse (e.g., construction of habitat features or construction of uplands) or may require disposal at appropriate disposal facilities.~~

## **Policies:**

- (e) ~~Dredging should be allowed only to accommodate existing navigational uses, remediation of contaminated materials, or approved water dependent uses and then only when ecological impacts are minimized and mitigation is provided.~~
- (f) ~~Deposition of dredge spoils waterward of the Ordinary High Water Mark should be allowed only when necessary to support allowed water dependent use, public access, beach restoration or Model Toxics Control act or the Comprehensive Environmental Response Compensation and Liability Act and other water dependent uses that are consistent with this master program or consistent with locations approved by the State Departments of Natural Resources, and the Department of Fish and Wildlife where the alternatives of depositing materials on land is more detrimental to shoreline resources than depositing it in water areas.~~
- (g) ~~Dredging within aquatic areas for the primary purpose of acquisition of fill material should not be allowed.~~
- (h) ~~Where dredging occurs within marine waters the result should be suitable for establishment of a variety of aquatic organisms including, where appropriate, salmonids and forage fish.~~

## **Regulations:**

- (a) Dredging and dredge material disposal shall be done in a manner which avoids or minimizes significant ecological impacts. When impacts cannot be avoided they should be mitigated in a manner that assures no net loss of shoreline ecological functions.
- (b) New development shall be sited and designed to avoid or, if that is not possible, to minimize the need for new and maintenance dredging.
- (c) Dredging for the purpose of establishing, expanding, relocating or reconfiguring navigation channels and basins shall be allowed where necessary for assuring safe and efficient accommodation of existing navigational uses, and then only when significant ecological impacts are minimized and mitigation is provided. Maintenance dredging of established navigation channels and basins shall be permitted only to the limits originally allowed.
- (d) Dredging waterward of the ordinary high-water mark for the primary purpose of obtaining fill material shall be prohibited, except when the material is necessary for the restoration of ecological functions. In this case the project must be either associated with a Model Toxics Control Act or a Comprehensive Environmental Response Compensation Liability Act remediation project, or a habitat restoration project approved through a Shoreline Conditional Use Permit.
- (e) Dredging spoils shall be deposited upland if feasible, and measures taken to prevent erosion of the deposited material. If the deposit area is on the shoreline, a vegetation inventory and restoration shall be required, consistent with the vegetation conservation and critical areas regulations of the Master

Program.

- (f) Spoil deposit sites in water areas shall be identified with the cooperation of the State Departments of Natural Resources, and the Department of Fish and Wildlife U.S. Army Corp of Engineers, and Suquamish Tribe. Depositing of dredge materials in water areas shall be allowed only for habitat improvement, to correct existing problems of material distribution adversely affecting fish and shellfish resources, or where the alternatives of depositing materials on land is more detrimental to shoreline resources than depositing it in water areas.
- (g) Disposal of dredge material on shorelands or wetlands within a river's channel migration zone shall be discouraged. In the limited instances where it is allowed, such disposal shall require a Shoreline Conditional Use Permit.
- (h) All applications for dredging shall provide the following information prepared by a qualified professional and any other information deemed necessary:
  - (1) An analysis of material to be dredged;
  - (2) Time of dredging;
  - (3) Method of dredging and disposal;
  - (4) Location and stability of bedlands adjacent to proposed dredging area;
  - (5) Ecological processes and functions affected by the proposed dredging;
  - (6) Location, size, capacity, physical and ecologic characteristics of spoils disposal area.

## 9.050 Flood Hazard Reduction:

### Policies:

- (f) ~~The City should recognize that seasonal flooding is an essential natural process and minimize alteration of such processes where feasible.~~
- (g) ~~Flood hazard reduction measures should not result in a net loss of ecological functions associated with the rivers and streams.~~
- (h) ~~Flood hazard reduction measures should be consistent with comprehensive strategies that recognize the natural hydro-geological and biological processes of water bodies and should seek to restore ecological functions within frequently flooded areas.~~
- (i) ~~Development in frequently flooded areas should be prevented or existing development removed when feasible and to maintain or restore a stream system's natural hydrological and geo-morphological processes.~~
- (j) ~~Bioengineered flood hazard reduction techniques are preferred and should be examined and implemented where feasible rather than structural measures.~~

### Regulations:

- (a) Flood control works shall be permitted only when it is demonstrated by engineering and scientific evaluation by qualified professionals that:
  - (1) They are necessary to protect health/safety and/or existing development;
  - (2) Non-structural flood hazard reduction measures are infeasible; and
  - (3) Measures are consistent with an adopted comprehensive flood hazard

management plan that evaluates cumulative impacts to the watershed or coastal reach.

- (b) New or expanding development or uses in the shoreline, including subdivision of land that would likely require new structural flood control works within a stream, channel migration zone, or floodway, should not be allowed.
- (c) New or expanded flood control works and in-stream structures should be planned and designed to be compatible with appropriate multiple uses of stream resources over the long term, especially in shorelines of statewide significance.
- (d) Flood control works should incorporate native vegetation to the extent feasible to enhance ecological functions, create a more natural appearance, improve ecological functions, and provide more flexibility for long term shoreline management.
- (e) To minimize flood damages and to maintain natural resources associated with streams, overflow corridors and other alternatives to traditional bank levees, revetments and/or dams should be considered. Setback levees and similar measures should be employed where they will result in lower flood peaks and velocities, and more effective conservation of ecological resources than with bank levees.
- (f) Non-structural and non-regulatory methods to protect, enhance, and restore shoreline ecological functions and other shoreline resources should be encouraged as an alternative to structural flood control works. Non-regulatory and non-structural methods may include public facility and resource planning, land or easement acquisition, education, voluntary protection and enhancement projects, or incentive programs. Removal of materials from the creek, stream, or river channel for flood management purposes may be allowed only as part of an adopted integrated flood control management program that demonstrates that other flood hazard reduction strategies would not be effective in the absence of gravel removal.
- (g) Flood management diking shall be located landward of the floodway base (100-year frequency) flood, and landward any wetlands associated or directly interrelated and interdependent with the water body.
- (h) Linear public access shall be provided whenever possible as outlined in the public access requirements in Chapter 7, section SMP section 7.040, unless it is demonstrated that public access would cause unavoidable public health and safety hazards, or security problems, or unmitigatable ecological impacts, or unavoidable conflicts with proposed uses, or unreasonable cost. Improved trail systems are preferred. At a minimum, flood control works should not decrease existing or potential public access to shorelines.

## 9.060 Landfills:

~~Landfill is the creation of dry upland area by the placement or deposition of sand, soil, gravel or contaminated sediments into a water body.~~

## **Policies:**

- (e) ~~Landfills waterward of OHWM should be allowed only when necessary to support, public access, beach restoration, or MTCA / CERCLA restoration projects and other water dependent uses that are consistent with this master program.~~
- (f) ~~Landfills should be limited in the shoreline and should be the minimum necessary.~~

## **Regulations:**

- (a) Landfills within shorelines shall be permitted only through a Conditional Use Permit and shall be allowed only when necessary to support:
  - (1) Water-dependent use, or;
  - (2) Public access, or;
  - (3) Cleanup and disposal of contaminated sediments as part of an interagency environmental clean-up plan, or;
  - (4) Disposal of dredged material considered suitable under, and conducted in accordance with the dredged material management program of the Department of Natural Resources, or;
  - (5) Expansion or alteration of transportation facilities of statewide significance currently located on the shoreline, and then only upon a demonstration that alternatives to fill are not feasible, or;
  - (6) Mitigation action, approved environmental restoration, beach nourishment, or an approved enhancement project.
- (b) (a) Shoreline fills or cuts shall be designed and located so that there will be no significant change to natural shoreline topography or damage to existing ecological systems or natural resources, and no alteration of local currents which would result in a hazard to adjacent life, property, or natural resources systems.
- (c) Landfills shall include restoration and/or enhancement of ecological functions within the shoreline consistent with the restoration objectives within the Restoration Plan and shall provide public access where feasible.
- (d) Applications which include landfills shall include the following information prepared by a qualified professional:
  - (1) Physical, chemical and biological character of landfill material;
  - (2) Proposed use of fill area;
  - (3) Source of landfill material;
  - (4) Method of placement and compaction;
  - (5) Type of proposed surfacing or vegetation cover;
  - (6) Method of perimeter erosion control; and
  - (7) Any other information deemed necessary.

## **9.070 Restoration and Conservation:**

~~Restoration is the improvement or reestablishment of impaired ecological shoreline~~

processes or functions. This may be accomplished through measures including, but not limited to: amending soils, planting native vegetation, removing derelict shoreline structures, removing or treating toxic materials, and restoring the natural configuration of banks within near shore or riparian areas. Restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions (WAC 173-26). The citywide objective of restoration is to achieve a net gain in ecological function within the watershed.

## Policies:

- (e) The primary objectives of restoration projects should be to protect and restore natural processes controlling environmental factors.
- (f) The Suquamish Tribe, Corps of Engineers, Washington Department of Ecology, the Washington Department of Fish and Wildlife and other appropriate resource agencies should be included at the beginning of the design and development stages of a restoration project or plan.
- (g) The goals of the Restoration Plan should be considered for all restoration and conservation projects.
- (h) Restoration and conservation may take place as a stand-alone project or as a required element of a larger development proposal. In either case the following should be achieved, as feasible:
  - (1) Non-native vegetative species should be controlled and native vegetation established (soil amendments, including mulching, may be required to support native vegetation);
  - (2) Installation of native vegetation should be an appropriate mix of deciduous, conifer, under-story and groundcover species that are capable of achieving substantial water body shading, provide food sources for a variety of species, enhance and connect to habitat corridors and slow movement of groundwater and sheet flow towards the water body;
  - (3) Introduction of large woody debris to the water body should not adversely impact fish passage or hydrologic function; and
  - (4) Design and implementation of restoration projects that alter the location of the OHWM should not negatively impact abutting or proximate (third party) property owners, compromise the integrity or threaten the loss of existing structures, transportation routes, public access areas or cause significant additional erosion.

## Regulations:

- (a) Restoration projects that are within critical areas, or their required buffers are permitted subject to the applicable requirements within this Title.
- (b) Restoration projects that achieve the objectives within the Restoration Plan shall have priority over other restoration projects.
- (c) Restoration projects that include structural modification or stabilization shall first consider preferred techniques as specified in Chapter 9, Section SMP section 9.080 Shoreline Stabilization.

- (d) Restoration projects shall be designed and implemented such that there are no adverse impacts on ecological resources or functions.
- (e) Restoration projects shall include a maintenance and monitoring plan and financial surety as outlined in Chapter 7, section SMP section 7.020030 (vegetation plan) that includes a guarantee and/or contingency plan when said project does not achieve its intended objective.
- (f) Restoration projects shall take into consideration existing and lawfully erected structures and developments such that their safety is not compromised.
- (g) Restoration projects shall not conflict with existing utilities, roadways and public access points unless those functions can be relocated such that the public benefit remains the same or is improved.

## **9.080 Shore Stabilization:**

~~Shoreline stabilization measures are those mechanisms used to prevent erosion and deterioration of shoreline areas as a result of waves, wind, tidal action, or flooding. Shoreline stabilization measures can include a wide range of works varying from hard armoring to vegetation conservation and anchoring of trees.~~

### **Policies:**

- (d) ~~New development should be managed and designed to eliminate the need for shoreline modification or stabilization.~~
- (e) ~~Replacement of rigid structurally engineered stabilization measures with the same new measures should not occur unless it is associated with a water-dependent use or there is a demonstrated need based on potential loss of a legally permitted primary structure or there is a threat to the viability of an existing water-dependent use.~~
- (f) ~~Whenever feasible, bioengineered and soft shore shoreline modifications and stabilization should be explored and implemented before reverting to structurally engineered techniques.~~

### **Regulations:**

- (a) **Hierarchy of Alternatives:** Alternatives for shoreline stabilization shall be based on the following hierarchy of preference:
  - (1) No action (allow the shoreline to retreat naturally), increase building setbacks, and relocate structures.
  - (2) Provide flexible stabilization constructed of natural materials incorporating measures such as soft shore protection and bioengineering, including beach nourishment, protective berms, or vegetative stabilization.
  - (3) Provide flexible stabilization, as described above, with rigid works, as described below, constructed as a protective measure.
  - (4) Construct rigid works constructed of artificial materials such as riprap or concrete.
- (b) **Stabilization Necessity:** New structural stabilization measures shall not be allowed for existing developments except when necessity is demonstrated in the following

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manner:

- (1) To protect existing primary structures: New or enlarged structural shoreline stabilization measures for an existing primary structure, including residences, shall not be allowed unless there is conclusive evidence, documented by a qualified professional, that the structure is in danger from shoreline erosion caused by currents, or waves. Normal sloughing, erosion of steep bluffs, or shoreline erosion itself, without a scientific and geotechnical analysis, is not demonstration of need. Site analysis, at a minimum, must include the following to demonstrate the need of a structural solution:
  - (i) On-site drainage issues. The report(s) must clearly evaluate and resolve existing drainage problems before considering structural shore stabilization.
  - (ii) The report(s) must clearly evaluate supplementary beach nourishment and/or soft-shore measures and such measures must be shown to be impractical or non-effective, as demonstrated through a geotechnical report.
  - (iii) The report(s) must clearly establish that the stabilization structure will not result in a net loss of shoreline ecological functions.
  - (iv) The report(s) must clearly establish the lack of structural integrity of the existing structure due to ongoing wave action.
- (2) To protect a new water-dependent development, or new single-family residences, when all of the conditions below apply and are documented by a qualified professional:
  - (i) The erosion is not being caused by upland conditions such as the loss of vegetation and drainage.
  - (ii) Nonstructural measures, such as placing the development further from the shoreline, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.
  - (iii) The need to protect primary structures from damage due to erosion is demonstrated through a geotechnical report. The damage must be caused by natural processes such as currents, and waves.
  - (iv) Supplementary beach nourishment must be shown to be impractical or non-effective, as demonstrated through a geotechnical report.
  - (v) To protect an existing non-water-dependent development, when all of the conditions below apply and are documented by a qualified professional: The erosion is not being caused by upland conditions such as the loss of vegetation and drainage;
  - (vi) Nonstructural measures, planting vegetation, or installing on-site drainage improvements, are not feasible;
  - (vii) Stabilization structures are needed to protect primary structures from damage due to erosion;
  - (viii) Supplementary beach nourishment is shown to be impractical and ineffective;
  - (ix) The affected structure cannot be feasibly located or relocated outside of the

- area affected by natural shoreline erosion processes;
- (x) The stabilization structure will not result in a net loss of shoreline ecological functions.
- (3) To protect projects for the restoration of ecological functions or hazardous substance remediation projects pursuant to chapter 70.105D RCW. All of the conditions below apply and are documented by a qualified professional:
- (i) Nonstructural measures, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.
- (ii) The erosion control structure will not result in a net loss of shoreline ecological functions.
- (c) **Creeks and Streams:** Creeks and streams shall be maintained in their natural state, free of shoreline modification, where they are not now influenced by urban growth and channelization. Where natural processes and functions have been substantially altered, shoreline stabilization shall avoid substantial channel direction modifications, realignment and straightening as a consequence of shore stabilization and flood management.
- (d) **Bulkhead/Seawall Location:**
- (1) On all shorelines, bulkheads/seawalls shall be located landward of the OHWM, landward of existing protective berms (artificial or natural), and shall be located generally parallel to the natural shoreline.
- (2) On Marine Accretion Beaches, bulkheads/seawalls shall be set back a minimum of twenty-five (25) feet landward of the OHWM, and shall parallel the natural shoreline; except on sloping or bluff/cliff shores where said setback is not feasible, in which case bulkheads shall be placed as far landward of the OHWM as is feasible. In no case shall the bulkhead be waterward of the OHWM.
- (3) On driftways and lake shores that are subject to erosion bulkheads/seawalls shall be located within one (1) foot of the bank toe and shall generally parallel the natural shoreline.
- (4) On bluff or bank shorelines with no adjacent bulkheads/seawalls the bulkheads/seawalls shall be as close to the bank as possible and in no case shall it be more than three (3) feet from the toe of the natural bank.
- (5) A bulkhead/seawall for a permitted landfill shall be located at the toe of the fill.
- (6) Replacement bulkheads/seawalls shall be located no further waterward of the existing bulkhead than is necessary for construction of new footings
- (e) **Design:** new and replacement bulkheads/seawalls shall comply with the following design and construction criteria:
- (1) Bulkheads/seawalls shall be sited and designed consistent with appropriate engineering principles. Professional geologic site studies or design may be required for any proposed bulkhead if the City determines sufficient uncertainties exist. Grounds for such determination shall be inadequate information or expertise on local physical features; and/or the evidence of potential damage to other shoreline properties and features.

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- (2) Bulkheads/seawalls shall be the minimum dimensions necessary to adequately protect the development.
  - (3) Stairs or other permitted structures may be built into a bulkhead, but shall not extend waterward of it.
  - (4) Bulkheads/seawalls shall be designed to permit the passage of surface or ground water without causing ponding or saturation of retained soil/materials.
  - (5) Adequate toe protection (i.e. proper footings and a fine retention mesh, etc.) shall be provided to ensure bulkhead stability without relying on additional riprap.
  - (6) Sheet piling and precast concrete slabs with vertical waterward faces shall include adequate tiebacks and toe protection.
  - (7) Bulkheads/seawalls shall utilize stable, non-erodible, homogeneous materials (e.g. concrete, wood, rock riprap or other suitable materials) which will accomplish the desired end with the maximum preservation of natural shoreline characteristics.
  - (8) Beach materials shall not be used for fill behind bulkheads/seawalls except clean dredge spoil from a permitted off site dredge and fill operation.
  - (9) Bulkheads/seawalls may tie in flush with existing bulkheads/seawalls on adjoining properties to ensure there is no gap between the two except when:
    - (i) An adjoining bulkhead/seawall extends waterward of the OHWM or the toe of the bank or permitted landfill; in which the location requirements of Regulation of Subsection D criteria 1,2, and 3 above shall apply.
    - (ii) If there is an existing bulkhead/seawall on only one of the adjacent properties, the proposed bulkhead/seawall may tie in flush with the adjacent bulkhead/seawall at or landward of the OHWM in order to minimize the land area waterward of the required setback. The required setback, however, shall be met on the side not abutting an existing bulkhead/seawall.
- (f) **Beach Enhancement:** Beach enhancement/restoration should be employed on upland, tidal and/or submerged shorelines to restore, enhance or create recreational beaches, aquatic habitat, and/or to control erosion where geotechnical analysis confirms that it is practical and effective and specifically in cases where:
- (1) Beach restoration/enhancement will accomplish the following objectives:
    - (i) Recreate or enhance natural shore conditions;
    - (ii) Create or enhance natural habitat;
    - (iii) Reverse otherwise erosional conditions; and
    - (iv) Enhance access to the shore, especially to public shores.
  - (2) Beach enhancement is prohibited where:
    - (i) Littoral drift of the enhancement materials will adversely affect adjacent spawning grounds or other areas of biological significance; or
    - (ii) It will interfere with the normal public use of the navigable waters of

the state.

(3) Beach enhancement projects shall be designed so that the project avoids:

- (i) Detrimental interruption of littoral drift, or redirection of waves, current or sediments to other shorelines that may adversely affect adjacent properties or habitat;
- (ii) Any exposed groin-like structures; EXCEPT: Small drift cell or littoral cell groins may be used as a means of stabilizing restored sediment where part of a federally and/or state approved beach enhancement program;
- (iii) Extending waterward more than the minimum amount necessary to achieve the desired stabilization;
- (iv) Creating contours sufficiently steep to impede easy pedestrian passage, or trap drifting sediments (a 5:1 slope is generally recommended; a 4:1 slope is a minimum);
- (v) Creation of "additional dry land mass"; and
- (vi) Disturbance to significant amounts of valuable shallow water fish/wildlife habitat, unless such habitat is immediately replaced by new habitat that is comparable or better.

(4) The size and/or mix of new materials to be added to a beach shall be adjusted to the local wave climate for maximum percolation and stability (generally similar to that of the natural beach sediment, but large enough to resist normal current, wake or wave action at the site).

(5) The restored beach shall approximate the natural beach width, height, bulk or profile. Exceedance of these features shall be limited, and shall not create substantial additional dry land mass.

(g) **Breakwaters:** Breakwaters shall be permitted only by Conditional Use Permit for navigational purposes, industrial activities and marinas and shall be approved only as integral components of a harbor, marina or port, where water-dependent uses are located seaward of the existing shoreline or shore protection from strong wave action is essential. The location of a breakwater shall not render the remaining open water surface unusable by the public. Open-pile or floating breakwaters shall be the only type allowed unless it can be shown that solid breakwaters will have no adverse effect on the aquatic biology and shore processes.

(h) **Jetties, Weirs & Groins:** Jetties, Rock Weirs and Groins are allowed subject to approval of a Conditional Use Permit only for navigational purposes, industrial activity, marinas, erosion control, fisheries or habitat enhancement, and public beach management and shall be approved only as integral components of an overall resource management plan.

(1) The effect of proposed breakwaters, jetties, rock weirs, and groins on sand movement shall be evaluated during permit review. The beneficiaries and/or owners of large scale shore modification works which substantially alter, reduce or block littoral drift and cause new erosion of downdrift shores shall be required to establish and maintain an adequate long term beach feeding program

as follows:

- (i) Breakwaters, Rock Weirs and Groins shall incorporate artificial beach feeding.
  - (ii) Jetties shall artificially transport sand to the downdrift side of the structure.
- (i) **Vegetation Management:**
- (1) All disturbed shore areas shall be restored or enhanced to provide the maximum benefits of non-structural measures, even if structural measures are approved and shall use native plant materials with a similar diversity and structure as the native climax community.
  - (2) Vegetation shall be planted and maintained on shore modification structures in a manner that will reduce the visual impact of such structures.
- (j) **Maintenance:** Maintenance of shore modification activities shall be the sole responsibility of the property owner.
- (k) **Liability:** liability for any impact to neighboring properties caused by shore modification activities is the sole responsibility of the property owner providing such shore modification.
- (l) **State & Federal Code Compliance:** Construction and operation of shore modification works shall demonstrate approval of and compliance with all applicable federal and state permits.
- (m) **Application Requirements:** Proposals for shore modification shall include the following information, or as otherwise determined by the Director:
- (1) Purpose of Project
  - (2) Description of Proposal:
    - Location of project;
    - Construction materials (e.g. materials used, dimensions of, design);
    - Method of construction (e.g. source of backfill, erosion controls);
    - Characteristics of the Site:
    - Toe and crest of uplands;
    - Existing buildings;
    - Existing shore stabilization and flood protection devices;
    - Ordinary, low, and high water elevations;
    - Net direction of littoral drift changes and tidal currents (if any);
    - General direction and speed of prevailing winds;
    - Beach type, slope and material;
    - Uplands type, slope and material;
    - Soil types (Soil Conservation Service);
    - Physical or geologic stability of uplands;
    - Profile of beach and uplands;
  - (3) Extent of Impact Area:
    - Marine shores: Within drift sector;
    - Lakes and streams: Three hundred feet (300') on each side of proposed project;

(4) Existing characteristics:

- Physical, geological and/or soil characteristics;
- Existing shore stabilization and flood management devices;
- Presence of fish/wildlife vital to the aquatic food chain, or their habitat;

(5) Analysis shall include:

- Potential impact upon area shoreline processes and functions, hydraulic processes, upland stability, natural habitat, adjacent properties, shoreline and water uses, and public access; and
- Alternative measures (including non-structural measures) which will achieve the same purpose. Design alternatives shall include the best available technology, including, but not limited to beach enhancement where appropriate.

(n) **Professional Design:** The City shall require professional design of the proposed project if it is determined there are sufficient uncertainties such as:

- (1) Inadequate data on local geophysical conditions;
- (2) Inadequate data on stream flow, velocity, and/or flood capacity; and/or
- (3) Effects on adjacent properties.

## 9.090 Stormwater Management Facilities:

~~Stormwater management (detention and treatment) facilities are necessary elements of development. If designed correctly and managed properly they can produce multiple benefits within the shoreline jurisdiction.~~

### **Policies:**

- (d) ~~Stormwater facilities should not be located in areas where there would be an adverse impact to existing shoreline ecological functions.~~
- (e) ~~Stormwater management facilities should be designed to incorporate Low Impact Development techniques.~~
- (f) ~~All Shoreline Designations must comply with these requirements including the shoreline isolated locations.~~

**Regulations:**

- (a) Stormwater management facilities shall be located outside of critical areas and their required buffers, except as specified in [Chapter 7, SMP](#) section [7.010](#).
- (b) Stormwater management facilities shall provide a minimum of enhanced treatment as defined by the latest version of the Department of Ecology Stormwater Manual for Western Washington and must comply with BMC 20.15 (stormwater).
- (c) New stormwater conveyance facilities (outfalls) shall not be constructed within required shoreline or critical area buffers, unless no other feasible alternative exists.

# **ATTACHMENT C**

## **DRAFT CRITICAL AREAS ORDINANCE**

**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.
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- 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.
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- 20.14.440 ALLOWED USES WITH PERFORMANCE STANDARDS.
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- 20.14.520 CLASSIFICATION AND DESIGNATION.
- 20.14.530 DEVELOPMENT STANDARDS.
- 20.14.600 GEOLOGICALLY HAZARDOUS AREAS.
- 20.14.610 PURPOSE.
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- 20.14.700 FISH AND WILDLIFE HABITAT CONSERVATION AREAS.
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- 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.

**20.14.100 GENERAL PROVISIONS.**

BMC 20.14.100 through 20.14.175 are general provisions pertaining to critical areas. (Ord. 5301 §3 (Exh. B) (part), 2016: Ord. 4965 §7 (part), 2006)

**20.14.110 PURPOSE.**

The purpose of this chapter 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 in association with these areas. The identification and protection of critical areas is required by the Washington State Growth Management Act of 1990 (Chapter 17, Laws of 1990). (Ord. 5301 §3 (Exh. B) (part), 2016: Ord. 4965 §7 (part), 2006)

**20.14.115 INTENT.**

Critical areas include wetlands, critical aquifer recharge areas, frequently flooded areas, geologically hazardous areas, and fish and wildlife habitat conservation areas. The intent of this chapter is to preserve the beneficial functions and values of critical areas, and to minimize potential dangers or public costs associated with the inappropriate use of such areas, and to manage development in or adjacent to critical areas. This chapter contains classification criteria and preservation standards for each type of critical area. Classification criteria identify physical characteristics by which critical areas are designated. Preservation standards protect critical areas from degradation caused by improper development. These criteria and standards will secure the public health, safety and welfare by:

- (a) Reducing risk of damage due to erosion, flooding, and landslides;
- (b) Reducing the risks to the public from personal injury, loss of life, or property damage;
- (c) Maintaining surface water quality and protecting groundwater areas which help recharge (purify or resupply) rivers, streams, and aquifers;
- (d) Maintaining and protecting priority fish and wildlife habitats;
- (e) Maintaining and protecting the habitat of threatened and endangered wildlife species;
- (f) Avoiding public expenditures to correct damaged or degraded critical ecosystems;
- (g) Alerting appraisers, assessors, owners, potential buyers, or lessees to the potential presence of a critical ecosystem and possible development limitations;
- (h) Providing flexibility and attention to site-specific characteristics when administering code, allowing for reasonable use of private property and the provision of public facilities and services necessary to support existing development;
- (i) Applying the best available science, as determined according to WAC 365-195-900 through 365-195-925;
- (j) Implementing the goals, policies, guidelines, and requirements of Bremerton's Comprehensive Plan and the Washington State Growth Management Act. (Ord. 5301 §3 (Exh. B) (part), 2016: Ord. 4965 §7 (part), 2006)

**20.14.120 SCOPE AND APPLICABILITY.**

(a) General. This chapter applies to any public or private activity or action which would alter the condition of any land, water or vegetation, or construct or alter any structure or improvement regulated by this title, on any land which meets the classification standards for any critical area defined herein. Such activities or actions include, but are not limited to:

- (1) Building, demolition, clearing, grubbing, grading, filling;
- (2) Subdivisions and short plats;
- (3) Reclassifications, site plan approvals, shoreline substantial development permits, and special and conditional use permits;

(4) Temporary use permits, variances, exceptions and waivers.

(b) Where one (1) site is classified as containing two (2) or more critical areas, the project shall meet the minimum standards and requirements for each identified critical area as set forth in this chapter.

(c) Mapping. Critical areas may be located through the use of any and all information from the United States Department of Agriculture, Department of Fish and Wildlife, National Resources Conservation Service, the United States Geological Survey, the Washington Department of Ecology, the Coastal Zone Atlas, the National Wetlands Inventory maps, Bremerton topography maps, the Kitsap County Generalized Wetland and Critical Areas Inventory maps, Kitsap Public Utilities District maps, and Kitsap County Assessor's maps, and other Geographical Information Systems (GIS) data provided by Kitsap County. The above-listed maps and data sources are only guidelines available for reference. The actual location of critical areas must be determined on a site-by-site basis according to the classification criteria found in this chapter. (Ord. 5301 §3 (Exh. B) (part), 2016: Ord. 4965 §7 (part), 2006)

#### **20.14.125 RELATIONSHIP TO OTHER REGULATIONS.**

Applications for permits and approvals are subject to the provisions of this chapter as well as to other provisions of state and City law, including all other chapters of BMC Title 20, Land Use Code. Where this chapter imposes greater restrictions than existing regulations, easements, covenants or deed restrictions, the provisions of this chapter shall prevail. (Ord. 5301 §3 (Exh. B) (part), 2016: Ord. 4965 §7 (part), 2006)

#### **20.14.130 ADMINISTRATION AND PROCEDURES.**

The requirements and criteria of this chapter shall be applied at the time of application for any development proposal, land use project or nonproject action requiring permit approval subject to the BMC. The requirements and criteria of this chapter shall be applied in conjunction with review for permits required by other chapters of the BMC. Procedures specifically related to the application of this chapter are as follows:

(a) Project Permits. The procedures as set forth in Chapter 20.02 BMC, Project Permits, shall apply unless modified by this chapter.

(b) Presubmittal Conference. Any applicant intending to construct, grade or conduct any activity subject to this chapter in a critical area or its buffer is encouraged to schedule a presubmittal conference during the earliest possible stages of project planning to discuss impact avoidance before large commitments have been made to a particular project design. Effort put into presubmittal conferences and planning will help applicants create projects which will be more quickly and easily processed.

(c) Burden of Proof. Applications for any proposal subject to this chapter shall be reviewed by the Department of Community Development for completeness and consistency with this chapter. At every stage, the burden of proof demonstrating that any proposed development is consistent with this title is upon the applicant.

(d) Special Reports. When a critical area is on site, or the Department of Community Development determines a likelihood that a critical area is on site, the Department may require submittal of additional special reports and studies prepared by qualified specialists to make an assessment or delineation of the critical area. Sections of this chapter include detailed procedures for preparation of special reports.

(e) Site Plan. Applications for any proposal subject to this chapter shall include a site plan drawn to scale identifying locations of critical areas in addition to proposed structures and activities. Site plan submittal shall meet the standards of BMC 20.58.080, Site Plan Review.

(f) Conditions. The Director may attach any conditions deemed necessary to minimize or avoid impacts to any critical area in order to meet the requirements and intent of this chapter. Development may be prohibited in a proposed site based on criteria set forth in this chapter.

(g) Notice to Title and Hold Harmless. The owner of any property upon which approval under BMC Title 20, or BMC Title 17, is sought, with a critical area or critical area buffer verified on site through an assessment delineation or permit application, shall record a "Notice to Title" of the presence of the critical area and/or buffer with the Kitsap County Auditor when required by the Department. The Department may require recording of a "Notice to

Title and Hold Harmless" in cases where a site-specific critical area could pose potential threats to safety or property if altered through future acts. Said document shall also serve as a hold harmless and covenant holding the City harmless from claims due to soil disturbances or any development on the property in conjunction with issuance of development permits by the City. The notice shall be notarized and the applicant must submit proof that the notice has been legally recorded before the final approval for development is issued.

(h) Time Limit. The approvals granted under this chapter shall be valid for the same time period as the underlying permit (e.g., preliminary plat, building permit, etc.). If the underlying permit does not contain a specified expiration date, then approvals granted under this title shall be valid for a period of three (3) years from the date of issue, unless a longer or shorter period is specified by the Department.

(i) Activities Not Requiring a Permit. If an activity is subject to this chapter per BMC 20.14.120 but is not subject to any established City permit, the proponent shall obtain written authorization from the Department prior to commencement to ensure compliance with the chapter.

(j) Modifications and Reductions. Modifications or reductions to critical areas buffers, setbacks, or other standards through a site-specific or special report shall be processed as a Type I (for applications where the underlying permit does not require SEPA) or Type II (for applications where the underlying permit requires SEPA) decision per BMC 20.02.040, Table 040. (Ord. 5301 §3 (Exh. B) (part), 2016: Ord. 4965 §7 (part), 2006)

#### **20.14.140 APPEALS.**

An appeal of a decision regarding a critical area may be made in accordance with BMC 20.02.140. (Ord. 5301 §3 (Exh. B) (part), 2016: Ord. 4965 §7 (part), 2006)

#### **20.14.145 EXEMPTIONS.**

An exemption means that an activity is fully exempt from critical areas review, and not subject to the provisions of this chapter. The proponent of the activity may submit a written request for exemption to the Director that describes the activity and states the exemption listed in this section that applies. The Director shall review the request to verify that it complies with this chapter and approve or deny the exemption as a Type I administrative determination. All exempted activities shall use best management practices to the greatest possible extent to avoid potential impacts to critical areas. The following developments, activities and associated uses shall be exempt:

(a) Emergencies. Emergency activities are those activities necessary to prevent an immediate threat to public health, safety or welfare, or that pose an immediate risk of damage to property and that require remedial or preventative action in a short time frame. The person or agency undertaking such action shall notify the Department, and the Director shall determine if the action taken is within the scope of the emergency action allowed in this section. After the emergency, the person or agency shall fully restore and/or mitigate any impacts to the critical areas and buffers resulting from the action in accordance with an approved critical area report and mitigation plan.

(b) Operation Maintenance or Repair. Operation maintenance or repair of existing structures not requiring permits, if the activity does not further alter or increase the impact to critical areas or their buffers.

(c) Passive Outdoor Activities. Recreation, education, and scientific research activities that do not degrade the critical area.

(d) Forest Practices. Forest practices regulated and conducted in accordance with the provisions of Chapter 76.09 RCW and forest practices regulations, WAC Title 222.

(e) Existing Infrastructure Maintenance and Repair. Maintenance and repair of legally existing roads, utilities, infrastructure and associated facilities.

(f) Activities Within the Improved Right-of-Way. Construction of new utility facilities, improvements or upgrades to existing utility facilities that take place within existing improved rights-of-way or existing impervious surfaces that do not increase the amount of impervious surface. (Ord. 5301 §3 (Exh. B) (part), 2016: Ord. 4965 §7 (part), 2006)

**20.14.150 PUBLIC AGENCY EXCEPTION.**

An exception means that an activity may receive special consideration and relief from certain provisions of this chapter, but the activity is subject to the chapter, and must undergo full critical areas review. Public agencies may make an application for exception to the Department for construction of items such as new roads, utilities, infrastructure and associated facilities. The application shall include critical area identification; critical area report, including mitigation plan if necessary; and any other related project documents such as environmental documents pursuant to SEPA, Chapter 43.21C RCW. The decision whether to grant the public agency utility exception shall be processed as a Type III Hearing Examiner decision per Chapter 20.02 BMC pursuant to the following review criteria:

- (a) There is no other practical alternative to the proposed development with less impact on the critical areas; and
- (b) The application of this chapter would unreasonably restrict the ability to provide utility services to the public. (Ord. 5301 §3 (Exh. B) (part), 2016: Ord. 4965 §7 (part), 2006)

**20.14.155 REASONABLE USE EXCEPTION.**

An exception means that an activity may receive special consideration and relief from certain provisions of this chapter, but the activity is subject to the chapter, and must undergo full critical areas review. An applicant may apply for a reasonable use exception if it can be demonstrated that application of this chapter would deny all reasonable use of the subject property. The application shall include critical areas identification; critical areas report including mitigation plan, if necessary; and any other related project documents such as environmental documents and special studies. The decision whether to grant the reasonable use exception shall be processed as a Type III Hearing Examiner decision per BMC 20.02.110 pursuant to the following review criteria:

- (a) The application of this chapter would deny all reasonable use of the property;
- (b) No other reasonable use of the property has less impact on the critical area;
- (c) Any alteration is the minimum necessary to allow for reasonable use of the property; and
- (d) The inability of the applicant to derive reasonable use of the property is not the result of actions by the applicant after the effective date of this title or its predecessor. (Ord. 5301 §3 (Exh. B) (part), 2016: Ord. 4965 §7 (part), 2006)

**20.14.160 NONCONFORMING USES/STRUCTURES.**

An established use or existing structure that was lawfully permitted prior to the adoption of this chapter, but which is not in compliance with this chapter, may continue subject to the provisions of Chapter 20.54 BMC. (Ord. 5301 §3 (Exh. B) (part), 2016: Ord. 4965 §7 (part), 2006)

**20.14.165 BONDS.**

All bonds and acceptable securities guaranteeing compliance with this chapter shall be set in the amount of one hundred fifty (150) percent of the average expected value of the project. The value of the bond shall be based on the average of three (3) contract bids that establish all costs of compensation, including costs relative to performance, monitoring, maintenance, and provision for contingency plans.

- (a) Performance Bonds. Except for public agencies, applicants receiving a permit are required to post a cash performance bond or other acceptable security to guarantee compliance with this chapter prior to beginning any site work. The surety shall guarantee that work and materials used in construction are free from defects. All bonds shall be approved by the City Attorney. The surety or bonds cannot be terminated or canceled without written approval. The Director shall release the bond after documented proof that all structures and improvements have been shown to meet the requirements of this chapter and that a maintenance bond has been posted, if required.
- (b) Maintenance Bonds. Except for public agencies, an applicant shall be required to post a cash maintenance bond or other acceptable security guaranteeing that structures and improvements required by this chapter will perform satisfactorily for a minimum of three (3) years after they have been constructed and approved. All bonds shall be on a form approved by the City Attorney. Without written release, the bond cannot be canceled or terminated. The Director shall release the bond after determination that the performance standards established for

measuring the effectiveness and success of the project have been met. (Ord. 5301 §3 (Exh. B) (part), 2016: Ord. 4965 §7 (part), 2006)

**20.14.170 ENFORCEMENT.**

- (a) No regulated activity, as defined in BMC 20.14.200, shall be conducted without a permit and without full compliance with this chapter. All activities not allowed or conditionally approved shall be prohibited.
- (b) The Director shall have authority to enforce this chapter, issue delineation verifications, permits, and violation notices, and process violations through the use of administrative orders and/or civil and criminal actions as provided for herein, and as listed in BMC 20.40.180.
- (c) In the event of violation, the City shall have the authority to order restoration, enhancement, or creation measures to compensate for the destroyed or degraded critical area. If work is not completed in a reasonable time following the order, the City may implement a process to restore or enhance the affected site. This includes creation of new wetlands or streams to offset loss as a result of violation of the provisions in this chapter. The violator shall be liable for all costs of such action, including administrative costs.
- (d) Failure to comply with an administrative order of the Director under this section shall constitute a violation subject to enforcement pursuant to this section. (Ord. 5301 §3 (Exh. B) (part), 2016: Ord. 4965 §7 (part), 2006)

**20.14.175 VIOLATION - PENALTY.**

- (a) Any violation of any provision of this chapter constitutes a civil violation under Chapter 1.04 BMC for which a monetary penalty may be assessed and abatement and/or enforcement may be required as provided therein.
- (b) In addition to or as an alternative to any other penalty provided in this chapter or by law, any person who violates any provision of this chapter shall be guilty of a misdemeanor pursuant to BMC 1.12.020(2). Each day, or a portion thereof, during which a violation occurs shall constitute a separate violation. (Ord. 5301 §3 (Exh. B) (part), 2016: Ord. 4965 §7 (part), 2006)

**20.14.180 SEVERABILITY.**

If any clause, sentence, paragraph, section, or part of this chapter or the application thereof to any person or circumstances shall be adjudged by any court of competent jurisdiction to be invalid, such order or judgment shall be confined in its operation to the controversy in which it was rendered and shall not affect or invalidate the remainder of any part thereof to any other person or circumstances, and to this end, the provisions of each clause, sentence, paragraph, section or part of this chapter are hereby declared to be severable. (Ord. 5301 §3 (Exh. B) (part), 2016: Ord. 4965 §7 (part), 2006)

**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 critical area or associated buffers, including danger trees, must comply with the following provisions:

- (1) Removal of trees greater than six (6) inches in diameter at four (4) feet in height shall be replaced at a ratio of three to one (3:1) with native species and shall be a minimum of six feet in height at the time of planting for both evergreen and deciduous trees reestablished within an onsite any required critical area buffer on the project site. Replacement trees shall be spaced appropriately for the species type or as specified in a critical area report. In the case of a danger tree being removed, the danger tree may be removed and replaced with a 3:1 ratio of a native tree that is known to enhance the critical area in which it is located without a critical area report. The Director or his or her designee may grant some or all replacement locations outside a critical area buffer at a nearby location, where no feasible alternative exists.

(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 buffer. See Shoreline Master Program Section 7.020 for additional standards. (Ord. 5301 §3 (Exh. B) (part), 2016)

## **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 three hundred (300) feet upland from a stream, wetland, or water body;
- D. Bordering or within the floodway, floodplain, or channel migration zone; or
- E. 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.

# ATTACHMENT C

**"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.

**"Associated wetlands"** means those wetlands which are in proximity to and either influence or are influenced by tidal waters or a lake or stream subject to the Shoreline Management Act.

**"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

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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 bind 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.

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**"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 aboveground 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 365-190-130. 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, sandlance and other forage fish spawning habitat;
- F. 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;
- G. 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;
- H. Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity;
- I. State natural area preserves and natural resource conservation areas; and
- J. 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."

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**"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.

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**"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.

**"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

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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.

**"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.

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**"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.

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**"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 the mark on all lakes, streams, and tidal waters which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation, as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the Department; provided, that in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water.

**"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.

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**"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

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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 at 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.

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**"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

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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.

**"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"** 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 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 include artificial wetlands created from nonwetland 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 \(5\) years; after such date, the City shall determine whether a revision or additional assessment is necessary.](#)

**"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. (Ord. 5301 §3 (Exh. B) (part), 2016: Ord. 4965 §7 (part), 2006)

**20.14.300 WETLANDS.**

BMC 20.14.310 through 20.14.360 pertain to wetlands. (Ord. 5301 §3 (Exh. B) (part), 2016: Ord. 4965 §7 (part), 2006)

**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. 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. (Ord. 5301 §3 (Exh. B) (part), 2016: Ord. 4965 §7 (part), 2006)

**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. 14-06-029) or as amended and approved by Ecology hereafter. Wetland delineations are valid for five (5) years; after such date the city shall determine whether a revision or additional assessment is necessary. 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 (23) points or more, out of twenty-seven (27) (DOE Wetlands Rating System, 2014); or
  - e. Are characterized as wetlands of high conservation value per the Washington Natural Heritage Program (WNHP); 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 wetland.

- (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

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- b. Perform most functions relatively well, scoring twenty (20) to twenty-two (22) points out of twenty-seven (27) (DOE Wetlands Rating System, 2014); or
  - c. Estuarine wetlands smaller than one (1) acre or those that are distributed and larger than one (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).
- (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 System, 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. (Ord. 5301 §3 (Exh. B) (part), 2016; Ord. 4965 §7 (part), 2006)

## **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.

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(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. Any ground disturbing activity or placement of fill within wetlands or in-water may also require state or federal approval and it is the applicant's responsibility to ensure that they obtain necessary authorization before beginning work. 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 nonnative 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.

(e) 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).

(f) Category III and IV Wetlands. Isolated Category III and IV wetlands less than one thousand (1,000) square feet that meet all of the following criteria shall be exempt from the buffer provisions in subsection (h) of this section 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.

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Full compensation for the acreage and loss functions will be provided under the terms established under BMC 20.14.340(f) and (g).

(h) 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 (Table 20.14.330(h)(1)).

Table 20.14.330(h)(1) Wetland Buffer Table. (Standard wetland buffer widths when minimization measures and wildlife corridors are not provided)

Wetland Category and Type	Buffer Width (in feet) Based on Habitat Score		
	<u>3-5 (Low)</u>	<u>6-7 (Medium)</u>	<u>8-9 (High)</u>
I: Estuarine and Coastal wetlands		200	
I: All others	<u>100</u>	<u>150</u>	<u>300</u>
II: Estuarine wetlands		150	
II: All	<u>100</u>	<u>150</u>	<u>300</u>
III: All	<u>80</u>	<u>150</u>	<u>300</u>
IV: All		50	

(2) Reduced Buffer Widths. ~~The standard wetland buffers may be reduced by 25 percent according to the values presented in Table 20.14.330(h)(2) when the impact minimization measures in Table 20.14.330(h)(3) are implemented. For wetlands that score 6 or more points for habitat function, the following conditions must be maintained in order to use the reduced buffers, as follows: In the table the wetland buffers vary according to the wetland type and/or habitat score (on a range of three (3) to nine (9), with nine (9) representing high habitat-function).~~

- (i) ~~If an existing, relatively undisturbed vegetated corridor at least 100 feet wide exists between the on-site wetland and other Priority Habitats, as defined by the Washington State Department of Fish and Wildlife, and the off-site portion of the corridor is already protected via an existing conservation easement, critical areas regulations, or other legal requirement, the portion of the corridor on-site must also be protected by a similar legal protection. All other applicable criteria found in subsection (4) must also be met. The evaluation of presence or absence of the conditions described above must be completed as part of the critical areas report.~~
- (ii) ~~If no such corridor is present to protect, the reduced buffers alone may be used with the other applicable criteria contained in subsection (4). If an option for protection of a corridor, as defined under (i) above, exists on the parcel, but is not provided, standard buffer widths contained in Table 20.14.330(h)(1) are required.~~
- (iii) ~~The buffer widths in the table below (Table 20.14.330(h)(2)) assumes that the buffer is vegetated with a native plant community appropriate for the ecoregion. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed functions, the~~

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buffer should either be planted to create the appropriate plant community or the buffer should be widened to ensure that adequate functions of the buffer are provided.

Wetland Category and Type	Buffer Width (in Feet) Based on Habitat Score			
	3-4 (Low)	5 (Medium)	6-7 (Medium)	8-9 (High)
I: Estuarine wetlands	200			
II: All others	100	140	220	300
III: Estuarine wetlands	150			
III: All	100	140	220	300
IV: All	80	140	220	300
IV: All	50			

Table 20.14.330(h)(2) Wetland Buffer Table. (Reduced wetland buffer widths when minimization measures and corridor are provided)

Wetland Category and Type	Buffer Width (in feet) Based on Habitat Score		
	3-5 (Low)	6-7 (Medium)	8-9 (High)
I: Estuarine and Coastal wetlands	150		
II: All others	75	110	225
III: Estuarine wetlands	110		
III: All	75	110	225
IV: All	60	110	225
IV: All	40		

(23) 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.

(24) Required measures to minimize impacts to wetlands. Measures are required to mitigate the impacts and disturbances associated with surrounding land use, where applicable to a specific proposal in order to implement Table 20.14.330(h)(2). If required measures outlined in Table 20.14.330(h)(3) are not implemented, the standard wetland buffers in Table 20.14.330(h)(1) shall be required. 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 lists impact minimization measures which, when

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~~implemented where applicable, may allow a project to reduce the standard wetland buffer widths by no more than twenty-five (25) percent:~~

Table 20.14.330(h)(3) Required Measures to Minimize Impacts to Wetlands

Disturbance	Required Measures to Minimize Impacts
Lights	(1) Direct lights away from wetland as illustrated in a photometric plan.
Noise	(2) Locate activity that generates noise away from wetland.
	(3) If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source.
	(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.
Toxic runoff	(5) Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered.
	(6) Establish covenants limiting use of pesticides within one hundred fifty (150) feet of wetland.
	<u>(7) Apply integrated pest management.</u>
Stormwater runoff	<u>(8)(7)</u> Retrofit stormwater detention and treatment for roads and existing adjacent development.
	<u>(9)(8)</u> Prevent channelized flow from lawns that directly enters the buffer.
	<u>(10)(9)</u> Use low intensity development <a href="#">(for more information refer to the drainage ordinance and manual)</a> best management practices where appropriate.
Change in water regime	<u>(11)(10)</u> Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns.
Pets and human disturbance	<u>(12)(H)</u> Use privacy fencing or plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion.
	<u>(13)(2)</u> Place wetland and its buffer in a separate tract or protect with a conservation easement.
Dust	<u>(14)(3)</u> Use best management practices to control dust.
Disruption of corridors or connections	<u>(15)(4)</u> Maintain connections to off-site areas that are undisturbed.
	<u>(16)(5)</u> Restore on-site corridors or connections to off-site habitats by replanting.

**(45)** 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.

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(56) 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 demonstrate 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.

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

(78) 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.

(89) 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 outer twenty-five (25) percent of the buffer area and located to avoid removal of significant trees; 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.

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(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.

(i) 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. (Ord. 5301 §3 (Exh. B) (part), 2016; Ord. 4965 §7 (part), 2006)

## 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," 2006 (Publication Nos. 06-06-011a and 06-06-011b), or as revised.

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- (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

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- (ii) Credits from a state-certified wetland mitigation bank or state-approved in-lieu fee (ILF) site are used as mitigation and the use of credits is consistent with the terms of the bank's certification or ILF approval.
- (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 or approved ILF site. When credits from a certified bank or approved ILF site are used, replacement ratios should be consistent with the requirements of the bank's certification or site's approved instrument. The first number specifies the acreage of replacement wetlands and the second specifies the acreage of wetlands altered.

Wetland Category	Wetland Mitigation Type and Replacement Ratio			
	Creation	Reestablishment	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

(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 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

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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 one to one (1:1) replacement through creation or reestablishment. See Table 1a, Wetland Mitigation in Washington State - Part 1: Agency Policies and Guidance - Version 1 (Ecology Publication No. 06-06-011a, Olympia, WA, March 2006 or as revised).

(h) Mitigation of Wetland Buffer Impacts. Compensation for wetland buffer impacts shall occur at a minimum one to one (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.

(i) 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.

(j) 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. The Director shall have the authority to modify or extend the monitoring period and require additional monitoring reports for up to ten (10) years when any of the following conditions apply:

- (1) The project does not meet the performance standards identified in the mitigation plan;
- (2) The project does not provide adequate replacement for the functions and values of the impacted critical area;
- (3) The project involves establishment of forested plant communities, which require longer time for establishment. (Ord. 5301 §3 (Exh. B) (part), 2016: Ord. 4965 §7 (part), 2006)

## 20.14.350 PERFORMANCE STANDARDS - SUBDIVISIONS.

The subdivision and short subdivision of land in wetlands and associated buffers is subject to the following:

- (a) Land that is located wholly within a wetland or its buffer may not be subdivided.
- (b) Land that is located partially within a wetland or its buffer may be subdivided; provided, that an accessible and contiguous portion of each new lot is located outside of the wetland and its buffer.
- (c) Access roads and utilities serving the proposed subdivision may be permitted within the wetland and associated buffers only if the City determines that no other feasible alternative exists and when consistent with this

title and all other required state and federal approvals. (Ord. 5301 §3 (Exh. B) (part), 2016: Ord. 4965 §7 (part), 2006)

**20.14.360 WETLAND REPORT.**

Critical area reports for wetlands must meet the requirements of this section.

(a) Preparation by a Qualified Professional. A critical area report for wetlands shall be prepared by a qualified professional who is a certified professional wetland scientist or a noncertified professional wetland scientist with a minimum of five (5) years experience in the field of wetland science and with experience preparing wetland reports.

(b) Area Addressed in Wetland Report. The following areas shall be addressed in a critical area report for wetlands:

- (1) The project area of the proposed activity;
- (2) All wetlands and recommended buffers within three hundred (300) feet of the project area; and
- (3) All shoreline areas, water features, floodplains, and other critical areas, and related buffers within three hundred (300) feet of the project area.

(c) Wetland Analysis. A critical area report for wetlands shall contain an analysis of the wetlands including the following site- and proposal-related information at a minimum:

- (1) A written assessment and accompanying maps of the wetlands and buffers within three hundred (300) feet of the project area, including the following information at a minimum:
  - (i) Wetland delineation and required buffers;
  - (ii) Existing wetland acreage;
  - (iii) Wetland category;
  - (iv) Vegetative, faunal, and hydrologic characteristics;
  - (v) Soil and substrate conditions;
  - (vi) Topographic elevations, at two (2) foot contours; and
  - (vii) A discussion of the water sources supplying the wetland and documentation of hydrologic regime (locations of inlet and outlet features, water depths throughout the wetland, evidence of recharge or discharge, evidence of water depths throughout the year: drift lines, algal layers, moss lines, and sediment deposits).
- (2) A discussion of measures, including avoidance, minimization, and mitigation, proposed to preserve existing wetlands and restore any wetlands that were degraded prior to the current proposed land use activity.
- (3) A habitat and native vegetation conservation strategy that addresses methods to protect and enhance on-site habitat and wetland functions.
- (4) Functional evaluation for the wetland and adjacent buffer using a local or state agency staff-recognized method and including the reference of the method and all data sheets.
- (5) Proposed mitigation, if needed, including a written assessment and accompanying maps of the mitigation area, including the following information at a minimum:
  - (i) Existing and proposed wetland acreage;
  - (ii) Vegetative and faunal conditions;

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- (iii) Surface and subsurface hydrologic conditions including an analysis of existing and future hydrologic regime and proposed hydrologic regime for enhanced, created, or restored mitigation areas;
  - (iv) Relationship within watershed and to existing waterbodies;
  - (v) Soil and substrate conditions, and topographic elevations;
  - (vi) Existing and proposed adjacent site conditions;
  - (vii) Required wetland buffers (including any buffer reduction and mitigation proposed to increase the plant densities, remove weedy vegetation, and replant the buffers);
  - (viii) Property ownership; and
  - (ix) Associated wetlands and related wetlands that may be greater than three hundred (300) feet from the subject project.
- (6) A scale map of the development proposal site and adjacent area. A discussion of ongoing management practices that will protect wetlands after the project site has been developed, including proposed monitoring and maintenance programs.
- (7) A bond estimate for the installation (including site preparation, plant materials and installation, fertilizers, mulch, stakes) and the proposed monitoring and maintenance work for the required number of years.
- (8) Title Notification. All activity in critical area protection areas shall be accompanied by a title.
- (d) Additional Information. When appropriate, the Director may also require the wetland report to include an evaluation by the State Department of Ecology or an independent qualified expert regarding the applicant's analysis and the effectiveness of any proposed mitigating measures or programs, and to include any recommendations as appropriate.
- (1) If the development proposal site contains or is within a wetland area, the applicant shall submit an affidavit which declares whether the applicant has knowledge of any illegal alteration to any or all wetlands on the proposed site and whether the applicant previously has been found in violation of this chapter. If the applicant has been found previously in violation, the applicant shall declare whether such violation has been corrected to the satisfaction of the jurisdiction.
  - (2) The Director shall determine if the mitigation and monitoring plans and bonding measures proposed by the applicant are sufficient to protect the public health, safety, and welfare, consistent with the goals, purposes, objectives and requirements of this chapter. (Ord. 5301 §3 (Exh. B) (part), 2016: Ord. 4965 §7 (part), 2006)
- 20.14.400 CRITICAL AQUIFER RECHARGE AREAS.**  
BMC 20.14.410 through 20.14.450 pertain to critical aquifer recharge areas. (Ord. 5301 §3 (Exh. B) (part), 2016: Ord. 4965 §7 (part), 2006)
- 20.14.410 DESCRIPTION AND PURPOSE.**  
Groundwater from aquifers provides a source of potable water and contributes to stream discharge/flow. Critical aquifer recharge areas contribute to the recharge of aquifers, springs and/or wells and are susceptible to contamination of water supplies through infiltration of pollutants through the soil. City residents rely on an essential life-sustaining safe drinking water supply. A significant portion of the City's drinking water comes from groundwater supplies in aquifers. The primary goals of groundwater protection regulations are to protect groundwater quality by maintaining the quantity of recharge; avoiding or limiting land use activities that pose potential risk of aquifer contamination; and to minimize or avoid adverse impacts to groundwater protection areas through the application of performance standards, and to comply with the requirements of the Federal Safe Drinking Water Act, Washington Administrative Code, and the requirements of the Wellhead Protection Program. (Ord. 5301 §3 (Exh. B) (part), 2016: Ord. 4965 §7 (part), 2006)

**20.14.420 CLASSIFICATION AND DESIGNATION.**

Critical aquifer recharge areas are those land areas that contain hydrogeologic conditions that facilitate aquifer recharge and/or transmission of contaminants to an underlying aquifer. Critical aquifer recharge areas under this section may be established based on general criteria, specifically designated due to special circumstances, or based on scientific studies and mapping efforts. Factors considered in the identification of critical aquifer recharge areas include depth to water table, presence of highly permeable soils (specifically Group A hydrologic soils), presence of flat terrain, and the presence of more permeable surficial geology. Critical aquifer recharge areas may be placed in one (1) of the following categories:

(a) Category I Critical Aquifer Recharge Areas. Category I critical aquifer recharge areas are those areas where potential for certain land use activities to adversely affect groundwater is high. Category I critical aquifer recharge areas include:

- (1) Areas inside the five (5) year time-of-travel zone for Group A water system wells, calculated in accordance with the Washington State Source Water Assessment Program.
- (2) Ten (10) year time-of-travel zones in wellhead protection areas are included as critical aquifer recharge when a well draws its water from an aquifer that is at or above sea level and is without an overlying protective impermeable layer.
- (3) Areas identified as regionally significant aquifer recharge areas and identified as such by the City are:
  - (i) Gorst Basin Aquifer recharge area, and
  - (ii) Other areas that may be identified in the future.

(b) Category II Critical Aquifer Recharge Areas. Category II critical aquifer recharge areas are areas that provide recharge to aquifers that are current or potentially will become potable water supplies and are vulnerable to contamination based on the type of land use activity. These include the following:

- (1) Highly Permeable Soils (Group A Hydrologic Soils). The general location and characteristics of Group A hydrologic soils in the City is given in the Soils Survey of Kitsap County by the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS). The soil survey information is available at the Department of Community Development.
- (2) Areas Above Shallow/Vashon Principal Aquifers. Surface areas above shallow, principal aquifer(s) which are not separated from the underlying aquifers by an impermeable layer that provides adequate protections to preclude the proposed land use from contaminating the shallow aquifer(s) below, are considered aquifer recharge areas of concern. (Ord. 5301 §3 (Exh. B) (part), 2016; Ord. 4965 §7 (part), 2006)

**20.14.430 DEVELOPMENT STANDARDS.**

(a) Allowed Activities. The following activities are allowed in critical aquifer recharge areas and do not require submission of a hydrogeological assessment:

- (1) Construction of structures and improvements, including additions, resulting in less than five (5) percent or two thousand five hundred (2,500) square feet (whichever is greater) total site impervious surface area that does not result in a change of use or increase the use of a hazardous substance.
- (2) Development and improvement of parks, recreation facilities, open space, or conservation areas resulting in less than five (5) percent total site impervious surface area that do not increase the use of a hazardous substance.

Standards for development shall be in accordance with the provisions below and the requirements of other underlying city regulations.

- (3) On-site domestic septic systems releasing less than fourteen thousand five hundred (14,500) gallons of effluent per day and that are limited to a maximum density of one (1) system per one (1) acre.

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- (4) Residential Use of Pesticides and Nutrients. Application of household pesticides, herbicides, and fertilizers that do not exceed times and rates specified on the packaging.
- (5) Residential storage or use of petroleum and petroleum products.
- (6) Activities which have a potential contamination source below threshold amounts as set forth in applicable statutes of the Revised Code of Washington or local regulations. The purpose of this clause is to allow for small-scale and residential activities thought to have no significant impacts to critical aquifer recharge areas.

(b) Prohibited Activities. The following activities and uses are prohibited in Category I critical aquifer recharge areas:

- (1) Landfills, including hazardous or dangerous waste, municipal solid waste, special waste, and wood waste;
- (2) Underground Injection Wells. Wells which meet the requirements of Chapters 173-218 and 173-200 WAC with the exception of 5B22, 5D2, 5G30, 5W12, 5W32, 5R21, and 5S23;
- (3) Commercial mining and washing of metals, hard rock, sand and gravel;
- (4) Chemical wood preservation and/or treatment facilities;
- (5) Storage, processing, or disposal of radioactive substances;
- (6) Commercial activities that are not connected to an available sanitary sewer system;
- (7) Use or storage of pesticides listed as "State restricted use pesticides" by Chapter 16-228 WAC;
- (8) Within one thousand six hundred (1,600) feet of Twin Lakes, any use of pesticides, and use of fertilizers above agronomic rates;
- (9) Oil and gas drilling as defined in WAC 332-12-450 and Chapter 173-218 WAC;
- (10) Underground storage of hazardous substances as regulated by Chapter 173-360 WAC;
- (11) Use, storage, treatment, or production of perchlorethylene (PCE), other than in closed-loop systems that do not involve any discharge of PCE;
- (12) Petroleum refining, reprocessing, storage and petroleum-product pipelines;
- (13) Electroplating/metal finishing;
- (14) Activities that would significantly reduce the recharge to aquifers currently or potentially used as a potable water source; and
- (15) Activities that would significantly reduce the recharge to aquifers that are a source of significant base flow to a regulated stream. (Ord. 5301 §3 (Exh. B) (part), 2016: Ord. 4965 §7 (part), 2006)

## **20.14.440 ALLOWED USES WITH PERFORMANCE STANDARDS.**

(a) General Requirements. Any activity not specifically exempted through BMC 20.14.430 as allowed or prohibited may be permitted in a critical aquifer recharge area if all of the following criteria are met (a list of specific uses with a potential threat to groundwater can be found in subsection (b) of this section):

- (1) Hydrogeological Assessment.
  - (i) For Category I aquifer recharge areas the applicant must show through a hydrogeological assessment that the proposed activity will not cause significant impact to aquifer quality or recharge. The hydrogeological assessment will be evaluated and treated as a special use review and be reviewed by the

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Department, the health district, affected tribes, and affected water purveyors. An incompatible activity can be denied by the Director;

(ii) For Category II aquifer recharge areas a hydrogeological assessment may be required. The scope of the report shall be based on site-specific conditions. The hydrogeological assessment will be evaluated and treated as a special use review and be reviewed by the Department, the health district, affected tribes, and affected water purveyors. An incompatible activity can be denied by the Director. The need for additional information will be determined by the Department, the health district, and the affected water purveyor. Based on the report, controls, mitigation, and/or other requirements will be established as a prerequisite for the development proposal being approved.

(2) The proposed activity must comply with the source water protection requirements and recommendations of the U.S. Environmental Protection Agency, Washington State Department of Health, Washington Department of Ecology, and the Kitsap County Health District.

(3) The proposed activity shall be designed and constructed in accordance with BMC Title 15, Municipal Utilities.

(4) The applicant must explore low-impact development site design alternatives and implement them. Low-impact development techniques can include, but are not limited to:

- (i) Rainwater harvesting;
- (ii) Reverse slope sidewalks;
- (iii) Vegetated roofs;
- (iv) Bioretention areas (rain gardens); and
- (v) Pervious pavement.

(b) Potential Threats to Groundwater. Specific uses with potential threats to groundwater can include, but are not limited to the following. Uses meeting the listed performance standards may be allowed if the criteria of this section are met.

(1) Anything that is not exempt per BMC 20.14.430.

(2) All storage tanks proposed to be located in a critical aquifer recharge area must comply with local building code requirements and must conform to the following requirements:

- (i) All new above-ground storage facilities proposed for use in the storage of hazardous substances or hazardous wastes shall be designed and constructed so as to:
  - a. Not allow the release of a hazardous substance to the ground, groundwaters, or surface waters;
  - b. Have a primary containment area enclosing or underlying the tank or part thereof; and
  - c. A secondary containment system either built into the tank structure or a dike system built outside the tank for all tanks.

(3) Vehicle Repair and Servicing.

- (i) Vehicle repair and servicing must be conducted over impermeable pads and within a covered structure capable of withstanding normally expected weather conditions. Chemicals used in the process of vehicle repair and servicing must be stored in a manner that protects them from weather and provides containment should leaks occur.

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- (ii) No dry wells shall be allowed in critical aquifer recharge areas on sites used for vehicle repair and servicing. Dry wells existing on the site prior to facility establishment must be abandoned using techniques approved by the State Department of Ecology prior to commencement of the proposed activity.
- (4) Water reuse projects for reclaimed water must be in accordance with the adopted water or sewer comprehensive plans that have been approved by the State Departments of Ecology and Health.
- (i) Use of reclaimed water for surface percolation must meet the groundwater recharge criteria given in RCW 90.46.010(10) and 90.46.080(1). The State Department of Ecology may establish additional discharge limits in accordance with RCW 90.46.080(2).
- (ii) Direct injection must be in accordance with the standards developed by authority of RCW 90.46.042.
- (5) Automobile washers as defined in Chapter 173-216 WAC.
- (6) Chemical treatment storage and disposal facilities as defined in WAC 173-303-182.
- (7) Hazardous waste generators, including, but not limited to: boat repair shops, biological research facilities, dry cleaners, furniture stripping, motor vehicle service garages, photographic processing, printing and publishing shops, medical and dental facilities, etc., as defined in Chapter 173-303 WAC.
- (8) Junk yards and salvage yards as defined in Chapter 173-304 WAC, Best Management Practices to Prevent Stormwater Pollution at Vehicle Recycler Facilities (WDOE publication number 94-146).
- (9) On-site sewage systems (large scale) as defined in Chapter 173-240 WAC.
- (10) On-site sewage systems (less than fourteen thousand five hundred (14,500) gal./day) as defined in Chapter 246-272 WAC.
- (11) Pesticide storage and use as defined in Chapters 15.54 and 17.21 RCW.
- (12) Sawmills as defined in Chapters 173-303 and 173-304 WAC, WDOE publication number 95-53, Best Management Practices to Prevent Stormwater Pollution at Log Yards.
- (13) Solid waste handling and recycling facilities as defined in Chapter 173-304 WAC.
- (14) Wastewater application to land surface as defined in Chapters 173-216 and 173-200 WAC, and WDOE Land Application Guidelines, Best Management Practices for Irrigated Agriculture.
- (15) New impervious surface area exceeding twenty thousand (20,000) square feet.
- (16) Beneficial use of biosolids as defined in Chapter 173-308 WAC.
- (17) Golf courses, provided:
- (i) Fertilizer use is not above agronomic rates;
- (ii) Pesticides are managed and applied by properly licensed personnel, and use of all pesticides is approved by the affected water utility;
- (iii) The golf course allows for periodic monitoring by the Department or an affected water utility.
- (18) Noncommercial gravel and sand mining, provided the extraction of materials remains no less than ten (10) feet above the level of the aquifer.
- (c) Affected Agency Review. The City will notify Kitsap County Health District and affected water utilities and will request them to comment during the preliminary phases of the City's review process on all proposed projects

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defined in subsection (b) of this section or other uses not explicitly allowed or prohibited in BMC 20.14.430. The City in conjunction with these agencies may approve, deny, or condition proposals.

(d) Inspection. City personnel may inspect at reasonable times, upon presentation of credentials, as part of its wellhead protection program any activity that is known to manage or potentially manage hazardous materials. (Ord. 5301 §3 (Exh. B) (part), 2016: Ord. 4965 §7 (part), 2006)

## **20.14.450 HYDROGEOLOGIC ASSESSMENT.**

The assessment shall address the impact the proposed land use will have on both the quality and quantity of the water transmitted to the aquifer.

(a) The assessment shall be submitted to the Department and shall address, at a minimum, the following criteria:

- (1) Surficial soil type and geologic setting;
  - (2) Location and identification of wells within one thousand (1,000) feet of the site;
  - (3) Location and identification of surface water bodies and springs within one thousand (1,000) feet of the site with recharge potential;
  - (4) Description of underlying aquifers and aquitards, including water level, gradients and flow direction;
  - (5) Available surface water and groundwater quality data;
  - (6) Effects of the proposed development on water quality;
  - (7) Sampling schedules required to assure water quality;
  - (8) Discussion of the effects of the proposed development on the groundwater resource;
  - (9) Recommendations on appropriate BMPs (best management practices) or mitigation to assure no significant degradation of groundwater quality; and
  - (10) Other information as required by the Kitsap County Health District.
- (11) The assessment shall also address the types of pesticides, herbicides and fertilizers that can safely be used for the care of landscaping proposed by the applicant.

(b) The hydrogeologic assessment shall be prepared by a professional geologist/hydrologist or by a soil scientist with a strong background in geology (see definition of "Qualified professional" in BMC 20.14.200).

(c) Applications for development or operations with underground storage of petroleum products will be processed using the appropriate procedure as specified in existing Kitsap County ordinances.

(d) Analysis for a specific parcel(s), using the criteria outlined below, will be employed to confirm if the soils present require a recharge area designation. Data collection will include, at a minimum, six (6) soil logs to a depth of ten (10) feet (or to a depth four (4) feet below the lowest proposed excavation point whichever is greater) for each acre in the parcel(s) being evaluated. At least one (1) well, two hundred (200) feet or greater in depth with an adequate drilling report, must be available within one (1) mile. The associated data shall be analyzed and included in the hydrogeologic assessment to determine the presence of highly permeable soils with the recharge area designation. (Ord. 5301 §3 (Exh. B) (part), 2016: Ord. 4965 §7 (part), 2006)

## **20.14.500 FREQUENTLY FLOODED AREAS.**

BMC 20.14.500 through 20.14.530 pertain to frequently flooded areas. (Ord. 5301 §3 (Exh. B) (part), 2016: Ord. 4965 §7 (part), 2006)

**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. (Ord. 5301 §3 (Exh. B) (part), 2016: Ord. 4965 §7 (part), 2006)

**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). (Ord. 5301 §3 (Exh. B) (part), 2016: Ord. 4965 §7 (part), 2006)

**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 subsection (d) of this section, 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 of 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 nonnative vegetation with native vegetation;
- (4) Ongoing activities such as lawn and garden maintenance;

- (5) Removal of ~~hazard~~danger 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. (Ord. 5301 §3 (Exh. B) (part), 2016: Ord. 4965 §7 (part), 2006)

**20.14.600 GEOLOGICALLY HAZARDOUS AREAS.**

BMC 20.14.600 through 20.14.660 pertain to geologically hazardous areas. (Ord. 5301 §3 (Exh. B) (part), 2016: Ord. 4965 §7 (part), 2006)

**20.14.610 PURPOSE.**

The purpose of BMC 20.14.600 through 20.14.660 is to protect human life and property from potential risks related to development on or near geologically hazardous areas. Geologically hazardous areas include areas susceptible to erosion, sliding, geologic events, landslides, and moderate and steep slope areas. BMC 20.14.600 through 20.14.660 classify geologically hazardous areas and set development standards for development and clearing in or near geologically hazardous areas. (Ord. 5301 §3 (Exh. B) (part), 2016: Ord. 4965 §7 (part), 2006)

**20.14.620 CLASSIFICATION.**

The following categories shall be used in classifying geologically hazardous areas:

- (a) Areas of high geologic hazard are areas meeting either of the following two (2) criteria:
  - (1) Areas with slopes greater than forty (40) percent with vertical relief of ten (10) or more feet; or
  - (2) Areas with slopes greater than thirty (30) percent with vertical relief of ten (10) or more feet, and any of the following characteristics:
    - (i) Unstable soil or shoreline classified as "unstable" (U), "unstable old slides" (UOS), "unstable recent slides" (URS), or "intermediate" (I) by the U.S. Department of Agriculture Soil Conservation Service, U.S. Geologic Survey, the Washington Department of Ecology Coastal Zone Atlas, or qualified geologist or geotechnical engineer;
    - (ii) Groundwater seepage or springs present on the slope, areas underlain by impermeable silts or clays, or mappable emergent water;
    - (iii) Erosion hazard as indicated by potential for stream or wave incision or as classified as "highly erodible" or "potentially erodible" by the Natural Resources Conservation Service;
    - (iv) Seismic areas subject to liquefaction from earthquakes such as hydric soils as identified by the Natural Resources Conservation Service, and areas that have been filled to make a site more suitable.
  - (b) Areas of moderate geologic hazard are any areas with slopes of thirty (30) percent or greater and vertical relief of ten (10) or more feet, and any areas with slopes of fifteen (15) percent to thirty (30) percent with vertical relief of ten (10) or more feet and any of the characteristics per subsections (a)(2)(i) through (iii) of this section. Seismic hazard areas subject to liquefaction from earthquakes, areas with hydric soils, and areas of loose fill shall be classified as moderate geologic hazard areas regardless of percent slope.
  - (c) Site-Specific Determination. Site-specific geological reports may be used to determine the classification of a potentially geologically hazardous area in either of the following cases:
    - (1) When an applicant questions the information the Department must rely on to determine whether a location is classified as a geologically hazardous area, the applicant may submit an appropriate site-specific geological report. If supportable by the geological report, the Department may make a nongeologically hazardous determination.
    - (2) The Department is authorized but not mandated to require submittal of a geological report for any proposal on a site with slopes of fifteen (15) percent or greater and vertical relief of ten (10) or more feet, or

potential seismic hazard areas. Requests by the Department for submittal of a geological report may be made when slope percentages are poorly documented, or when it is deemed through site visit, close proximity to mapped areas of unstable soils, previously prepared geological reports in the vicinity, or other pertinent information that a probable likelihood of soil instability per subsection (a)(2)(i) through (iv) of this section exists on the site. The Department shall not make requests for geological reports in cases where slope percentages are well documented and there is a probable likelihood of stable soil characteristics on the site. (Ord. 5301 §3 (Exh. B) (part), 2016: Ord. 4965 §7 (part), 2006)

**20.14.630 DEVELOPMENT STANDARDS.**

The following standards shall apply to any land or vegetation modification or construction within a geologically hazardous area as classified per BMC 20.14.620 and its buffer as described herein. The Department will approve, approve with conditions or deny the development proposal based on its ability to meet the development standards. The Department will also consider any proposed mitigation measures or buffer reductions included in a geotechnical report per subsection (c) of this section.

(a) Areas of high geologic hazard as classified per BMC 20.14.620(a) shall be subject to the following standards:

(1) Building and Impervious Surface Buffer. No construction of any structure or impervious surface is allowed within fifty (50) feet of the top and toe of the slope, unless reductions supportable by a geotechnical report are approved.

(2) Native Vegetation Buffer. Native vegetation shall be in place from the toe of the slope to twenty-five (25) feet beyond the top of the slope, unless modifications supportable by a geotechnical report are approved. Native vegetation shall meet the standards of subsection (g) of this section.

(b) Areas of moderate geologic hazard as classified per BMC 20.14.620(b) shall be subject to the following standards:

(1) Building and Impervious Surface Buffer. No construction of any structure or impervious surface is allowed within twenty-five (25) feet of the top and toe of the slope, unless reductions supportable by a geotechnical report are approved.

(2) Native Vegetation Buffer. Native vegetation shall be in place from the toe of the slope to twenty-five (25) feet beyond the top of the slope, unless modifications supportable by a geotechnical report are approved. Native vegetation shall meet the standards of subsection (g) of this section.

(c) Reductions with Geological or Geotechnical Report. Modifications and/or reductions to the buffers prescribed per subsections (a)(1) and (2) and (b)(1) and (2) of this section may be granted if a geotechnical or geological report demonstrates that modified or reduced buffers, through design and engineering solutions, will provide protection to the proposed development and adjacent properties equal to that of the standard buffer. Such reports are subject to third-party review per BMC 20.14.660(h). Reductions shall utilize the mitigation and performance standards listed per BMC 20.14.650 to the greatest possible extent. Requirements for geotechnical and geological reports are outlined in BMC 20.14.660.

(d) Buffer Increase. Should the Department determine based on a geological or geotechnical report that greater buffers than required per subsections (a)(1) and (2) and (b)(1) and (2) of this section are necessary to protect the proposed development and adjacent properties, greater buffers may be required. The Department may require an applicant to submit a geotechnical report with any proposal for land alteration that is located within two hundred (200) feet of an area of high or moderate geologic hazard if it determines through site visit, review of available documents, or history of prior events in the area, that the proposal could potentially require increased buffers to ensure safety.

(e) Elimination of Danger Trees. Within high or moderate geologic hazard areas, removal of danger trees 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.

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(f) Vegetation Thinning. Within high or moderate geologic hazard areas, minor pruning of vegetation or trees for view enhancement may be allowed only if such activity is approved by the Department. The following are allowable methods and techniques for vegetation thinning, except that mature or old-growth trees shall only be treated per method in subsection (f)(5) of this section:

(1) Tree Thinning. The selective removal of branches in the inner crown of the tree, provided no more than twenty-five (25) percent of a tree's leaf-bearing crown is removed. An even distribution of interior small branches and foliage on remaining limbs shall be maintained to avoid over-thinning.

(2) Tree Raising. The removal of the lower branches of a tree in order to provide clearance for passage or vistas. After raising, the height of the pruned portion shall not exceed one-third (1/3) of the total tree height; provided, that removal of branches from the lower portion shall not exceed twenty-five (25) percent of the tree's leaf-bearing crown.

(3) Tree Reduction. Reducing the height or spread of a tree for clearance or vistas by selectively removing leaders and terminals of branches. Cuts should be made to lateral branches at unions, whereby the cut branch is at least one-third (1/3) the diameter of the stem at the union. No more than twenty-five (25) percent of a tree's crown mass shall be removed, unless it can be demonstrated that further reduction is necessary for functions such as utility clearance.

(4) Tree Topping. Topping shall be used as a last resort when it can be demonstrated that methods in subsections (f)(1) through (3) of this section are not feasible, or when it can be demonstrated by a certified arborist that topping is less harmful to the particular species of tree than other listed methods. Topping is the indiscriminate cutting of branches and laterals to stubs at a specific tree height or spread, often exceeding twenty-five (25) percent of a tree's crown mass. Topping is harmful to a tree and creates unsightly regrowth that requires future trimming at frequent intervals. When tree topping is used in a geologically hazardous area, the root system shall remain in place.

(5) Pruning Mature Trees. Mature and old-growth trees are more susceptible to permanent damage or death from pruning. Pruning of mature trees should only be done as a corrective or preventative measure, such as the removal of decayed, rubbing, or crowded branches.

(6) Brush Removal. Clearing of noninvasive brush, shrubs, natural grasses and other such vegetation shall be the minimum necessary to maintain vistas, passage and other necessary functions.

(g) Native Vegetation. Native vegetation shall be of appropriate plant selection and species to perform slope stabilization and erosion prevention functions. The Department may require vegetation enhancement with appropriate species, and may call for an analysis of the relationship between vegetation and slope stability per BMC 20.14.660(e)(1). Valid scientific resources such as Washington State Department of Ecology documents "Vegetation Management: A Guide For Puget Sound Bluff Property Owners" and "Erosion Control Using Vegetation" should be consulted when vegetation is proposed for slope stabilization and erosion control purposes.

(h) Erosion Control. Clearing or grading of any area within a high or moderate geologic hazard area or within two hundred (200) feet of the high or moderate geologic hazard area shall be limited to the period between May 1st to October 1st, unless the applicant provides an erosion and sedimentation control plan prepared by a qualified professional licensed in the State of Washington that specifically and realistically identifies methods of erosion control for wet weather conditions. All land modification proposals shall be consistent with the guidelines set forth in BMC 15.04.090, Stormwater Systems/Engineering Design and Construction Standards General. The faces of all cut and fill slopes shall be protected to prevent erosion as required by the engineered erosion and sedimentation control plan.

(i) Stormwater Runoff. At no time shall concentrated stormwater runoff be allowed to surface flow directly over a moderate or high geologically hazardous area or its buffer on a subject site or on neighboring properties. To reduce potentially harmful stormwater runoff discharge from impervious surfaces, the Department may approve reductions to required parking standards, provided it can be demonstrated that such reductions would not significantly impact neighboring properties. Stormwater discharge shall meet all standards set forth in BMC 15.04.090, Stormwater Systems/Engineering Design and Construction Standards General.

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(j) Significant Development Risk. In cases where a geotechnical report indicates a significant risk to public health, safety and welfare, the Department shall deny or require revision of the site development proposal.

(k) Utilities, Trails, and Roads. The following activities are allowable within geologically hazardous areas and buffers, provided it can be demonstrated through a geotechnical report that construction will not significantly increase landslide or erosion risk:

- (1) Public or private trails approved by the Department per the provisions of this chapter;
- (2) Public or private utilities;
- (3) Public roads and related infrastructure.

(l) On-Site Sewage Disposal. On-site sewage disposal should be avoided in areas of high geologic hazard and their buffers. In cases where such areas cannot be avoided, review by a geologist or a geotechnical engineer licensed in the State of Washington will be required in coordination with the Kitsap County Health District.

(m) Construction for Earthquake Loads. All construction must meet the requirements of the City Building Code as set forth in Chapter 17.04 BMC. (Ord. 5301 §3 (Exh. B) (part), 2016: Ord. 5209 §4, 2013: Ord. 4965 §7 (part), 2006)

## **20.14.650 MITIGATION, PERFORMANCE STANDARDS AND REQUIREMENTS.**

(a) The following project design and location techniques are preferred in areas of moderate or high geologic hazard and their buffers. The Department may condition or modify development proposals to require incorporation of such design techniques in cases where their application would increase public safety and welfare without substantially altering the allowable scope and scale of the proposal:

- (1) Minimize soil disturbance and vegetation removal;
- (2) Cluster structures to maintain natural topography;
- (3) Minimize building footprints and impervious surface areas;
- (4) Construct roads, walkways and parking areas to parallel natural contours;
- (5) Provide access in areas of the site with less sensitivity;
- (6) Avoid toe armoring at the base of banks, bluffs and near shorelines. Toe armoring is only an acceptable engineering solution when it meets the provisions of BMC 20.14.660(b), and all requirements of the Bremerton Shoreline Master Program and other sections of this chapter;
- (7) The following performance and mitigation standards shall apply to seismically hazardous areas:
  - (i) Avoid construction of structures using unreinforced masonry materials in areas of hydric soils, fill, or other soils prone to liquefaction from earthquakes;
  - (ii) When redevelopment is proposed on a site containing hydric soils, fill, or other soils prone to liquefaction from earthquakes encourage replacement or removal of existing unreinforced masonry structures;
  - (iii) Use appropriate building footing techniques such as pilings on sites containing hydric soils, fill, or other soils prone to liquefaction from earthquakes;
  - (iv) Avoid construction of essential public facilities, other potential emergency response facilities, and large-scale public gathering places on sites underlain by known surface fault lines. (Ord. 5301 §3 (Exh. B) (part), 2016: Ord. 4965 §7 (part), 2006)

**20.14.660 SPECIAL REPORTS.**

Whenever development is proposed in a geologically hazardous area as defined in BMC 20.14.620, or when the Department determines that additional soils and slope analysis is appropriate on a particular site per BMC 20.14.620(c), the applicant is required to submit a geotechnical or geological report that evaluates the surface and subsurface soil conditions on the site.

(a) Qualifications. Geotechnical reports shall be prepared by a qualified professional (defined in BMC 20.14.200 under "qualified professional").

(b) General Provisions. Report recommendations for earthwork, clearing or siting structures in geologically hazardous areas shall be based on existing site conditions rather than measures that have not yet been successfully approved or constructed (e.g., slope recontouring, retaining walls, bulkheads, etc.). Shoreline bulkheads and retaining walls may only be utilized as an engineering solution where it can be demonstrated that:

- (1) An existing structure or existing public facility such as roads cannot be safely maintained without such measures;
- (2) Other nonstructural methods of beach stabilization have been considered and determined infeasible; and
- (3) The resulting stabilization structure is the minimum necessary to provide stability for the existing structure and appurtenances.

(c) Minor Repairs. Minor repair activities on existing permitted structures (i.e., those that do not involve design modifications, changes in structure location, and/or demolition or abandonment of failed structure and replacement with new structures) are not subject to the following project submittal requirements.

(d) Geological Reports. A geological report is required for site development proposals that involve development activities within a geological hazardous area or its buffer per BMC 20.14.630(c), but do not require an engineered solution. The following minimum information is required:

- (1) Description of surface and subsurface conditions, including ground materials, vegetation, surface drainage, groundwater, and a preliminary geologic hazard assessment which includes the location of structures and the identification of the slope and/or coastal processes occurring at the site and factors that contribute to them;
- (2) Review of available information, literature, and mapping;
- (3) Detailed description of slope and other topographic features; and
- (4) Conceptual siting of structure and general recommendation which include methods and practices that avoid and/or reduce slope and shore impacts. Minimum recommendations should include upland and slope drainage control, groundwater control, site vegetation management, and erosion control.

(e) Geotechnical Reports. A geotechnical report is required when the Department or geological report determines that a site development proposal requires additional site information such as engineering design recommendation, slope stability analysis, subsurface exploration and testing, coastal process analyses, or construction recommendations. Depending on the level of activity proposed, the report will either be a more limited geotechnical slope evaluation report, or a full geotechnical design investigation report as described below:

(1) Geotechnical Slope Evaluation Report. A geotechnical slope evaluation report is required when slope stability analyses are confined to existing surface and/or drainage conditions, including the relationship of natural and constructed slope features to proposed changes in environmental conditions such as drainage, vegetation removal and slope geometry. The following minimum information is required:

- (i) All information under subsection (d) of this section;
- (ii) Subsurface data, exploration logs, and testing data, when required by the geotechnical engineers;

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- (iii) Estimated (or surveyed) contour map and site plan, and the Department may require ground surface profiles and typical cross-sections;
- (iv) Relative location of ordinary high water (OHW) on the surface profile and cross-sections which include mean higher high water (MHHW) for the site location, where applicable;
- (v) Soil strength parameters;
- (vi) Stability analysis of existing site;
- (vii) Analysis of the relationship of vegetation and slope stability; and
- (viii) Conceptual site development plans and cross-sections.

(2) Geotechnical Design Investigation Report. A geotechnical design investigation report is required for site development activities that propose design and construction measures at the slope crest, face and/or toe. If a designed structure does not impact slope stability or coastal processes, the report will not be required to perform all items listed under this section, as long as each item is addressed and the report details why a particular item does not apply. The following information is required:

- (i) All the information required under subsection (e)(1) of this section;
- (ii) Geotechnical requirements and measures to reduce risks;
- (iii) Geotechnical criteria used for any designs including all critical dimension, lateral earth pressures, soil-bearing pressures, location and limits of structure on or near the slope, maximum constructed slope angles, minimum soil reinforcement embedment, soil compaction requirements, and structure heights;
- (iv) Temporary construction slope stability recommendation and analyses of proposed final site stability measures;
- (v) Required construction specification and construction monitoring procedures;
- (vi) Revegetation and surface and groundwater management requirements;
- (vii) Evaluation of erosion potential and recommendations for erosion avoidance and any proposed mitigation measures; and
- (viii) Detailed tabulation of all basic geotechnical engineering test results pertinent to design and construction, and when required for clarification, detailed examples of tests conducted for the project.

(f) Revisions to Geotechnical Reports. Further recommendations shall be provided by the geotechnical engineer should there be additions or exceptions to the original recommendation based on the plans, site condition, or other supporting data. If the geotechnical engineer who revises the plans and specification is not the same engineer who prepared the geotechnical report, the new engineer shall, in a letter to the Department, express his or her agreement or disagreement with the recommendations in the geotechnical report and state whether the plans and specification conform to his or her recommendations.

(g) Plan and Specification Review. When the engineered solutions are proposed, the geotechnical engineer shall submit a statement that in his or her judgment, the plans and specifications (if prepared by others) conform to the recommendations in the geotechnical report and that all portions of the site which are disturbed or impacted by the proposed development have appropriate measures or specification that permit construction to occur while addressing slope stability so that the work does not create additional risk. The statement shall also indicate whether or not a relative gain in slope stability will be achieved after construction is complete.

(h) Monitoring and Third-Party Review.

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(1) To protect public health, safety and welfare, the Department may call for a third-party review of any geotechnical report in cases where it determines there may be substantial damage to life, property or the environment should a proposed engineered solution fail. When a third-party review is required, costs incurred for a qualified third-party geotechnical engineer to perform the review shall be borne by the applicant.

(2) Where revegetation or plantings are proposed as a method to ensure slope stability, a monitoring program shall be included as a part of the approved geotechnical report. To ensure that the performance standards of the approved geotechnical report are met, the vegetation shall be monitored for a minimum of five (5) years. A longer monitoring period may be required by the City based on either the initial report, or a review of subsequent monitoring reports. The monitoring reports shall be submitted on August 1st of each year during the monitoring period.

(i) Construction Inspection. A final inspection report shall be provided by the geotechnical engineer stating that construction has or has not implemented the design recommendations of the geotechnical report, and evaluation of any deviation from the design recommendations. (Ord. 5301 §3 (Exh. B) (part), 2016: Ord. 4965 §7 (part), 2006)

## **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. (Ord. 5301 §3 (Exh. B) (part), 2016: Ord. 4965 §7 (part), 2006)

### **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. (Ord. 5301 §3 (Exh. B) (part), 2016: Ord. 4965 §7 (part), 2006)

### **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;

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(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 go 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.

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(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 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. (Ord. 5301 §3 (Exh. B) (part), 2016; Ord. 4965 §7 (part), 2006)

**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).
- (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.

## (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;

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- (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 20.14.145.

20.14.730 Table 1: Water Type Buffer Standards			
Water Types	Attributes	Minimum Building Setback	Buffer Width Standard
S Saltwater and Freshwater	See Shoreline Master Program for buffer and minimum building setback per Ordinance 5229, or as hereinafter amended		
F	Fish habitat waters	15 feet beyond buffer	150 feet
Np	Year-round, nonfish habitat	15 feet beyond buffer	50 feet
Ns	Seasonal, nonfish habitat	15 feet beyond buffer	35 feet

(1) Buffers. Where existing buffer area plantings along Type F, Np, and Ns waters 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 when buffers are directly impacted or reduced. Enhancement should be conducted at a minimum 1:1 ratio to mitigate direct impacts or buffer reduction. 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 deciduous trees, and sixteen (16) feet on center for coniferous 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.

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(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 stormwaters, 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 Shoreline Master Program Section 7.010(c)(5). For all other areas, 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

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- 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 one hundred (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 one hundred (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, habitat 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. 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. or applicable distance by WDFW management recommendations of a designated Class I wildlife habitat conservation area shall have buffer widths determined by a mandatory habitat management plan.
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;

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(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

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(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 and that the applicant obtains all other required state and federal approvals for any work in-water or in wetlands:

(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 and one-half (4-1/2) 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

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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(e). (Ord. 5301 §3 (Exh. B) (part), 2016: Ord. 4965 §7 (part), 2006)

## 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.

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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. In a case-by-case basis, the Director may approve a departure from the prescribed habitat buffers if two state or federal resource agencies or tribes supports a departure from these critical area regulations that can demonstrate equal or greater protection of the critical areas.

(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.

(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;

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- (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, including a field determination of the ordinary high water mark or any surface waters and supporting documentation.

(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)five (5) 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) Single-family minor development exemption. At direction of the director, single family re-developments amounting to one instance of less than 500 square feet in expansion, may be exempt from requirement listed above, so long as an equal amount of native planting areas waterward of the structure are established, consistent with the requirements of 20.14.730(d)(1).

(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. (Ord. 5301 § 3 (Exh. B) (part), 2016: Ord. 4965 § 7 (part), 2006)

## **20.14.750 MITIGATION STANDARDS AND CRITERIA.**

(a) The applicant shall avoid all impacts that degrade the functions and values of a critical area or areas. Unless otherwise provided in this title, if alteration to the critical area is unavoidable, all adverse impacts to or from critical areas and buffers resulting from a development proposal or alteration shall be mitigated using the best available

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science in accordance with an approved habitat management plan and SEPA documents, so as to result in no net loss of critical area functions and values.

(b) Mitigation shall be in kind and on site, when possible, and sufficient to maintain the functions and values of the critical area, and to prevent risk from a hazard posed by a critical area.

(c) Mitigation shall not be implemented until after the City's approval of an HMP that includes a mitigation plan, and mitigation shall be in accordance with the provisions of the approved HMP.

(d) Mitigation Sequencing. Applicants shall demonstrate that all reasonable efforts have been examined with the intent to avoid and minimize impacts to critical areas. When an alteration to a critical area is proposed, such alteration shall be avoided, minimized, or compensated for in the following sequential 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, such as project redesign, relocation, or timing, to avoid or reduce impacts;
- (3) Rectifying the impact to habitat conservation areas by repairing, rehabilitating, or restoring the affected environment to the historical conditions or the conditions existing at the time of the initiation of the project;
- (4) Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action;
- (5) Compensating for the impact to habitat conservation areas by replacing, enhancing, or providing substitute resources or environments; and
- (6) 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.

(e) Mitigation Plan Requirements. When mitigation is required, the applicant shall submit for approval by the City a mitigation plan as part of the HMP. The mitigation plan shall include:

- (1) Environmental Goals and Objectives. The mitigation plan shall include a written report identifying environmental goals and objectives of the compensation proposed and including:
  - (i) A description of the anticipated impacts to the critical areas and the mitigating actions proposed and the purposes of the compensation measures, including the site selection criteria, identification of compensation goals, identification of resource functions, and dates for beginning and completion of site compensation construction activities. The goals and objectives shall be related to the functions and values of the impacted critical area;
  - (ii) A review of the best available science supporting the proposed mitigation and a description of the report author's experience to date in restoring or creating the type of critical area proposed; and
  - (iii) An analysis of the likelihood of success of the compensation project.
- (2) Performance Standards. The mitigation plan shall include measurable specific criteria for evaluating whether or not the goals and objectives of the mitigation project have been successfully attained and whether or not the requirements of this title have been met.
- (3) Detailed Construction Plans. The mitigation plan shall include written specifications and descriptions of the mitigation proposed, such as:
  - (i) The proposed construction sequence, timing, and duration;

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- (ii) Grading and excavation details;
- (iii) Erosion and sediment control features;
- (iv) A planting plan specifying plant species, quantities, locations, size, spacing, and density; and
- (v) Measures to protect and maintain plants until established.

These written specifications shall be accompanied by detailed site diagrams, scaled cross-sectional drawings, topographic maps showing slope percentage and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated final outcome.

(4) Monitoring Program. The mitigation plan shall include a program for monitoring construction of the compensation project and for assessing a completed project (BMC 20.14.760, Monitoring and Contingency Plan). A protocol shall be included outlining the schedule for site monitoring (for example, monitoring shall occur in years one (1), three (3), and five (5), ~~and seven (7)~~ after site construction), and how the monitoring data will be evaluated to determine if the performance standards are being met. 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.

(5) Contingency Plan. The mitigation plan shall include identification of potential courses of action, and any corrective measures to be taken if monitoring or evaluation indicates project performance standards are not being met (BMC 20.14.760).

(6) Financial Guarantees. The mitigation plan shall include financial guarantees, if necessary, to ensure that the mitigation plan is fully implemented. Financial guarantees ensuring fulfillment of the compensation project, monitoring program, and any contingency measures shall be posted in accordance with bonds to ensure mitigation, maintenance, and monitoring (BMC 20.14.760).

(f) Innovative Mitigation.

(1) The city may encourage, facilitate, and approve innovative mitigation projects that are based on the best available science. Advance mitigation or mitigation banking are examples of alternative mitigation projects allowed under the provisions of this section wherein one (1) or more applicants, or an organization with demonstrated capability, may undertake a mitigation project together if it is demonstrated that all of the following circumstances exist:

- (i) Creation or enhancement of a larger system of critical areas and open space is preferable to the preservation of many individual habitat areas;
- (ii) The group demonstrates the organizational and fiscal capability to act cooperatively;
- (iii) The group demonstrates that long-term management of the habitat area will be provided; and
- (iv) There is a clear potential for success of the proposed mitigation at the identified mitigation site.  
(Ord. 5301 §3 (Exh. B) (part), 2016: Ord. 4965 §7 (part), 2006)

## 20.14.760 MONITORING AND CONTINGENCY PLAN.

(a) A monitoring program shall be included as a part of the approved mitigation plan for a fish and wildlife habitat conservation area. To ensure that the performance standards of the approved mitigation plan have been met, the mitigation and/or buffer enhancement site(s) shall be monitored for a minimum of five (5) years. A longer monitoring period may be required by the City based on either the initial mitigation plan or a review of subsequent monitoring reports. The monitoring reports shall be submitted on August 1st of each year during the monitoring period. The Director may waive either a performance and/or maintenance bond for single-family residential projects on a case-by case basis.

# ATTACHMENT C

An acceptable surety device is required to ensure the applicant's compliance with the terms of the mitigation agreement.

(1) Performance Surety. All mitigation and buffer enhancement shall be completed prior to final plat approval and/or building occupancy depending on the type of application. However, when improvements cannot be completed prior to final acceptance due to weather conditions which may negatively affect the success of the project, a performance surety may be used. The performance surety shall equal one hundred fifty (150) percent of the cost of the mitigation project, and the required improvements shall be installed in a satisfactory manner within six (6) months or less.

(2) Maintenance Surety. A maintenance surety shall be required on all mitigation projects to ensure that the improvement successfully survives the monitoring periods set above.

(i) Mitigation Projects. The amount of the maintenance surety shall be equal to fifteen (15) percent of the cost of the mitigation project and the term of the surety shall reflect the term of the monitoring program.

(ii) Buffer Enhancement Projects. The amount of the maintenance surety shall be equal to fifteen (15) percent of the costs of the enhancement project and the term of the surety shall reflect the term of the monitoring program.

(3) Monitoring Deposit. A cash deposit shall be submitted with all sureties prior to final acceptance of the project to cover the estimated City costs to review the yearly monitoring reports and conduct a site inspection to ensure the performance standards are being met.

(b) Long-Term Maintenance. To ensure the long-term success of the fish and wildlife habitat conservation area, the applicant or their heirs or successors shall be responsible for the long-term maintenance of the habitat area and its associated buffer. The habitat and buffer shall be kept clear of weeds, invasive plant material, lawn clippings, junk, debris, intrusions or the like. (Ord. 5301 §3 (Exh. B) (part), 2016; Ord. 4965 §7 (part), 2006)

## **ATTACHMENT D**

## **COMMISSIONER COMMENTS**

# ATTACHMENT D

## RESPONSE TO PLANNING COMMISSIONER COMMENTS

Commissioners had a number of questions at the September meeting. Staff responses to points made by the Commission are below:

**Commissioner Question:** Define “timber cutting”, and how is this different than “timber harvesting” as currently used in BSMP 8.040 (b)? (**Attachment A, page 6, section e**)

**Staff Response:** Our use of the term “timber cutting” comes directly from Ecology’s guidance as it relates to Forest Practices. However, neither “timber cutting” nor “timber harvesting” are defined in the BSMP. The terms are essentially interchangeable in our use. Therefore, we should be able to use the term “timber harvesting” in the SMP to remain consistent.

**Commissioner Question:** Notes a potential error in that a reference is made to Table 3-1 as there appears to only be a Table 3-2 and 3-3. (**Attachment A, page 17 and 18**)

**Staff Response:** Table 3-1 is listed on Attachment A, page 15. Table 3-2 and 3-3 show current and proposed wetland buffers utilizing the July 2018 updated Ecology guidance for wetland buffers.

**Commissioner Question:** Interested in the WAC requirements as specific WAC was not cited. Would like further explanation on “add flexibility to current public access requirements” and “. . . remove public access requirements as appropriate.” (**Attachment A, page 23, section 9**)

**Staff Response:** WAC 173-26-221(4) discusses public access requirements (<https://apps.leg.wa.gov/wac/default.aspx?cite=173-26-221>) for certain shoreline projects. Removing public access requirements altogether is not under consideration. Rather, the City is looking at alternatives for sites where potential public access is especially constrained and could benefit from enhancing existing access or funding a public access point in a nearby location.

**Commissioner Question:** Requests Planning Commission have an opportunity to weigh in on this section, especially regarding the comment on requests to repair or modify bulkheads. (**Attachment A, page 24, section 12**)

**Staff Response:** Understood. Note, no changes are being proposed to the existing shoreline stabilization policies and regulations. However, incentives for shoreline enhancement, which include options for reducing shoreline stabilization along with other green alternatives, are proposed when applying for building setback reductions.

**Commissioner Question:** Commissioner notes interest in how revisions to mitigation requirements are going to look in practice and why the current restrictions are deemed unnecessary. (**Attachment A, page 24, section 14**)

**Staff Response:** The intent here is to refine single family residential project permit requirements, ensuring there is a nexus of proportionality between the scale of development and level of documentation required.

**Commissioner Question:** Commissioner requested more information on the City of Olympia Sea Level Rise Response Plan. We located to link to the Response Plan, as well as the active project page, found here:

<http://olympiawa.gov/city-utilities/storm-and-surface-water/sea-level-rise.aspx>