



City of Tacoma
Community and Economic Development Department

TO: Planning Commission
FROM: Donna Stenger, Manager, Long-Range Planning Division
SUBJECT: Shoreline Master Program Update
DATE: March 9, 2011

On March 16th, staff will be presenting a draft approach to addressing non-conforming uses and structures in the shoreline. A non-conforming use is a use or development that was lawfully constructed or established but does not conform to present Shoreline Master Program (SMP) requirements. A non-conforming use may be a use that was previously permitted in a shoreline district that would no longer be allowed. A non-conforming structure is one that does not meet development standards such as height or setback requirements. According to the Washington Administrative Code Guidelines, State rules for non-conforming uses (WAC 173-27-080) apply *unless* local governments have adopted different master program provisions.

In addition, staff will present draft development standards for log rafting and storage and a discussion of potential wetland buffer changes for Wapato Lake. Wapato Lake is currently designated as a Wetland of Local Significance with a 300' wetland buffer. Due to requirements that local jurisdictions incorporate all associated wetlands and their buffers into shoreline jurisdiction, a 300' buffer would expand shoreline review and permitting beyond the standard 200' jurisdiction area, which would bring additional developed properties under the purview of the Shoreline Management Act and the Master Program. Staff will be seeking direction from the Planning Commission on these issues.

In support of this discussion, staff is providing the following materials as background for the Commission's review:

- Draft provisions pertaining to non-conforming uses, structures and lots;
- Department of Ecology summary of State rules for non-conforming uses per WAC 173-27-080;
- Department of Ecology's *Shoreline Master Program Handbook* section addressing existing development; and
- Draft Development Regulations for Log Rafting and Storage.

If you have any questions on any of the attached materials, please contact Stephen Atkinson at 591-5531 or satkinson@cityoftacoma.org.

DS:sa

Attachments

c. Peter Huffman, Assistant Director

1.1 Non-Conforming Uses and Development

A. Nonconforming Uses

1. Nonconforming uses include shoreline uses which were lawfully established prior to the effective date of the Act or this Master Program, or amendments thereto, but which do not conform to the present regulations or standards of this Program. The continuance of a nonconforming use is subject to the following standards:
 - a. Change of ownership, tenancy, or management of a nonconforming use shall not affect its nonconforming status, provided that the use does not change or intensify;
 - b. Additional development of any property on which a nonconforming use exists shall require that all new uses conform to this Master Program and the Act;
 - c. If a nonconforming use is converted to a conforming use, no nonconforming use may be resumed;
 - d. A nonconforming use which is moved any distance must be brought into conformance with the Master Program and the Act;
 - e. A nonconforming use may convert to another nonconforming use of a similar intensity, provided the conversion does not increase any detrimental impact to the shoreline environment;
 - f. When the operation of a nonconforming use is vacated or abandoned for a period of 12 consecutive months or for 18 months of any 3-year period, the nonconforming use rights shall be deemed extinguished and the future use of such property shall be in accordance with the permitted and conditional use regulations of the Shoreline District in which it is located;
 - g. If a nonconforming use is damaged by fire, flood, explosion, or other natural disaster and the damage is less than seventy-five percent (75%) of the replacement cost of the structure or development, such use may be resumed at the time the building is repaired; Provided, such restoration shall be undertaken within 18 months following said damage;
 - h. If a non-conforming use is damaged by fire, flood, explosions, or other natural disaster and the damage exceeds seventy-five percent (75%) of the replacement cost of the original structure or development, all reconstructed or restored structures shall conform to the provisions of this Program and all applicable City codes. However, any residential uses, including multifamily, may be reconstructed up to the size, placement and density that existed prior to the catastrophe.
 - i. Normal maintenance and repair of a nonconforming use or structure may be permitted provided all work is consistent with the provisions of this Program.

B. Nonconforming Structures

1. Nonconforming structures includes shoreline structures which were lawfully constructed or placed prior to the effective date of the Act or the Master Program, or amendments thereto, but which do not conform to present bulk, height, dimensional, setback, or density requirements. Nonconforming structures may continue even though the structures fail to conform to the present requirements of the district in which they are located. A nonconforming structure may be maintained as follows:
 - a. If a nonconforming structure or development is damaged by fire, flood, explosion, or other natural disaster and the damage is less than seventy-five percent (75%) of the replacement cost of the structure or development, it may be restored or reconstructed to those configurations existing at the time of such damage, provided:
 - i. The reconstructed or restored structure will not cause additional adverse effects to adjacent properties or to the shoreline environment; and
 - ii. The rebuilt structure shall not expand the footprint or height of the damaged structure;
 - iii. No degree of relocation shall occur, except to increase conformity or to increase ecological function, in which case the structure shall be located in the least environmentally damaging location possible;
 - iv. The submittal of applications for permits necessary to restore the development is begun within eighteen (18) months of the damage. The Land Use Administrator may waive this requirement in situations with extenuating circumstances; and
 - v. The reconstruction is commenced within one (1) year of the issuance of permits. The Land Use Administrator may allow a one (1) year extension.
 - b. Except where otherwise specified in this Program, if a non-conforming structure or development is damaged by fire, flood, explosions, or other natural disaster and the damage exceeds seventy-five percent (75%) of the replacement cost of the original structure or development, all reconstructed or restored structures shall conform to the provisions of this Program and all applicable City codes. However, any residential structures, including multifamily structures, may be reconstructed up to the size, placement and density that existed prior to the catastrophe, so long as the conditions in 2.5.B(1)(a) are met.
 - c. A nonconforming building or structure may be repaired and maintained as provided in and as limited by this section. The maintenance of such building or structure shall include only necessary repairs and incidental alterations, which alterations, however, shall not extend the nonconformity of such building or structure; provided that necessary alterations may be made as required by other law or ordinance.

- d. Changes to interior partitions or other nonstructural improvements and repairs may be made to a nonconforming structure; provided that the cost of the desired improvement or repair does not exceed one-half of the replacement cost of the nonconforming structure over any consecutive five-year period, with replacement cost determined according to the Building Code.
2. A building or structure, nonconforming as to the bulk, dimensional and density requirements of this title, with a conforming use, may be added to or enlarged if such addition or enlargement conforms to the regulations of the shoreline environment and district in which it is located. In such case, such addition or enlargement shall be treated as a separate building or structure in determining conformity to all of the requirements of this Program.
3. The Administrator may allow a one time expansion of nonconforming overwater structures up to ten (10) percent of the total square footage of the structure, provided there is no increase in overwater area or shading, or overall height of the structure and the expansion is consistent with all other provisions of this Program. The applicant shall record notice on Title.

C. Nonconforming Lots

1. Undeveloped lots, tracts, parcels, or sites located landward of the ordinary high water mark that were established prior to the effective date of the Act and the Master Program, or amendments thereto, but that do not conform to the present lot size or density standards are considered nonconforming lots of record and are legally buildable subject to the following conditions:
 - a. All new structures or additions to structures on any nonconforming lot must meet all setback, height and other construction requirements of the Master Program and the Act.
 - b. Parcel modifications, such as a boundary line adjustment, property combinations, segregations, and short and long plats shall be allowed, without need for a variance, to modify existing parcels that are nonconforming to minimum lot size requirements, such as minimum area, width or frontage, as long as such actions would make the nonconforming parcel(s) more conforming to the minimum lot size requirements and would not create any new or make greater any existing nonconformities.

From Shoreline Use Standards, 6.1.2(5)

2. At the time of adoption of this Program, legally established uses and/or structures located outside a critical area or buffer and upland of the OHWM, shall be considered conforming. Expansion, modification, or change of said use or structure shall be permitted in accordance with the requirements of this Program.

From Marine Buffer Standards, 6.4.3.B (4)

3. At the time of adoption of this Program, existing uses that were legally established and do not conform to the marine buffer standards, shall be considered conforming for the purposes of this Master Program. Expansion or modification of said use/structure shall be permitted in accordance with the requirements of this Program. In addition, non-water-oriented uses that do not conform to the marine buffer standards shall be subject to the restrictions below:
 - a. If the non-water-oriented use is converted to a water-oriented use, then all future uses shall be in accordance with the permitted and conditional use regulations of the Shoreline Environment and District in which it is located;
 - b. The non-water-oriented use may convert to another non-water-oriented use of a similar intensity, provided the conversion does not increase any detrimental impact to the shoreline environment;
 - c. When the operation of the non-water-oriented use is vacated or abandoned for a period of 12 consecutive months or for 18 months of any 3-year period, the future use of such property shall be in accordance with the permitted and conditional use regulations of the Shoreline District in which it is located;
 - d. If the use or structure is damaged by fire, flood, explosion, or other natural disaster and the damage is less than seventy-five percent (75%) of the replacement cost of the structure or development, such use may be resumed at the time the building is repaired; Provided, such restoration shall be undertaken within 18 months following said damage;
 - e. If the use or structure is damaged by fire, flood, explosion, or other natural disaster and the damage is more than seventy-five percent (75%) of the replacement cost of the structure or development, the replacement structure and use shall be in accordance with the use and development provisions of this Master Program;
 - f. The Administrator may allow a one time expansion landward of the OHWM, or laterally along the shoreline parallel to the OHWM, of up to ten (10) percent of the total square footage of the primary structure, provided the expansion is consistent with all other provisions of this Program and the expansion does not encroach any further on a critical area or marine shoreline. The applicant shall record notice on Title and re-vegetate an equivalent area of marine or critical area buffer in accordance with the landscaping requirements of Chapter 6.7.2.
 - g. Normal maintenance and repair may be allowed provided all work is consistent with the provisions of this Program.

From Boating Facilities, 7.3.2.D

4. Legally permitted covered moorage and boathouses that were in lawful existence at the time of passage of this Program, or subsequent amendment to this program, may continue as permitted/conforming structures subject to the requirements of this Master Program and the following restrictions:
 - a. Existing covered moorage and boathouses shall not increase overwater coverage;

- b. All work and materials shall be performed using Best Management Practices (BMPs);
- c. Existing structures may be repaired and maintained provided the amount of cover does not increase and light transmission is improved to meet state and federal standards;
- d. Walls and fences for covered moorage shall be prohibited above deck or float level, except that handrails which are open in nature and not higher than 42 inches above the deck or float may be permitted;
- e. Existing covered moorage and boathouses may be relocated and reconfigured within an approved marina if the relocation and reconfiguration does not result in an increase in overwater coverage and the new location results in an improvement to shoreline ecological functions.

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Shoreline Master Programs (SMPs)

[Shoreline Management Home](#) > [SMP Home](#) > [Permits and Enforcement](#) > Non-conforming uses

Non-conforming uses

A non-conforming use is a use or development that was **lawfully** constructed or established but does not conform to present SMP requirements. These "grandfathered" developments may continue as long as they are not enlarged, intensified, increased, or altered in a way that increases the nonconformity.

State rules for non-conforming uses ([WAC 173-27-080](#)) apply *unless* local governments have adopted different master program provisions.

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Enlarging or expanding a nonconforming use

A non-conforming uses may be **enlarged or expanded** under very limited circumstances. Nonconforming single-family residences that are located landward of the ordinary high water mark may be enlarged or expanded in conformance with applicable bulk and dimensional standards by the addition of space to the main structure or by the addition of normal **appurtenances** upon approval of a conditional use permit.



It is sometimes important to distinguish between a nonconforming structure with a conforming use and a nonconforming use. If a house is located in an environment that allows residential use but is closer to the water than the environment designation allows, it may be expanded as long as the expansion does not further intrude on the setback. (A further intrusion may be authorized by a **variance** if the criteria can be met.) Expansion of a structure that houses a nonconforming use cannot be authorized by these provisions or by variance.

If an existing use conforms with SMP use regulations but does not conform with SMP setback, height, or density requirements the use may be enlarged or expanded *if* the extent of non-conformity is not increased.

Abandoned uses

Nonconforming uses are considered **abandoned** if they are discontinued for more than twelve consecutive months or for twelve months during any two year period. The "grandfathered" rights expire regardless of the owner's intent to abandon or not.

Any subsequent use must conform to the requirements of the SMA and SMP. Similarly, a nonconforming use may not be changed to another nonconforming use or moved any distance within the shorelines of the state.

Repairing damaged nonconforming uses

If a nonconforming use is damaged to an extent not exceeding 75% replacement cost of the original structure, it may be reconstructed to those configurations existing immediately prior to the time the structure was damaged, so long as:

- the applicant applies for permits needed to restore the development within six months of the date the damage occurred;
- all permits are obtained; and
- the restoration is completed within two years of permit issuance.

Substandard lots

A pre-existing lot or parcel that is substandard with respect to lot size or density requirements may be developed providing it meets the other requirements of the SMA and SMP. A reasonable use of the property should be allowed based on the characteristics of the site. Easing of standards other than lot size or density, for example building setbacks, would require a variance permit. Typical situations of nonconforming developments are an old boat repair yard or industrial warehouse located in a conservancy environment; or a residence encroaching within established SMP setbacks.

Approved variances

A structure for which a variance has been issued shall be considered a legal nonconforming structure and the requirements of this section shall apply as they apply to preexisting nonconformities.

Changing uses of nonconforming structures requires a CUP

A structure which is being or has been used for a nonconforming use may be used for a different nonconforming use only upon the approval of a conditional use permit. A conditional use permit may be approved only upon a finding that:

- No reasonable alternative conforming use is practical; and
- The proposed use will be at least as consistent with the policies and provisions of the act and the master program and as compatible with the uses in the area as the preexisting use.

In addition conditions may be attached to the permit to assure compliance with the master program and to assure that the use will not become a nuisance or a hazard.

Moving a nonconforming structure

A nonconforming structure which is moved any distance must be brought into conformance with the applicable master program and the act.

Determining the age of a development

Determining exactly when a development, such as a bulkhead, was initially built, can be a difficult task. While technically it is the applicant which must prove compliance with the regulation, the practical situation is that usually the local government must look into this to be sure of the situation. Evidence such as assessor's records, recorded deeds or other documents, historical photos, other permit records (e.g. *building, HPA, short or long plat, etc.*) or testimony from contractors, neighbors, officials, etc.) can be crucial in proving the date of construction or initial use.

Nonconforming uses and CUPs

The criteria for allowing a Conditional Use Permit (CUP) in 173-27-150(4) prohibits prohibited uses through a CUP. However, the SMA section on nonconforming development in 173-27-080(6) allows it. At first blush, this appears to be a conflict. However, the purpose of the nonconforming use rule is to provide reasonable use of a legally existing non-conforming building when no more conforming use can be practically expected to make use of the structure. This is a very limited exception under very limited circumstances but is necessary to assure that regulations do not either overly compromise policy in order to accommodate some particular situation or overregulate and result in a "taking" of private property.

Pre-existing uses

If a shoreline development predates the SMA or a local SMP ("*pre-existing uses*") is consistent with the SMP, permits are only required if new substantial development is proposed.

When the use consists of ongoing development activities, such as a gravel mine, the project requires an "active" (unexpired) shoreline substantial development permit throughout the life of the project. If the use of a pre-existing development is proposed to be changed the new use must be consistent with the SMP. If the proposed use is a conditional use in the master program then a conditional use permit is required whether or not new development is required to establish the use.

Structures placed in navigable waters before 1969

In RCW 90.58.270, the SMA specifically recognizes one class of pre-existing use, in declaring that "Nothing in this statute shall constitute authority for requiring or ordering the removal of any structures, improvements, docks, fills, or developments placed in navigable waters prior to December 4, 1969." This language was a response to the State Supreme Court's decision in *Wilbour v. Gallagher*, in which the court held that fill placed in Lake Chelan violated the public's right of navigation under the public trust doctrine.

For more information

Law: RCW 90.58.270
Rule: WAC 173-27-080

For specific information about a city or county permit process, visit the Status of Local Shoreline Master Programs (SMPs) web page, or contact a shoreline specialist at the appropriate Ecology regional office.

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Shoreline Master Program Updates

Existing development

Introduction

Many of Washington's 28,000 miles of shorelines are developed. Freight containers dock and unload at port facilities. Marinas provide in-water and dry storage for recreational and commercial boats. Public parks offer swimming beaches and boat docks. Single family homes and multifamily buildings offer their residents sunset views and quick access to the water. Commercial buildings feature retail shops and restaurants.

Development that's within shoreline jurisdiction (see SMP Handbook Chapter 5) falls under the authority of the Shoreline Management Act (SMA), which is enacted through local Shoreline Master Programs (SMP). As local governments update their SMPs and approve new regulations, questions arise about what will happen to existing structures and uses along shorelines.

Existing development is "grandfathered"

Existing legally established structures and uses are typically "grandfathered" with the approval of updated SMPs. That means they can continue to exist, be used, and be maintained and repaired. That's the case even if the updated SMPs include regulations that would not allow new development to be built exactly as existing development. For example, new buildings may need to be further away from the water, or new development projects may need to retain some vegetation onsite.

Existing development will remain in place and continue to be used. Homeowners can continue to live in their houses and grow vegetables in their gardens. Local governments sometimes allow existing "grandfathered" buildings to be expanded, although there may be limits to the size of the addition, the total square footage, new stories, or new impervious surfaces.

Ecology and local governments do not expect most existing development to be eliminated from the shoreline after new SMP regulations are adopted. Local governments may determine that certain development should be eliminated – for example, dilapidated buildings in hazard areas such as steep eroding slopes, older uses that are not compatible with surrounding uses, or abandoned structures.

There are different ways to address continuance and expansion of buildings, structures and uses that don't quite meet the new SMP regulations. This guidance discusses ways local SMPs can address existing development.

No net loss starts with existing development

The updated SMPs must include policies and regulations to achieve “no net loss” of shoreline ecological functions. The current conditions of the shorelines, including existing development, are the starting point or baseline for determining no net loss. It will be important to know what shoreline development looks like when options for managing existing development are considered. Are shoreline lots big or small? Are lots mostly covered by impervious surfaces? Are there big lawns? Is native vegetation present? Is the shoreline armored with bulkheads?

The no net loss goal needs to be part of the decision-making process regarding future development – both new development and expansion or renovation of existing development. Local governments need to consider how the impacts of future development will be mitigated.

Cities with densely developed shorelines may have fewer opportunities for achieving no net loss than cities or counties with less developed shorelines. With a densely developed shoreline, large buffers or setbacks may not be appropriate or feasible for various reasons -- small lots cannot accommodate them; large buffers would include many structures and impervious surfaces that interfere with buffer functions; regulations regarding structures within buffers could be complicated.

If the SMP allows existing structures to expand, how will the impacts of the expansion be mitigated?

- Is there room on the lots to plant native vegetation?
- Are rain gardens and other low impact development techniques feasible to mitigate stormwater impacts?
- Do wind and wave conditions allow for removal of bulkheads?
- Are there sites within the city for off-site mitigation if no space is available onsite? In some small cities, there are limited opportunities for off-site mitigation.

If new impacts cannot be avoided or mitigated, the no net loss standard may be difficult to achieve. Ecology cannot approve draft SMPs unless policies and regulations are designed to achieve no net loss.

Traditional approach

Traditionally, uses and structures that are not consistent with the new regulations have been categorized as “nonconforming” development. Nonconforming uses and development were lawfully constructed or established, but do not conform to current land use regulations or standards. The creation and regulation of nonconforming uses and development are old issues, beginning early in the 20th century, when municipalities started enacting zoning regulations.

After the SMA became law and SMPs were developed, the concept of nonconforming uses and development carried over to shorelines regulations. Not all of the SMPs adopted in the 1970s and early 1980s included clear provisions for nonconforming development. To ensure clarity, Ecology adopted nonconforming development regulations in 1986 in the former WAC 173-14. The regulations were revised and then incorporated in the updated WAC 173-27-080 in 1996. These regulations apply at the local level only if the local SMP does not address nonconforming development.

The term, “nonconforming use” is often used to mean both uses and development or structures. This guidance refers to use, development or structures, and lots.

- A **use** is nonconforming if it would not be approved under the current regulations. An example is a commercial use within an area designated for residential uses.
- A **development or structure** is nonconforming if it is located or configured in ways that do not meet current standards. A common example along shorelines is a single-family residence that does not meet current setback standards. In these cases, the **use** is consistent with the shoreline regulations, but the **structure** does not meet one or more standards in the existing regulations. Piers and docks that are larger than the current regulations allow also are examples of nonconforming structures.
- **Lots** that were legally established prior to the effective date of the current SMP and do not conform to the current lot size standards also are nonconforming.

Many SMPs define nonconforming structures, uses and lots; address expansion, changes in use, and rebuilding after fire or natural disaster; and set timelines for permitting, reconstruction and abandonment.

The regulation of nonconforming development sometimes is a contentious issue during SMP updates. The word “nonconforming” has raised concerns and confusion among property owners. Home owners seem to be the most worried about having a “nonconforming” label on their property. Their concerns and questions include:

- Can they repair and maintain their house?
- Will homeowners insurance cost more?
- Will they be able to get a loan for house repairs or improvements?
- Will potential buyers be able to get a mortgage?

Other property or business owners wonder if they can they continue the existing use, such as a retail shop, or will they need to close and move?

Nonconforming development is discussed in more detail later in this document.

Optional approaches

Some local governments are proposing different approaches as they update their SMPs. They would allow existing structures, particularly single family residences, to continue as conforming structures even though new shoreline setbacks, buffers, and other regulations in their Shoreline Master Programs would typically create nonconforming structures.

Non-traditional approaches to existing structures include:

- Excluding the footprint of the existing structures from the buffer or setback. Depending on the size of the buffer, it may wrap around the sides and rear of the structure but will not include the structure. On some urban shorelines, significant amounts of trees and vegetation exist behind houses, away from the water. Larger buffers may be appropriate in these areas.
- Stating in the SMP that all legally-established existing structures are conforming structures.

These approaches have not been tested before the hearings boards and the courts.

Nonconforming development, however, has been the subject of many Shorelines Hearings Board and court cases, as discussed later in this document.

Local governments that use a nontraditional approach should keep a record of their decisions, including why they decided to use this approach, and how the impacts on the shoreline environment compare with the expected impacts from an SMP that creates nonconforming development through use of shoreline buffers or setbacks. Though there may be little or no differences in impacts, it's important to be able to show how you arrived at your decision, per the "show your work" mandate from the Growth Management Hearings Board.

Local governments using these approaches will need to provide a detailed inventory and assessment of buffer functions as a baseline to compare how the optional approach would affect the natural shoreline resources. For example, if along a specific shoreline reach, water quality filtration functions are determined to occur within 100 feet of the OHWM, future development impacts due to increased impervious surfaces must be related to specific water quality treatment measures. For example, low-impact development methods should offset the impact and yield no net loss of function from the current conditions.

Nontraditional approaches for existing development must be:

- Limited to structures only. Uses that would not be allowed under the new SMP should not be included.
- Limited to legally established structures only.

- Not applied to overwater residences. New overwater residences are not allowed under the SMP Guidelines, so existing overwater residences are nonconforming uses and nonconforming structures.

Ecology will require SMP regulatory language that is clear and precise and, at a minimum, include regulations to address the questions listed below. Otherwise, these issues will inevitably arise during implementation of the SMP. Regulations are needed to ensure consistency in treatment of these conforming structures so that the SMP does not default to WAC 173-27-080, Ecology's regulation for nonconforming development.

- Does the approach apply throughout shoreline jurisdiction or in specific environment designations or shoreline reaches only? It may not be appropriate in all shoreline areas.
- Is it limited to single family residences? Are appurtenances such as garages included? Are other residential-related uses such as sheds, driveways, or tennis courts included?
- Are water-related uses and nonwater oriented uses included?
- Are there clear procedures and criteria for considering when expansion of these structures would be allowed? Can the footprint be expanded? Will additional stories be allowed? Are there specific limits to expansion such as percent of existing square footage, maximum impervious surface, maximum square footage, etc.? Expansions toward the water or over the water should not be allowed.
- Will replacement in the event of a disaster such as a fire or earthquake be allowed? Is replacement limited to the footprint prior to the disaster?
- Will replacement for other reasons be allowed?
- Are expansions of structures on old fills that were placed waterward of the OHWM allowed or only allowed upland of the structure?
- How is view blockage from adjacent residences and upland streets and aesthetic consequences along the shoreline reach addressed?
- What mitigation will be required for expansion? This could include removing bulkheads, adding vegetation, improving stormwater facilities, or other measures. Mitigation measures should be carefully reviewed during the permit process to ensure they mitigate the impacts of the development.
- Are there regulations regarding retention and replacement of trees and other vegetation within buffers or elsewhere on the property?
- What setbacks and buffers will be put in place?
- What can be built in the buffer or setback?

- Is a shoreline conditional use permit or variance required for expansion? In what circumstance?
- How will the no net loss standard be met? How will the baseline ecological functions be retained or enhanced?
- How will abandoned structures be addressed?

A generalized statement in the SMP that simply says that all existing structures are conforming, or that simply excludes all existing structures from the buffer, and does not address the issues above, is not likely to be consistent with the no net loss standard.

Other things that local governments should think about:

- How would these alternative approaches within shoreline jurisdiction mesh with the nonconforming standards and other provisions of the zoning code, flood ordinances, building codes, and with the critical areas ordinance?
- Under some circumstances, local governments may determine certain structures to be nonconforming. For example, in some marine reaches, summer vacation cabins have been allowed in the past, but are now determined to be in hazardous slide areas. Local government may decide to designate such structures as non-conforming and not allow further expansion. In hazardous areas such as floodways, replacement of substantially damaged or destroyed structures may be required to be located out of the hazard area or in an area of significantly lower risk.

Nonconforming development

Local governments that choose one of the options discussed above, as well as local governments that will take the traditional approach toward nonconforming development in shoreline areas, both need nonconforming development language in the SMP.

Why would local governments that choose the nontraditional options need language in the SMP about nonconforming development?

- Some nonconforming uses, structures and lots may exist. Overwater residences are nonconforming uses and nonconforming structures. Uses that would not be allowed under the SMP are nonconforming uses; for example, a factory in a shoreline residential environment designation. Lots that do not meet the standards of the SMP are nonconforming lots.
- Variances may create nonconforming structures. The SMP should set the parameters for new development and redevelopment. Local government will need to decide whether any development that is outside those parameters and requires a variance will be nonconforming and will meet the no net loss requirement.

- The nonconforming language in WAC 173-27-080 will apply to any nonconforming uses, structures and lots if the SMP does not include nonconforming language.

The rest of this document provides background information on regulation of nonconforming uses and development in Washington. It includes the Department of Ecology standards for nonconforming uses and development, reviews relevant court and board cases, and provides examples of custom nonconforming provisions in Shoreline Master Programs (SMP) that Ecology has approved.

Washington statutes

Within the general framework of the Constitution and case law, Washington State local governments have significant flexibility for defining and addressing nonconforming uses and development. Historically, nonconforming uses and development have not been addressed by State legislation in Washington.

However, in March 2010, the Governor signed EHB 1653, which adds special provisions to the Growth Management Act (GMA) regarding existing uses in Shoreline areas. First, the bill clarifies that critical areas regulations adopted under the GMA remain in effect within shoreline jurisdiction until Ecology adopts a comprehensive SMP update or SMP amendment specifically related to critical areas.

The bill also provides that *legally existing structures and uses within critical areas buffers in shoreline jurisdiction are considered to be “conforming”* under the GMA, and may continue during the time the critical areas regulations remain in effect. Special provisions are included regarding change or expansion of these existing uses. More information is available at <http://www.ecy.wa.gov/programs/sea/sma/news/reconsider.html>)

Ecology shoreline regulations

The WAC regulations about nonconforming development apply at the local level only if the local SMP does not address nonconforming development. These standards reflect the basic policy expressed in several Washington court decisions and the policy of the SMA to provide for preferred uses and protect shoreline habitat.

For purposes of shoreline management under the SMA, nonconforming use or development is defined as:

“ a shoreline use or development which was lawfully constructed or established prior to the effective date of the act or the applicable master program, or amendments thereto, but which does not conform to present regulations or standards of the program (WAC 173-27-080(1)).

The WAC also addresses nonconforming lots:

(10) An undeveloped lot, tract, parcel, site, or division of land located landward of the ordinary high water mark which was established in accordance with local and state subdivision requirements prior to the effective date of the act or the applicable master program but which does not conform to the present lot size standards may be developed if permitted by other land use regulations of the local government and so long as such development conforms to all other requirements of the applicable master program and the act.

The WAC nonconforming regulations are provided below.

WAC 173-27-080

Nonconforming use and development standards

When nonconforming use and development standards do not exist in the applicable master program, the following definitions and standards shall apply:

(1) "Nonconforming use or development" means a shoreline use or development which was lawfully constructed or established prior to the effective date of the act or the applicable master program, or amendments thereto, but which does not conform to present regulations or standards of the program.

(2) Structures that were legally established and are used for a conforming use but which are nonconforming with regard to setbacks, buffers or yards; area; bulk; height or density may be maintained and repaired and may be enlarged or expanded provided that said enlargement does not increase the extent of nonconformity by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses.

(3) Uses and developments that were legally established and are nonconforming with regard to the use regulations of the master program may continue as legal nonconforming uses. Such uses shall not be enlarged or expanded, except that nonconforming single-family residences that are located landward of the ordinary high water mark may be enlarged or expanded in conformance with applicable bulk and dimensional standards by the addition of space to the main structure or by the addition of normal appurtenances as defined in WAC [173-27-040](#) (2)(g) upon approval of a conditional use permit.

(4) A use which is listed as a conditional use but which existed prior to adoption of the master program or any relevant amendment and for which a conditional use permit has not been obtained shall be considered a nonconforming use. A use which is listed as a conditional use but which existed prior to the applicability of the master program to the site and for which a conditional use permit has not been obtained shall be considered a nonconforming use.

(5) A structure for which a variance has been issued shall be considered a legal

nonconforming structure and the requirements of this section shall apply as they apply to preexisting nonconformities.

(6) A structure which is being or has been used for a nonconforming use may be used for a different nonconforming use only upon the approval of a conditional use permit. A conditional use permit may be approved only upon a finding that:

(a) No reasonable alternative conforming use is practical; and

(b) The proposed use will be at least as consistent with the policies and provisions of the act and the master program and as compatible with the uses in the area as the preexisting use.

In addition such conditions may be attached to the permit as are deemed necessary to assure compliance with the above findings, the requirements of the master program and the Shoreline Management Act and to assure that the use will not become a nuisance or a hazard.

(7) A nonconforming structure which is moved any distance must be brought into conformance with the applicable master program and the act.

(8) If a nonconforming development is damaged to an extent not exceeding seventy-five percent of the replacement cost of the original development, it may be reconstructed to those configurations existing immediately prior to the time the development was damaged, provided that application is made for the permits necessary to restore the development within six months of the date the damage occurred, all permits are obtained and the restoration is completed within two years of permit issuance.

(9) If a nonconforming use is discontinued for twelve consecutive months or for twelve months during any two-year period, the nonconforming rights shall expire and any subsequent use shall be conforming. A use authorized pursuant to subsection (6) of this section shall be considered a conforming use for purposes of this section.

(10) An undeveloped lot, tract, parcel, site, or division of land located landward of the ordinary high water mark which was established in accordance with local and state subdivision requirements prior to the effective date of the act or the applicable master program but which does not conform to the present lot size standards may be developed if permitted by other land use regulations of the local government and so long as such development conforms to all other requirements of the applicable master program and the act.

Nonconforming uses and development in an SMP

SMPS should include provisions to address local government decisions that determine uses and properties are nonconforming (WAC 173-26-191(2)(a)(iii)(A)). Ecology does not expect, nor is it asking, local governments to eliminate nonconforming development from shorelines. Some nonconforming uses and structure within shoreline jurisdiction have existed for many years.

Options for addressing nonconforming situations include:

- Use the tried and tested nonconforming standards in WAC 173-27-080.
- Use some provisions of WAC 173-27-080 and revise others to meet local needs.
- Write new nonconforming provisions.
- Use the same nonconforming provisions that are in the local zoning code. This will provide consistent treatment of nonconforming uses and development within and outside shoreline jurisdiction.

If your SMP does not include regulations regarding nonconforming development, WAC 173-27-080 will apply within your municipality's shoreline jurisdiction.

General "sideboards"

SMP language should be within the parameters of case law on nonconforming development. (For your convenience, some of those cases are discussed below.) The basic general "sideboards" for nonconforming development regulations include:

- "Grandfathered" (nonconforming) existing legal uses and structures may continue.
- Owners of grandfathered structures that wish to expand the structure may be able to do so if they do not increase the nonconformity. For example, a house partially within the buffer could be expanded outside the buffer.
- Local governments should develop use regulations using the information in their shoreline inventory and analysis and should avoid creating nonconforming development as much as possible. Local governments should assign environment designations and develop use regulations with the existing pattern of shoreline uses in mind and may adopt incentives or other programs in such areas to accommodate existing development while still meeting no net loss.
- Local governments have the right to terminate nonconforming development. (On occasion, an existing use may have a high potential for use conflicts, such as a fuel storage facility within a city's wellhead protection zone. In these cases, a specific time

may be set for the use to be amortized and removed.)

- As reflected in case law, local governments may adopt regulations to phase out nonconforming development over time. More commonly, phasing out is accomplished by adopting disincentives such as strict limits on change of use or expansion.
- For updated SMPs, the “no net loss” policy objective should guide review of proposed expansions or other changes to grandfathered uses and new development on substandard vacant lots.
- SMPs need to cover the breadth of the nonconforming provisions that are in WAC 173-27-080 including those listed below. (The questions on pages 4 and 5 for conforming structures should also be considered for nonconforming structures.)
 - Definitions.
 - Structures – maintenance and repair, expansion, moving the structure.
 - Uses – expansion, change in use.
 - Reconstruction after damage, including timelines for permitting and reconstruction. Ecology suggests that SMPs include criteria to avoid reconstruction in hazard areas.
 - Abandonment.
 - Undeveloped lots.

The nonconforming provisions in an SMP should distinguish nonconforming uses from nonconforming structures. A nonconforming structure may contain a conforming use. For example, a single family residence in a Shoreline Residential environment is a conforming use. If it is located within the shoreline buffer, it is a nonconforming structure but still a conforming use.

Benign or detrimental nonconformities

A recent *Zoning Practice* article suggests that local governments consider whether nonconforming developments are “benign” or “detrimental” and develop separate regulations for development falling within these categories. This may help determine whether nonconformities should be terminated over time or allowed to continue. (“Distinguishing Between Detrimental and Benign Nonconformities,” V. Gail Easley and David A. Theriaque, *Zoning Practice*, November 2009, Issue No. 11, American Planning Association.) However, in critical area buffers and shorelines, the cumulative impact of numerous minor or lesser impacting “benign” developments should be considered.

No net loss of ecological functions

SMPS must, over time, achieve no net loss of shoreline ecological functions. The SMP update process will include a cumulative impacts analysis and no net loss report that show how the SMP will achieve no net loss.

Nonconforming regulations must be included in those analyses. If the draft SMP would allow single family residences to be built on nonconforming lots, the analyses should reflect how no net loss will be achieved despite such development. The potential expansion of nonconforming development such as residences or other structures such as piers and docks, commercial or industrial buildings also should be included in the no net loss analyses.

Court cases and Shorelines Hearings Board cases

Hearings boards and courts in Washington have dealt with the nonconforming development issue under the Shoreline Management Act (SMA) and other land use statutes for more than three decades.

Some key points from the following Court and Shorelines Hearings Board (SHB) cases:

- Washington state laws do not address the regulation of nonconforming development, and leave this issue primarily to local governments to resolve. (Note the 2010 changes to the GMA mentioned earlier.)
- Nonconforming development (uses and structures) is generally disfavored.
- Nonconforming development is routinely allowed to continue, at least for some time.
- A nonconforming status grants the development the right to continue to exist, but does not assure the right to significantly change, enlarge or alter the development.
- Limited expansion of a nonconforming structure might be permissible because it is tied to other actions to bring the overall use into conformity (e.g., upgrade of nonconforming septic system).
- Local ordinances can terminate nonconforming development that is abandoned or presents a hazard, or provide for it to cease over time.
- The language in the SMP is critical to the resolution of SHB and Court cases.

Some Court and Shorelines Hearings Board cases that are applicable to nonconforming development regulations in an SMP include those shown below.

136 Wn.2d 1, Rhod-A-Zalea v. Snohomish County: In this case, the Washington Supreme Court supported Snohomish County's decision to require a grading permit for an existing nonconforming peat mining operation. The paragraphs below, taken from the case, discuss the theory of zoning in regards to nonconforming use and Washington State laws silence on the regulation of nonconforming use.

A nonconforming use is a use which lawfully existed prior to the enactment of a zoning ordinance, and which is maintained after the effective date of the ordinance, although it does not comply with the zoning restrictions applicable to the district in which it is

situated. See 1 Robert M. Anderson, American Law of Zoning § 6.01 (Kenneth H. Young ed., 4th ed. 1996.)

The theory of the zoning ordinance is that the nonconforming use is detrimental to some of those public interests (health, safety, morals or welfare) which justify the invoking of the police power. Id. at 220. Although found to be detrimental to important public interests, nonconforming uses are allowed to continue based on the belief that it would be unfair and perhaps unconstitutional to require an immediate cessation of a nonconforming use. Id. at 218. A protected nonconforming status generally grants the right to continue the existing use but will not grant the right to significantly change, alter, extend, or enlarge the existing use. Id. Moreover, zoning ordinances may provide for termination of nonconforming uses by abandonment or reasonable amortization provisions. See R. SETTLE, WASHINGTON LAND USE § 2.7(d).

While some states' authority to terminate, alter, or extend nonconforming uses is expressly granted or withheld in zoning enabling acts, Washington's enabling acts are silent regarding the regulation of nonconforming uses. See R. SETTLE, WASHINGTON LAND USE § 2.7(d). Instead, the state Legislature has deferred to local governments to seek solutions to the nonconforming use problem according to local circumstances. In Washington, local governments are free to preserve, limit or terminate nonconforming uses subject only to the broad limits of applicable enabling acts and the constitution. See id.

Meridian Minerals v. King County, 61 Wn. App. 195 (1991): The Washington Supreme Court supported King County's decision to withhold a permit for expansion of a nonconforming rock quarry. Language from the decision discusses nonconforming uses.

The various owners of the Veazie Valley quarry have been allowed to continue a nonconforming use since 1958. That use can continue as long as it remains similar in kind to the use that became vested, the use at the time zoning occurred. Although railroad use of rock may have declined over the years and BNRR may be one of the last to need rock from the quarry, Washington has long adhered to the policy of phasing out nonconforming uses. Anderson; Bartz; Coleman v. Walla Walla, [44 Wn.2d 296](#), 266 P. 2d 1034 (1954); Cain. The generally accepted method of eliminating nonconforming uses "is to prevent any increase in the nonconformity and, when changes in the premises are contemplated . . . to compel . . . a lessening or complete suppression of the nonconformity". Anderson, at 323 (quoting 147 A.L.R. 167, at 168. The use of the quarry, not its ownership, was at issue when BALD declined to process Meridian's permit application.

Jukanovich v. Ecology, SHB No. 06-013: In this summary judgment, the Shorelines Hearings Board supported Ecology's denial of a variance for reconstruction of a house within the shoreline setback.

While it is true that the house has not been moved closer to the water on the ground level, nor has the footprint changed, the Board concludes that adding nearly sixteen and one-half feet of height to the house, as well as creating additional interior square footage, enlarges,

intensifies, and increases the encroachment of the house within the setback. The Board agrees with Ecology that “the setback does not just define a line that runs along the ground, beyond which development is prohibited. The setback line extends up into the air as well, to include the space above the ground.” 11. This interpretation is consistent with the definition of “setback” in the SCSMA which states “A required open space, specified in shoreline master programs, measured horizontally upland from and perpendicular to the ordinary high water mark.” SCSMA, p. J-9. See also SCC 30.23.100(2) (“every required setback shall be open and unobstructed from the ground to the sky except for trees and other natural vegetation.”)

Garlick et.al. v Eiford et.al., SHB No. 95-6: This SHB case is a relevant decision to nonconforming residential structures. The decision states that nonconforming structures and uses are disfavored. The Board approved increasing the size of the home in the setback to allow a two-car garage, although the size increase was less than requested because the Board denied an over-the-garage living space.

While we recognize that the overall policy of the SMA favors single family residences, we believe that the establishment of setback lines which create non-conforming development in existing neighborhoods, are logically intended to phase out the residential use within the setback area. If this is not the ultimate goal, these setback requirements are of little consequence, other than to invite the piecemeal granting of variances, until the setback becomes a nullity. The WCSMP is consistent with the concept of limiting the expansion of non-conforming development. Section 23.50.92, for example, restricts repair of non-conforming developments to work which will not increase the non-conformity. Section 23.50.93 similarly restricts the reconstruction of any pre-existing non-conforming developments. It would be inconsistent with the liberal construction of the SMA to deduce from these sections that proposals to expand non-conforming residential development may be approved, based on the personal desires of the applicant.

73 Wn. App. 576, Jefferson Cy. v. Seattle Yacht Club, 1994: The Court of Appeals remanded to the SHB the Superior Court order affirming the SHB's decision to allow a yacht club outstation at Port Ludlow Bay. The Court directed the SHB to reconsider its decision to “reconsider the proposal's compatibility with the area immediately adjacent to the proposed site without considering any nonconforming use.”

*Because nonconforming uses are disfavored, and because the public policy of this state is to restrict such uses so that they may ultimately be phased out, see, e.g., Keller v. Bellingham, [20 Wn. App. 1](#), 9, 578 P.2d 881 (1978), *aff'd*, [92 Wn.2d 726](#), 600 P.2d 1276 (1979), we believe that nonconforming uses are not precedent for other uses. That is, a finding of compatibility cannot, in our view, be substantially based on the existence of a nonconforming use in the area in question.*

Guy Fox v. Ecology, SHB NO. 00-025: In this case, the SHB overturned Ecology's denial of a conditional use permit to enclose a deck as long as the change was linked to installation of a septic system.

First, it is important to note that the enclosure of the deck will not increase the non-conformity. Accord, Gambriell v. Mason County and Ecology, SHB 91-26 (1992) (enclosure of a deck to add a dining room did not increase the nonconformity as the same area that violated the setback was not increased.) The degree to which the nonconforming structures on the Fox property will be over the water will remain the same.

Second, the area around Mr. Fox's property is highly developed with many residential homes that are either over the water or behind nonconforming bulkheads. Many of these residential developments are much further waterward and are much larger in scale than Mr. Fox's very small 10 feet by 13 feet cabin. Allowing Mr. Fox to enclose an existing deck to add a bathroom and expanded kitchen will not grant him a special privilege but will merely make his home more in conformity with the surrounding area.

Third and most importantly, there has been no evidence of any environmental harm that will result from allowing this very modest request. If there is no environmental harm, allowance of this expansion will foster "all reasonable and appropriate uses" and will recognize the preference given to single-family development. RCW 90.58.020.

Stephen and Beverly Davis v. Pierce County and the Department of Ecology, SHB NO. 03-021: In this case, the board said the increasing the footprint of a small cabin that was a nonconforming use and adding a second story, which more than doubled its size, could not be authorized.

Because the 525 sq. ft. cabin is acknowledged as nonconforming use, the structure on the site today cannot be authorized unless the terms for expanding a nonconforming use are met. Expansion of a nonconforming use is addressed in PCC 20.72.050:

Any proposed expansion of a use determined by the Planning Department or the appropriate reviewing authority to be nonconforming shall be permitted provided all of the following criteria are met:

- A. The proposed change will make the use more compatible with the environment in which it is located.*
- B. That water, air, noise and other classes of pollution will not exceed the level customarily found in that particular environment.*
- C. That the public health, safety and welfare will not be adversely affected.*

5.

In this case, doubling the size of the cabin will not make the structure more compatible with the rural residential shoreline environment in which it is located. Allowing expansion of nonconforming structures, without compelling circumstances, would also be adverse to the public welfare (PCC 20.72.050(C)) and the orderly development of shorelines contemplated by the Shoreline Act. (RCW 90.58.020).

Nonconforming language in new SMPs

Local governments that have adopted comprehensive SMP updates since 2004 have addressed nonconforming development in various ways. Below are some examples. Check Ecology's website at <http://www.ecy.wa.gov/programs/sea/shorelines/smp/status.html> for links to SMPs that are approved by Ecology.

Douglas County: Adopted WAC 173-27-080 into its SMP.

City of Marysville: Incorporated the nonconforming provisions of its zoning code into its SMP. The zoning code allows nonconforming structures and uses "to continue in existence, and to be repaired, maintained, remodeled, expanded and intensified, but only to the extent expressly allowed by the provisions of this chapter. It is the purpose of the city to ultimately have all structures and uses brought into conformity with the land use codes and regulations duly adopted by the city, as the same may be amended from time to time. Nonconforming structures and uses should be phased out or brought into conformity as completely and as speedily as possible with due regard to the special interests and property rights of those concerned." (Ord. 2131, 1997). (MCC 19.44.010)

City of Monroe: Adopted WAC 173-27-080 into its SMP.

City of Port Townsend: Adopted nonconforming provisions that address the local shoreline conditions. The nonconforming chapter has separate sections for uses, standards and lots. Change of ownership, tenancy or management does not affect the use's nonconforming status. Additional development of property that includes a nonconforming use requires new uses to conform to the SMP. Nonconforming status is lost if the use is discontinued for 365 continuous days.

Nonconforming structures except for residences that are damaged one -half or more of replacement cost can be restored only if the restoration conforms to the SMP. Residences destroyed by catastrophe and in a residential zone may be reconstructed to the size, density and location that existed prior to the catastrophe. Additional provisions can be found in Port Townsend's SMP.

Whatcom County: The County's new SMP requires a variance for expansion of nonconforming structures, except for single family residences which meet certain requirements. The SMP establishes shoreline buffers of 100 to 150 feet. A small percentage of shoreline lots that are vacant are too small to meet the buffer requirements for new development. The SMP allows for development on these lots that have a building area not located in a hazard area.

The provisions from Whatcom County's SMP provided below show one approach regarding nonconforming structures and lots. Comments in the following section are from Barry Wenger, Ecology Regional Planner at the Bellingham Field Office.

Whatcom County's Non-conforming Development provisions located at Chapter 23.50.07

- D. *Non-conforming **structures** may be maintained, repaired, renovated, or remodeled to the extent that non-conformance with the standards and regulations of this Program is not increased, provided that a non-conforming development that is moved any distance must be brought into conformance with this Program and the Act; provided further, that as a conditional use a non-conforming dock may be modified, reoriented or altered within the same general location to be **more** consistent with the provisions of this SMP.*

Comment - The above provision allows structures to be maintained, and minor location adjustments of dock/float structures, to improve consistency with the SMP without defaulting to the current standards. This approach provides an incentive for non-conforming dock owners to make environmental improvements through an administrative conditional use rather than tearing the entire structure out and applying for a shoreline variance that has little chance of approval. An administrative conditional use is only processed by staff before being sent to Ecology for final determination rather than going through a long and expensive Hearing Examiner process at the local level.

- E. *Non-conforming structures that are expanded or enlarged must obtain a variance or be brought into conformance with this Program and the Act; provided that, non-conforming single family residences may be expanded without a variance where the provisions of SMP 23.50.07.1 apply; and provided further, that non-conforming structures with conforming uses within commercial or mixed-use developments may be expanded or enlarged within the existing building footprint as a conditional use pursuant to Ch 23.100.05.B.1(e).*

Comment - Non-conforming residences that are located in the setback/buffer may be expanded landward, laterally or vertically within the side yard/height limits via an administrative conditional use, provided the vegetation buffer is tailored and identified for the lot, a notice recorded with the county auditor, and mitigation provided commensurate for any buffer impacts [SMP 23.50.07.I]. Expansion waterward of the existing foundation walls, into the side yard setbacks, or above the height limit requires a shoreline variance.

Non-conforming structures that are expanded or enlarged must obtain a variance or be brought into conformance with this Program and the Act; provided that, non-conforming single family residences may be expanded without a variance where the provisions of SMP 23.50.07.1 apply; and provided further, that non-conforming structures with conforming uses within commercial or mixed-use developments may be expanded or enlarged within the existing building footprint as a conditional use pursuant to Ch 23.100.05.B.1(e).

Comment - The second part of Section E allows by conditional use conforming commercial or mixed use development within a non-conforming structure to modify or alter the shape of the structure within the same footprint to meet development needs i.e. change rooflines, add windows, etc. Section 23.100.05.B.1(e) requires public access and restoration be provided with the additional design flexibility.

Non-conforming lots

Comment - Owners of vacant lots that are too small to meet the new setbacks/buffers and are not located in a hazard area may take advantage of the following provision that allows a “building area” disturbance of 2,500 square feet as far from the water as possible, unless a shoreline variance is authorized. In no case shall the new structure be located closer to the water than the existing common-line setback within 50 feet of and between the two adjacent existing residences. The tailored vegetative buffer is required to be identified and provided, a notice recorded with the county auditor’s office, and mitigation provided for buffer impacts [SMP 23.90.06.B.3]

- K. *New single family development on non-conforming lots consisting of property under contiguous ownership less than 20,000 square feet in size and not subject to landslide hazard areas, alluvial fan hazard areas, or riverine and coastal erosion hazard areas or associated buffers as provided in WCC 16.16.310 may be allowed without a variance in accordance with the following criteria:*
1. *Non-conforming lots with a building area of 2,500 square feet or more available for a single family residence and normal appurtenances and unrestricted by setbacks or buffers from shorelines or critical areas shall comply with the provisions of this Program. The building area means the entire area that will be disturbed to construct the home, normal appurtenances (except drainfields), and landscaping.*
 2. *Non-conforming lots that do not meet the requirement of subsection K.1 above shall provide the maximum setback and buffer dimension feasible while providing for a building area of not more than 2,500 square feet on the portion of the lot farthest from the required setback or buffer; provided that consideration shall be given to view impacts and all single family residences approved under this section shall not extend waterward of the common-line setback as measured in accordance with Appendix F.*
 3. *The area between the structure and the shoreline and/or critical area shall comply with the vegetation conservation standards of SMP 23.90.06.B.3.*
 4. *Development may not take place waterward of the ordinary high water mark.*
 5. *Facilities such as a conventional drainfield system may be allowed within critical areas or their buffers, except wetlands and buffers, outside of the building area specified above, subject to specific criteria in WCC 16.16.*

A. Log Rafting and Storage

1. Log Rafting and storage shall only be allowed in the “S-10” Port/Industrial Shoreline District
2. Restrictions shall be considered in public waters where log storage and handling are a hindrance to other beneficial water uses.
3. Offshore log storage shall only be allowed on a temporary basis, and should be located where natural tidal or current flushing and water circulation are adequate to disperse polluting wastes.
4. Log rafting or storage operations are required to implement the following, whenever applicable:
 - a. Logs shall not be dumped, stored, or rafted where grounding will occur.
 - b. Easy let-down devices shall be provided for placing logs in water. The freefall dumping of logs into water is prohibited.
 - c. Bark and wood debris controls and disposal shall be implemented at log dumps, raft building areas, and mill-side handling zones. Accumulations of bark and wood debris on the land and docks around dump sites and upland storage sites shall be kept out of the water. After cleanup, disposal shall be at an upland site where leachate will not enter surface or ground waters.
 - d. Where water depths will permit the floating of bundled logs, they shall be secured in bundles on land before being placed in the water. Bundles shall not be broken again except on land or at mill sites.
5. Stormwater management facilities shall be provided to protect the quality of affected waters.
6. Log storage facilities shall be located upland and properly sited to avoid fish and wildlife habitat conservation areas.
7. Log storage facilities must be sited to avoid and minimize the need for dredging in order to accommodate new barging activities at the site.
8. Log booming shall only be allowed offshore in sub-tidal waters in order to maintain unimpeded nearshore migration corridors for juvenile salmonids and to minimize shading impacts from log rafts. Log booming activities include the placement in or removal of logs and log bundles from the water, and the assembly and disassembly of rafts for waterborne transportation.
9. A Debris Management Plan describing the removal and disposal of wood waste must be developed and submitted to the City. Debris monitoring reports shall be provided, where stipulated.

10. Existing in-water log storage and log booming facilities in critical habitats utilized by threatened or endangered species classified under ESA shall be reevaluated if use is discontinued for two (2) years or more, or if substantial repair or reconstruction is required. The evaluation shall include an alternatives analysis in order to determine if logs can be stored upland and out of the water. The alternatives analysis shall include evaluation of the potential for moving all, or portions of, log storage and booming to uplands.

DRAFT