

Proposed Amendments to the Aug 8, 2008 Whatcom County SMP

Below are proposed code changes to the Shoreline Management Program and Administrative Procedures Ordinance. On Oct. 21st the Council Natural Resources Committee asked that we address issues that are a result of public comment August through September 2008, as summarized in proposed Resolution of Oct. 21 ([AB2008-381](#)).

The proposed amendments will be posted to Shorelines web site for public review.

Issue from Resolution	Changed Code	Rational
<p>1. Review of non-conforming standards regarding single family residential uses and their appurtenances. (PDS RECOMMENDED CHANGES ARE HIGHLIGHTED)</p>		
<p>a. Whether the Shoreline Management Program has clear, understandable language that can be implemented by Whatcom County in the event a single family home is destroyed by fire or other causes.</p>	<p>23.50.07(F)- Non-conforming structures that are destroyed by fire, explosion, flood, or other casualty may be restored or replaced in kinds described in 23.60.02.2(b), exempt from a substantial development permit; if there is no feasible alternative that allows for compliance with the provisions of this Program; provided that, it is not in a hazardous area and the following are met:</p> <ol style="list-style-type: none"> 1. The reconstruction- permit process is commenced within eighteen (18) months of the date of such damage; and 2. The reconstruction does not expand, enlarge, or otherwise increase the non-conformity, except as provided for in subsection (E) above or (H) and (I) below. <p>23.60.02.2(b) - 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 within a reasonable period after decay or partial destruction except where repair causes substantial adverse effects to the 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 the environment.</p>	<p>Changes Recommended</p> <p>This section was never intended to prevent non-conforming structures from rebuilding, but rather to reduce future life and safety risk on the existing site. The modified code refers to the definition of “hazardous areas” and makes replaces the text “in kind” with more specific text from 23.60.02.2(b). Additional clarity as to what needs to be commenced within 18 months was added.</p> <p>Definition of hazardous area – “Hazardous Area” means any shoreline area which is hazardous for intensive human use or structural development due to inherent and/or predictable physical conditions; such as, but not limited to, geologically hazardous areas, frequently flooded areas, and coastal high hazard areas.</p>

<p>b. Review the limit of 2,500 square feet of buildable area for new single family development on non-conforming lots consisting of property under contiguous ownership less than 20,000 square feet in size.</p>	<p>23.50.07</p> <p>D. 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(N) or (O) 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).</p> <p>I. Enlargement or expansion of single family residences that extend waterward of the existing primary residential foundation walls, further into a critical area, further into the minimum required side yard setback, or that increase the structure height above the limits established by this Program shall require a variance.</p> <p>Enlargement or expansion of single family residences by the addition of space to the main structure or by the addition of normal appurtenances as defined in Chapter 11 that would increase the non-conformity and/or encroach further into areas where new structures or developments would not now be allowed under the Program may be approved by conditional use permit if all of the following criteria are met:</p> <ol style="list-style-type: none"> 1. The structure must be located landward of the ordinary high water mark. 2. The enlargement, expansion or addition shall not extend either further waterward than the existing primary residential structure (not appurtenance), further into the minimum side yard setback, or further into any critical area established by WCC 16.16 than the existing structure. Encroachments that extend waterward of the existing residential foundation walls or further into a critical area, or the minimum 	<p>Changes Recommended New text is highlighted in Yellow. Rewrite of major sections of the non-conforming chapter, 23.50.07.</p> <p>Changes to subsection D are only correcting the reference sections.</p> <p>Section I retains language that to indicates when a Shoreline variance is required. New provisions for remodels can be found in section (N) and (O).</p>
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required side yard setback require a variance.

3. ~~The area between the non-conforming structure and the shoreline and/or critical area shall meet the vegetation conservation standards of SMP 23.90.06.~~
4. ~~The remodel or expansion will not cause adverse impacts to shoreline ecological functions and/or processes.~~

K. New single family development on any legal lot in shoreline jurisdiction that is nonconforming with respect to the required shoreline buffer standards may be allowed without a shoreline variance when all of the following criteria are met:

1. The depth of the lot (the distance from the ordinary high water mark to the inside edge of the frontage setback) is equal to or less than the standard buffer as indicated in WCC 16.16; and
2. The building area lying landward of the shoreline buffer and interior to required sideyard setbacks is twenty five hundred (2,500) square feet or less, 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. The building area means the entire area that will be disturbed to construct the home, normal appurtenances (except drainfields), and landscaping; and
3. The lot is 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; and
4. The nonconforming lot was created prior to August 27, 1976; and
5. Appropriate measures are taken to mitigate all adverse impacts, including but not limited to locating the residence in the least environmentally damaging location relative to the shoreline and any critical areas and

K is rewritten to remove the size determination of a non-conforming lot. The size was not necessary, as a non-conforming lot is anything that cannot meet the shoreline setback.

Section K now states that the frontage and sideyard setbacks are not to be counted toward the 2500 sqft buildable area calculation. Non-conforming lots are allowed a certain amount of disturbance in the buffer. According to the Vegetation Conservation Standards 23.90.06.B.3 the greater of 500 sq ft of lawn or 10% of outer management zone would be allowed.

The 2500 sqft allows for residential development of a modest home without need to go through the Shoreline variance process. This allowance is consistent with the Water Resource Protection Overlay District (WCC 20.71). This zoning overlay requires that in the UR, URM, and RR zones 20% of the parcel can be impervious or 2500 sqft, whichever is greater.

A 3,000 Sqft reasonable use allowance is allowed in the King

	<p>provided that all administrative reductions to sideyard and/or frontage setbacks are pursued, when doing so will not create a hazardous condition or a condition that is inconsistent with this Program and Title 20; and.</p> <ol style="list-style-type: none"> 6. There is no opportunity to consolidate lots under common ownership that will alleviate the nonconformity; and 7. 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; and 8. Development may not take place waterward of the ordinary high water mark; and. 9. 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. <p>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:</p> <ol style="list-style-type: none"> 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 	<p>County CAO. Ord. 16172 § 2, 2008</p> <p>The Island County restricts the principal residence and any accessory structures shall not exceed 2,800 sqft in reasonable use situations. 17.02.040 (D).</p> <p>An alteration on this is to allow a certain amount of driveway to be exempt from the 2500 sqft requirement if it can be done as pervious surface.</p>
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~~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.~~

L. Lots with a building area of more than 2,500 square feet 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.

Old subsection L became subsection M.

N. The Administrator may allow enlargement or expansion of single family residences by the addition of space to the exterior of the main structure or normal appurtenances without a conditional use permit or variance subject to the following and provided the structure is located landward of the ordinary high water mark:

1. Enlargements, expansions or additions that increase the total footprint of the existing primary structure, or normal appurtenances by up to 10 percent or increase the structure height up to the limits allowed by this Program shall be allowed provided the expansion or addition will not adversely affect critical areas or significantly impair the ability of a substantial

Parcels that can meet the setbacks and still get a 2500 sqft buildable area outside of reduced sideyard and frontage setbacks are conforming lots.

Changes allow for small projects (10% addition to primary structure) without ecological or view impacts to occur without a conditional use permit or variance.

	<p>number of people to view the shoreline.</p> <p>2. Enlargements, expansions or additions that increase the total footprint of the existing primary structure, or normal appurtenances by 11 to 25 percent or increase the structure height up to the limits allowed by this Program shall be allowed provided that the addition will not adversely affect critical areas or significantly impair the ability of a substantial number of people to view the shoreline and further provided that an equivalent area of shoreline is enhanced. If enhanced through planting, the Administrator shall require a vegetation management plan consistent with 23.90.06.B(2).</p> <p>O. The Administrator shall require a conditional use permit for any of the following:</p> <ol style="list-style-type: none"> 1. Enlargement or expansion of single family residences by the addition of space to the exterior of the main structure, or normal appurtenances in excess of those allowances provided in SMP 23.50.07.I. 2. Enlargement or expansion of single family residences where the addition of space to the exterior, or normal appurtenances of the main structure is likely to adversely affect critical areas, or is likely to obstruct the view of a substantial number of people. 	<p>Larger projects (11 - 25% addition to primary structure) would be allowed in exchange for ecological restoration.</p> <p>Larger projects or those with ecological or view impacts would still require a conditional use permit.</p>
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<p>c. Changes required by Department of Ecology regarding non-conforming development applicable to single family residential uses.</p>	<p>Ch 23.50.07(I) – Non-Conforming Development – Enlargement or expansion of single-family residences by the addition of space to the main structure or by addition of normal appurtenances as defined in Chapter 11 that would increase the non-conformity and/or further encroach into areas where new structures or developments would not now be allowed under the Program may be approved by conditional use permit if all of the following criteria are met:</p> <p>ECOLOGY CHANGES:</p> <ol style="list-style-type: none"> 1. The structure must be located landward of the ordinary high water mark. 2. The enlargement, expansion or addition shall not extend either further waterward than the existing <u>primary residential structure (not appurtenance)</u>, further into the minimum side yard setback, or further into any critical area and/or associated buffer established by WCC 16.16 than the existing structure. Encroachments that extend waterward <u>of the existing residential foundation walls</u>, further into a critical area or associated buffer, or the minimum side yard setback require a variance. 3. The area between the non-conforming structure and the shoreline and/or critical area shall meet the vegetation conservation standards of SMP 23.90.06. 4. The change in use, remodel or expansion will not cause adverse impacts to shoreline ecological functions and/or processes. (this only applies to a SFR) 	<p>No changes recommended</p> <p>These changes apply to the non-conforming development section.</p> <p>The language clarifies that there will not be any expansion of a SFR waterward of the primary residential structure foundation walls, not garage, deck, or garden shed that may extend further waterward of the primary residential structure foundation walls.</p> <p>Further it indicates that the expansion can extend into the CAO Buffer as all non-conforming structures would (by definition the non-conforming development as described in this section cannot meet the CAO buffer requirements).</p> <p>Expansion into a CAO or side yard setback would require a variance.</p>
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	<p>ECOLOGY CHANGES:</p> <p>Pg 39 - Ch 23.50.07(K) – Non-Conforming Development –</p> <p>1. – last line - Add “except drainfields” after “appurtenances”.</p> <p>2. – Revise to read, “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 at least <u>not more than</u> 2,500 square feet on the portion of the lot farthest from the required setback or buffer; <u>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.</u>”</p> <p>5. – insert “<u>except wetlands and buffers,</u>” after “buffers”.</p> <p>Pg 40 – Ch 23.60.01.B(2) – Substantial Development Permit Criteria – The last sentence needs to be deleted as it is not internal consistent with the previous regulations and only serves to create regulatory ambiguity.</p>	<p>No changes recommended</p> <p>This clarifying language indicates that drainfields are not included in the building area.</p> <p>Ecology changed the 2,500 sq ft building area on non-conforming lots to say “not more than” rather than “at least.” The change was consistent with the intent of the provision and made it more clear as to the allowable limits. Without it, there would be no upper limit to size.</p> <p>The common line setback reference ensures that a non-conforming lot does not extend waterward of neighboring structures. This protects existing view corridors.</p> <p>Removal of the Substantial Development Permit Criteria?</p>
<p>2. Review the following changes required by Department of Ecology in their review and adoption of the Shoreline Management Program. (PDS RECOMMENDED CHANGES ARE HIGHLIGHTED)</p>		
<p>Amendments regarding Cherry Point water dependent industrial uses.</p>	<p>Pg 186 – Ch 23.100.17.A.2 - Cherry Point Management Area (CPMA) – The statute does not allow the type of stated preference of “long-term economic benefits” over “potential adverse effects”. The portion of the first sentence following “Area” needs to be deleted.</p> <p>Pg 187 - Ch.100.17.A.5 – CPMA – Shoreline Ecological Functions and Processes – To be consistent with the statute and the previous section, the first sentence needs to be revised to read, “In recognition</p>	<p>No changes recommended</p> <p>The goals of the Shoreline Management Act and Guidelines for Shorelines of the State (WAC 173-26) indicate the need to provide for both economic development for industries particularly dependent on their use of the shorelines (RCW 90.58.100) and protection and</p>

	<p>of the diverse and vital ecological resources in the Cherry Point Management Area, consideration of probable effects of all development proposals on shoreline ecological functions and processes should be assessed weighed with the other long-term statewide economic benefits <u>interests.</u>”</p> <p>Pg 187 - Ch.100.17.A.7 – CPMA – Site Development – Since other SMP provisions are generally not applicable in this designation, the first sentence needs to be revised as follows, “All development should be constructed and operated in a manner that while permitting water-dependent uses, also <u>protects shoreline resources, their ecological functions and processes, and that will incorporate the following:</u>”</p> <p>Pg 188 – Ch 23.100.17.B.1.a.2 – CPMA - Allowed Use – In order to be consistent with items A2 and A5 above on page 186-7, this regulation needs to read, “the long term <u>statewide economic</u> benefits of the development outweigh <u>have been considered with the</u> potential adverse impacts on ecological functions; and” NO FURTHER CHANGES:</p> <p>Pg 189 – Ch 23.100.17.B.3 – CPMA – Critical Areas – In order to provide equal or better critical areas protection this section needs to reference Ch 23.90.07, Ecological Protection and Critical Areas as follows, “<u>In addition to meeting the provisions of Ch 23.90.03 Ecological Protection and Critical Areas, development and alteration ...</u>”</p> <p>Pg 189 – Ch 23.100.17.B.4.a.1 – CPMA – Location and Design – Piers – For internal consistency, the county’s policy at Ch 23.100.17.A.1.c needs to be repeated as a regulation as follows, “<u>Due to the environmental sensitivity of the area, Whatcom County shall limit the number of piers to one (1) pier, in addition to those in operation</u> or approved <u>as of January 1, 1998.</u>”</p>	<p>restoration of ecological functions (RCW 90.58.020). The Act does not prioritize, SMPs must achieve all objectives of the Act.</p> <p>Changes recommended</p> <p>Added language to meet policies described in the SMA, RCW 90.58.100:</p> <p>“(2) The master programs shall include, when appropriate, the following:</p> <p>(a) An economic development element for the location and design of industries, industrial projects of statewide significance, transportation facilities, port facilities, tourist facilities, commerce and other developments that are particularly dependent on their location on or use of the shorelines of the state; “</p> <p>Changes recommended</p> <p>Deleted “or approved” as the final pier to be added in the Cherry Point Management Area (Gateway Pacific Terminal) was approved prior to the stated date.</p>
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<p>Amendment requiring public access measures for shoreline development by public entities.</p>	<p>Pg 82 – Public Access – Ch 23.90.08.B Regulations - item 4 – In order to be consistent with Policy 23.100.06.A.2g, the words “Flood Control and” needs to be deleted.</p> <p>Item “i” needs to be qualified to read, “Ecological restoration or enhancement activities not associated with development <u>when the purpose of the project would be undermined.</u>”</p> <p>Pg 82 – Public Access – Ch 23.90.08.B Regulations - item 7 – WAC 173-26-221(4) (dii) requires that a sentence be added as follows, “<u>Shoreline development by public entities shall include public access measures as part of each development project</u>”</p> <p>Pg 169 - Ch 23.100.13.B.4 – Viewpoints and Public Access – To be consistent with WAC 173-26-221(3c)(iv), item b needs to be revised as follows, “Publicly financed or subsidized shoreline stabilization shall not restrict appropriate public access to the shoreline and shall <u>provide</u> consider provisions for new public access except where such access is determined to be infeasible because of incompatible uses, safety, security, or harm to shoreline ecological functions.”</p>	<p>No Changes recommended</p> <p>Publicly funded projects on private property do not require public access if there are incompatible uses, safety, security, or ecological impacts.</p>
<p>Amendments regarding flood control works to be a conditional use in the Conservancy Area Designation (23.100.06C(7)).</p>	<p>Change Flood Control Works back to a permitted use in the Conservancy Designation.</p>	<p>Changes recommended</p> <p>This would effect the permitting time for a number on residents and the WC River and Flood Division within the Conservancy designation.</p>
<p>Amendments to the definition of “bedlands”.</p>	<p>“Bedlands” means those submerged lands below the line of extreme low tide in marine waters and below the <u>OHWM line of navigability of navigable lakes and rivers. Where the line of navigability has not been established, bedlands would be those submerged lands below the OHWM in lakes and rivers.</u></p>	<p>Changes recommended</p> <p>Change back to previous version, but add clause for areas where the federal line of navigability has not been established.</p>
<p>Amendments to the definition of “navigable waters.”</p>	<p>“Navigable Waters of the United States” means a water body that in its ordinary condition, or by being united with other water bodies, forms a continued route <u>or area</u> over which commerce <u>or</u></p>	<p>No Changes recommended</p> <p>The original definition of ‘Navigable Waters of the United States’ is overly</p>

	<p><u>recreational activities</u> are or may be carried on with other states or foreign countries in the customary modes in which such commerce or recreation is conducted on by water.</p>	<p>restrictive with regard to the state’s public trust doctrine as expressed through the Shoreline Management Act. Previous definition limited its applicability to water in which commerce between other states and foreign nations was conducted. SMA applies to local activity including docks, marinas, and recreational boating.</p> <p>Section 23.100.05.B.1 allows for nonwater-oriented commercial uses where navigability is severely limited.</p>
<p>Amendments to the definition of “development.”</p>	<p>“Development” means 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 that interferes with the normal public use of the surface of the waters overlying lands subject to the Act at any state of water level. This term <u>may</u> includes activities <u>related to</u> such as subdivision and short subdivisions; <u>binding site plans</u>; planned unit developments; variances; clearing activity; fill and grade work; activity conditionally allowed; building or construction; revocable encroachment permits; and septic approval; and both exempt and substantial developments activities that are exempt from the <u>substantial development</u> permit process or that require a shoreline variance or conditional use.</p>	<p>Changes recommended</p> <p>First half of definition is consistent with the SMA, the second half provides examples of development.</p> <p>Add binding site plans back into the list as it is another form of land division.</p>