

ORDINANCE NO. 5327

AN ORDINANCE of the City Council of the City of Bremerton, Washington repealing and replacing Ordinance 5300 with the adoption of this ordinance for the limited amendments to the City of Bremerton Shoreline Master Program.

WHEREAS, the people of the State of Washington enacted the Shoreline Management Act (Chapter 90.58 RCW) by a vote of the people in 1971; and

WHEREAS, the Growth Management Act of 1990 ("GMA") (RCW 36.70A.480) adds the goals and policies of the Shoreline Management Act as set forth in RCW 90.58.020 as one of the goals of the GMA without creating an order of priority; and

WHEREAS, in 2003, The Department of Ecology adopted rules, pursuant to RCW 90.58.200, which gave procedural and substantive direction to local jurisdictions for updating shoreline uses and regulations, which became effective January 17, 2004; and

WHEREAS, the City Council passed Ordinance No. 5229 on December 4, 2013, adopting the Shoreline Master Program ("SMP") after approval of Department of Ecology, to be compliant with RCW 90.58.020 and WAC 173-26-186; and

WHEREAS, the City updated the Comprehensive Plan through Ordinance No. 5299 on May 18, 2016; and

WHEREAS, the Comprehensive Plan update has made several land use map updates that required limited amendments to the SMP including text and mapping amendments to be consistent with the Comprehensive Plan pursuant to RCW 36.70A.070; and

WHEREAS, in accordance with Chapter 43.21C RCW and WAC 197-11, a Determination of Significance ("DS") with adoption of existing environmental documents with an addendum was filed on November 3, with a voluntary comment period which expired on November 17, 2015, and an appeal period which expired on November 30, 2015, and no appeals were filed; and

WHEREAS, on March 17, 2016, amendments to the SMP were circulated to the State Agencies for the requisite 60-day review and comment period; and

WHEREAS, the City of Bremerton Planning Commission considered staff's recommendations, received testimony, and formulated a recommendation for SMP limited update to the City Council for consideration at a duly advertised public hearing on April 19, 2016; and

WHEREAS, on May 7, 2016, the public was notified by legal advertisement in the Kitsap Sun of the opportunity to make comment and participate in the public hearing by the City Council on May 18, 2017; and,

WHEREAS, on May 18, 2017, City Council passed the Ordinance No. 5300 accepting the SMP limited amendments provided the City receives approval from the Department of Ecology; and

WHEREAS, the Department of Ecology processed the City's proposed SMP limited amendments through a public process, received public comments, and provided the City two required changes and two recommended changes prior to approval of the limited amendments; and

WHEREAS, this ordinance adopts the Department of Ecology's recommended and required amendments as well as the City's amendments set forth in Ordinance 5300, therefore Ordinance No. 5300 shall be repealed and replaced in its entirety; and

WHEREAS, on June 23, 2017, the public was notified by legal advertisement in the Kitsap Sun of the opportunity to make comment and participate in the public hearing by the City Council; NOW THEREFORE,

THE CITY COUNCIL OF THE CITY OF BREMERTON, WASHINGTON,
DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Ordinance Repeal and Replace. Ordinance No. 5300 is hereby repealed and replaced in its entirety.

SECTION 2. Findings and Recitals Incorporated. The findings and recitals set forth above are hereby adopted and incorporated herein by this reference.

SECTION 3. Planning Commission Findings Adopted. The findings and conclusions of the Bremerton Planning Commission as set forth in **Exhibit A**, attached hereto and incorporated herein by this reference, are hereby adopted.

SECTION 4. Chapter 4 - Shoreline Maps and Designations Amended. Chapter 4 of the SMP as adopted by Ordinance No. 5229 is hereby amended by amending Section 4.020 entitled "Maps" as set forth in **Exhibit B**, attached hereto and incorporated herein by this reference.

SECTION 5. Chapter 5 - Permit Administration Amended. Chapter 5 of the SMP as adopted by Ordinance No. 5229 is hereby amended by amending Section 5.010 entitled "Applicability" as set forth in **Exhibit C**, attached hereto and incorporated herein by this reference.

SECTION 6. Chapter 7 - General Standards and Regulations Amended. Chapter 7 of the SMP as adopted by Ordinance No. 5229 is hereby amended by amending Section 7.010 entitled "Buffers and Setbacks" as set forth in **Exhibit D**, attached hereto and incorporated herein by this reference.

SECTION 7. Chapter 7 - General Standards and Regulations Amended. Chapter 7 of the SMP as adopted by Ordinance No. 5229 is hereby amended by amending

Section 7.090 entitled "Use Matrix and Height Table" as set forth in **Exhibit E**, attached hereto and incorporated herein by this reference.

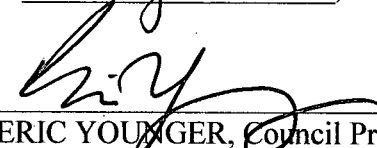
SECTION 8. Department of Ecology Required Process for Adoption. The City has coordinated with Department of Ecology on the limited amendments to the SMP and the Department of Ecology has provide the City their Findings and Conclusions from their public process and required and recommended amendments as set forth in **Exhibit F**, attached hereto and incorporated herein by this reference.

SECTION 9. Effective Date of Provisions. The provisions set forth in Sections 1 through 6 above shall become effective and in full force upon the 14-days from Washington State Department of Ecology final action approving the amendments of said provisions of this ordinance as set forth herein, subject to Section 9 below.

SECTION 10. Severability. If any one or more sections, subsections, or sentences of this ordinance are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

SECTION 11. Effective Date. This ordinance shall take effect and be in force ten (10) days from and after its passage, approval and publication as provided by law.

PASSED by the City Council the 5th day of July, 2017.


ERIC YOUNGER, Council President

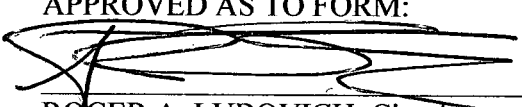
Approved this 5th day of July, 2017.


PATTY LENT, Mayor

ATTEST:


SHANNON CORIN, City Clerk

APPROVED AS TO FORM:


ROGER A. LUBOVICH, City Attorney

PUBLISHED the 11th day of July, 2017.
EFFECTIVE the 21st day of July, 2017.
ORDINANCE NO. 5327

DRAFT FINDINGS AND DETERMINATION OF THE CITY OF BREMERTON PLANNING COMMISSION

Summary – The Commission recommends that the City Council adopt the proposed limited amendments to the maps and text of the Shoreline Master Program (SMP) for the Growth Management Act 2016 periodic update of the City's Comprehensive Plan.

I. FINDINGS OF FACT - GENERAL

1. Project Description

The primary impetus for the limited updates of the Shoreline Master Program (SMP) is to ensure consistency with the Growth Management Act 2016 periodic update.

The limited amendments proposed to the SMP can be summarized as follows:

- Updating shoreline designations on three maps, Map B, C and E. Maps B and C had Single Family Residential designation for a few parcels amended to Multi-family Residential to be consistent with the Comprehensive Plan Land Use designation change to recognize the existing higher density neighborhood (most of those parcels are currently development with multi-family structures). Map E proposes to fix a mapping error of approximately 600' lineal feet of shoreline to be amended from Commercial Shoreline designation to Multi-Family Residential to be consistent with the current Land Use designation, in the Downtown Subarea Plan (this area is just south of the Manette Bridge, off Washington Avenue).
- Provide consistency to City's Critical Area Ordinance (CAO, Bremerton Municipal Code, BMC 20.14) and the SMP. The CAO was adopted in 2006 and the SMP in 2013. As best available science (BAS) was used in the SMP and CAO, the SMP had portions of the code that superseded the CAO as the adoption was later. Within this periodic update the CAO is proposing to be updated with BAS, thus the portions in the SMP related to CAO are slated for removal and the CAO will be amended separately).
- Revise the 7.090 Use Matrix to allow "Single Family Residential uses" in Recreational and Commercial designations. There is a SMP policy that identifies that *single family residential development is a priority use on the shoreline* (SMP 8.080), thus this amendment would provide further consistency.

2. Procedural History

The Shoreline Master Program (SMP) updates were drafted, reviewed and recommended for adoption after a series of public workshops and a hearing.

- **2.1 Initial Work Program Released: Planning Commission Workshop – September 15, 2014**
Discussed the Comprehensive Plan Update, including the Work Program, Public Participation

Process, and overview of the schedule. Encouraging comments from the public regarding the Work Program. This sets the framework for the 2-years including updating the functioning documents such as the Shoreline Master Program update process.

- **2.1(a) Shoreline Master Program Past History – 2010 through 2013.** The SMP was adopted in December 4, 2013 by Ordinance Number 5229 after a three-year extensive project with substantial public involvement and coordination of multiple agencies.
- **2.2 Work Program received approval from Planning Commission Workshop – October 21, 2014** Planning Commission provided recommendation of the Work Program, Schedule and Public Participation Plan for City Council's approval.
- **2.3 Work Program approved by City Council Public Hearing – November 19, 2014** City Council passed Resolution No. 3237 which set the Work Program for the Comprehensive Plan Update and the Public Participation Program.
- **2.4 Planning Commission Public Process for Comprehensive Plan Update - January 20, 2015 – November 17, 2015** Planning Commission held two open houses, 7 workshops and one public hearing on the 2016 Draft Comprehensive Plan. The Public Hearing was November 17, 2015 which was approved unanimously for City Council's consideration. Updating the Shoreline Master Program was continually part of the discussion and identified in the draft 2016 Comprehensive Plan.
 - **2.4(a) Planning Commission Workshop – July 21, 2015** During this workshop, a GAP analysis was provided for the public and Planning Commission's consideration by The Watershed Company that compared the Critical Area Ordinance with relevant sections of the City's Shoreline Master Program in order to bring the two regulatory documents into alignment with each other and with best available science. This analysis was also provided at the February 2016 workshop.
- **2.5 Zoning Code Amendments Planning Commission Workshop – February 16, 2016** Planning Commission held a public workshop on the Zoning Code Update related to the Comprehensive Plan amendments. The specific topics were: a few Bremerton Municipal Code (BMC) chapters, and limited amendments to Shoreline Master Program.
- **2.6 Zoning Code and Subarea Plan Amendments Planning Commission Workshop – March 15, 2016** Planning Commission held a public workshop on the Zoning Code Update related to the Comprehensive Plan amendments. The specific topics focused on Bremerton Municipal Code (BMC) chapters, however an additional change to Map E in the SMP was discussed at this Workshop.
- **2.7 Notice of Intent to Adopt - Department of Commerce – March 17, 2016** A 60-day notice of intent to adopt the Comprehensive Plan, Bremerton Municipal Code, Subarea Plans and the Shoreline Master Program were provided to Department of Commerce and the Puget Sound Regional Council for their review of the plans.
- **2.8 Planning Commission Public Hearing – April 19, 2016** Draft text and maps of the limited amendment to the SMP were release in advance of the April 19, 2016 public hearing with proper noticing. Planning Commission deliberated and made recommendation to City Council for adoption.
- **2.9 Compliance with the Public Participation Program** The following are actions that were taken to ensure compliance with the early and continuous public participation identified in the Public Participation Program approved by Resolution in November 2014 for the Comprehensive Plan Update (which includes further publication for the Shoreline Master Program limited amendments notice).

- **2.9(a) Adequate Noticing:** For the Comprehensive Plan update: standard notification of each workshop with a letter or email notice to the interested parties and posting of the Planning Commission Workshop in the Kitsap Sun, and approximately 9,000 notices were mailed twice to all City property owners in January 2015 (prior to an first Open House) and October 2015 (prior to the Public Hearing). Specific public notice that stated "Limited amendments to the Shoreline Master Program" were for the:
 - February 16, 2016 Public Workshop; and
 - April 19, 2016 Public Hearing
- **2.9(b) Website:** www.Bremerton2035.com was continual referred to and updated with planning commission packets and draft documents, comments, upcoming meeting notices, etc.
- **2.9(c) Video:** Staff participated in the September's *Growing Bremerton Together with Patty Lent* to talk about the Comprehensive Plan Update and get interested in the project (repeated on BKAT and available online, <https://vimeo.com/139257812>).
- **2.9(d) Additional Outreach:** Staff provide presentation on the City's Comprehensive Plan update to the following clubs to further outreach: Lions Club in May 2015, Home Builder Association of Kitsap in Summer 2015, and Kitsap Regional Coordinating Council (KRCC) in March 2016.

3. Public Comment

Public comment was received throughout the duration of the Comprehensive Plan Update. Comments were received in various formats including letters, e-mails, postcards, and public testimony at workshops and hearings that Planning Commission considered. No public comment was received regarding the limited amendments to the Shoreline Master Program.

4. SEPA Determination

As the City is updating the current (2004) Comprehensive Plan, Zoning Code, Subarea Plans and the Shoreline Master Program, much of the environmental review will continue to be applicable, however additional review needed to be conducted to address the minor changes. The City provided a Determination of Significance with adoption of existing environmental documents with a supportive addendum to address the minor changes on November 3, 2015. The voluntary public comment period on the DS expired on November 17, 2015. The appeal period on the DNS expired on November 30, 2015. No appeals were filed.

5. Consistency

5.1 The proposal is consistent with the Comprehensive Plan update that is regulated by the Washington State Growth Management Act goals and policies as stated by Washington State's Department of Commerce Extended Checklist for planning for population and employment growth for the next 20 years (until 2036).

5.2 The proposal is consistent with Department of Ecology and the Shoreline Management Act rules per RCW 90.58 and WAC 173-26 for limited amendments to the Shoreline Master Program.

5.3 The recommended limited amendments will result in minor modifications to the development and use potential of certain areas. As there the amendments to the maps

are for areas that are already existing multi-family development, there is minimal modification potential. Modification potential will be reviewed like all other land uses to result in an overall no net loss per the City's SMP.

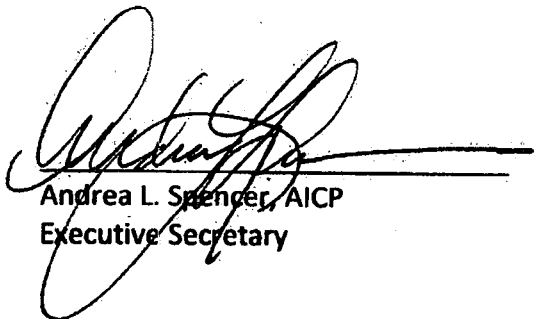
- 5.4 The proposed Update included continuous and open public involvement and adequate public notice. The Update underwent public hearings, public workshops, and review at the Planning Commission level. All public hearings and workshops at the Planning Commission were noticed with formal advertisement in the Kitsap Sun, and dates were posted on the City of Bremerton website. Drafts of the recommended Update were continuously posted to the City of Bremerton website (www.Bremerton2035.com), and paper copies were made available for review at the Community Development offices at 345 6th St.
- 5.5 The Planning Commission acknowledges the Department of Ecology public process for limited amendments to the Shoreline Master Program that occurs after the City Council adoption.

III. CONCLUSIONS & RECOMMENDATION

The Planning Commission concludes that the proposed limited amendments to the Shoreline Master Program, corresponding to the 2016 Growth Management Act Periodic update are consistent with the Growth Management Act, Department of Ecology requirements for limited amendments and the draft 2016 Comprehensive Plan. The Commission concludes that the proposed limited amendments to the Shoreline Master Program are adequate for consistency throughout the City documents, and appropriately updated in a limited way.

Respectfully submitted by:

Approved by:



Andrea L. Spencer, AICP
Executive Secretary



Nick Wofford, Chair
Planning Commission

Chapter 4 – Shoreline Maps and Designations

4.010 – Intent

4.020 – Maps

4.030 – Designations

4.040 – Shorelines of Statewide Significance

4.020 Maps:

The following maps are the official maps of the Shoreline Master Program.

Exhibit B

Shoreline Master Program Limited Amendments Ordinance

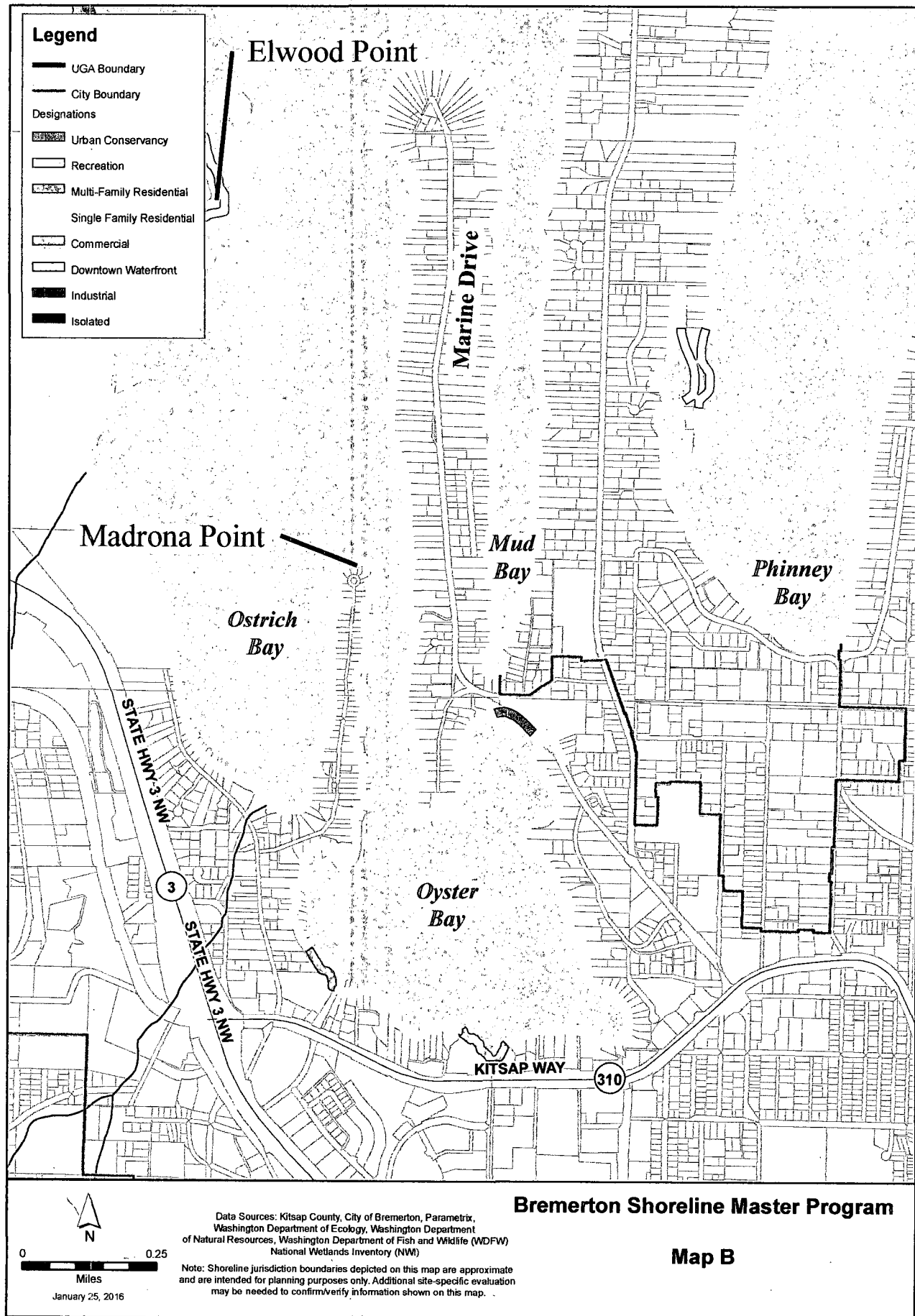


Exhibit B

Shoreline Master Program Limited Amendments Ordinance

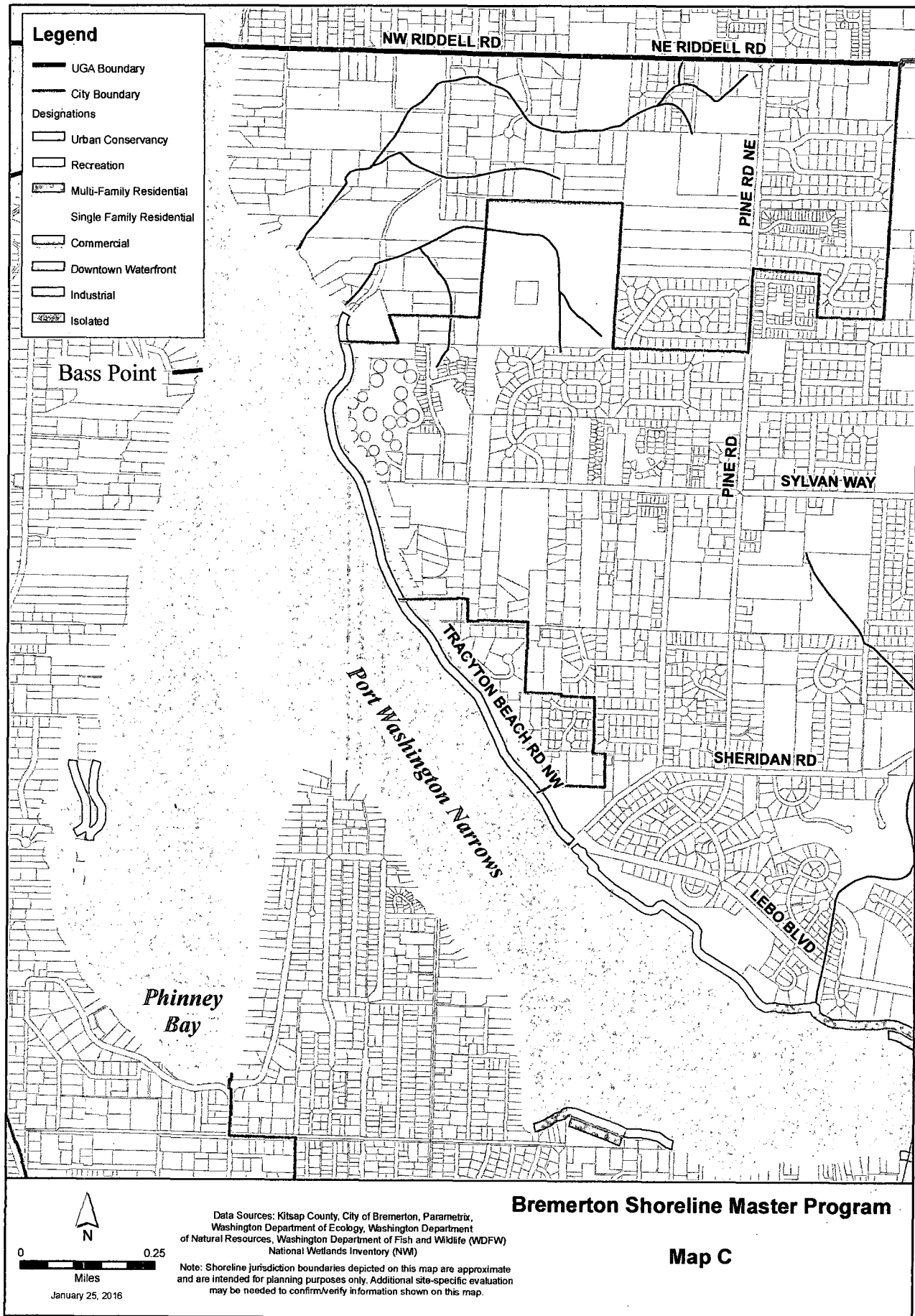
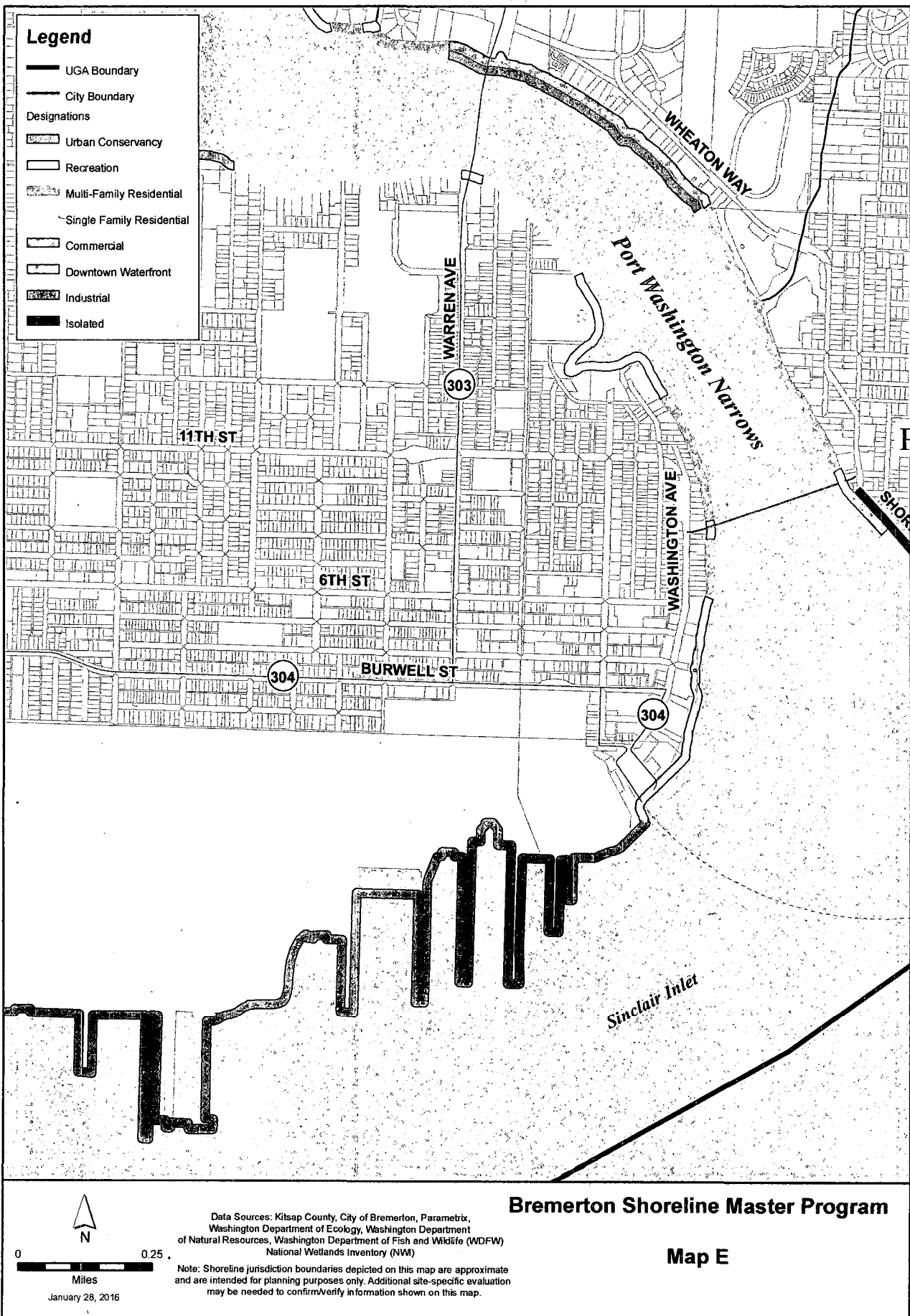


Exhibit B

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Chapter 5 - Permit Administration

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

5.010 Applicability:

- (a) **Liberal Construction:** All regulations applied within the shoreline shall be liberally construed to give full effect to the objectives and purposes for which they have been enacted. Shoreline Master Program policies establish intent for the shoreline regulations in addition to RCW 90.58 and Chapter 173 of the Washington Administrative Code 173-26 and 173-27.
- (b) **Burden of Proof:** The applicants for any permit shall have the burden of proving that the proposed development is consistent with the criteria as set out in the Shoreline Management Act.
- (c) **Development Permit Compliance:**
 - (1) For all development within shoreline jurisdiction, the responsible official shall not issue a development or construction permit or an exemption for such development until compliance with the Shoreline Master Program has been documented. If a Shoreline Substantial Development Permit is required, no permit shall be issued until all comment and appeal periods have expired. Any development permit for work within the shoreline jurisdiction (200' from the OHWM) shall be subject to the same terms and conditions that apply to the shoreline permit.
 - (2) Critical Areas in the shoreline jurisdiction are regulated by the Critical Areas Regulations, (~~Ordinance 4965 2008, Ord. 5301 (exh B) (part), 2017: Ord. 4965 Section 7 (part) 2006~~), codified under BMC 20.14 which is herein incorporated into this SMP however, the following sections of the Critical Area Ordinance do not apply:
 - (i) BMC 20.14.145(d) Exemptions for Forest Practices;
 - (ii) BMC 20.14.145(f) Exemptions for activities within improved Right-of-Way;
 - (iii) BMC 20.14.155 Reasonable Use Exception;
 - ~~(iv) BMC 20.14.200 Definition of "Wetlands".~~
 - ~~(v) BMC 20.14.330(f) & (g) & (h)(3)(4) Standard Wetland Buffer Widths;~~
 - ~~(vi) BMC 20.14.340(f) & (g) Mitigation Replacement and enhancement Ratios;~~
 - ~~(vii) BMC 20.14.730(d) Table 1: Water Type Buffer Standard.~~
 - ~~(viii) BMC 20.14.730(d)(5) Buffer Reduction;~~
 - ~~(ix) BMC 20.14.730(d)(8) Habitat Conservation Area Buffers;~~

Exhibit C

Shoreline Master Program Limited Amendments Ordinance

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

A Shoreline Substantial Development Permit shall be required for all proposed use and development within the shoreline jurisdiction unless the proposal is specifically exempt from

Exhibit C

Shoreline Master Program Limited Amendments Ordinance

permit requirements pursuant to WAC 173-27-040. The City issues exemptions for all work that does not meet the threshold for a shoreline permit to be required. The following list of exemptions is an exact copy from the WAC, and is located here as a courtesy to the reader. Any exemptions adopted subsequently by the legislature shall apply without amendment to this program. An exemption from a shoreline permit is not an exemption from compliance with the Act or the Shoreline Master Program, or from any other regulatory requirements. Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemption from the Shoreline Substantial Development Permit process. Exemptions are as follows:

(1) Any development of which the total cost or fair market value, whichever is higher, does not exceed five thousand dollars, if such development does not materially interfere with the normal public use of the water or shorelines of the state. The dollar threshold established in this subsection must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the Bureau of Labor and Statistics, United States Department of Labor. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the *Washington State Register* at least one month before the new dollar threshold is to take effect. For purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state as defined in RCW 90.58.030 (2)(c). The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials;

(2) Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition, including but not limited to its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development, including but not limited to its size, shape, configuration, location and external appearance, and the replacement does not cause substantial adverse effects to shoreline resources or environment;

(3) Construction of the normal protective bulkhead common to single-family residences. A "normal protective" bulkhead includes those structural and nonstructural developments installed at or near, and parallel to, the ordinary high water mark for the sole purpose of protecting an existing single-family residence and appurtenant structures from loss or damage by erosion. A normal protective bulkhead is not exempt if constructed for the purpose of creating dry land. When a vertical or near vertical wall is being constructed or reconstructed, not more than one cubic yard of fill per one foot of wall may be used as backfill. When an existing bulkhead is being repaired by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of

Exhibit C

Shoreline Master Program Limited Amendments Ordinance

new footings. When a bulkhead has deteriorated such that an ordinary high water mark has been established by the presence and action of water landward of the bulkhead then the replacement bulkhead must be located at or near the actual ordinary high water mark. Beach nourishment and bioengineered erosion control projects may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and when the project has been approved by the Department of Fish and Wildlife.

(4) Emergency construction necessary to protect property from damage by the elements. An "emergency" is an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with this chapter. Emergency construction does not include development of new permanent protective structures where none previously existed. Where new protective structures are deemed by the administrator to be the appropriate means to address the emergency situation, upon abatement of the emergency situation the new structure shall be removed or any permit which would have been required, absent an emergency, pursuant to chapter 90.58 RCW, these regulations, or the local master program, obtained. All emergency construction shall be consistent with the policies of chapter 90.58 RCW and the local master program. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency;

(5) Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, construction of a barn or similar agricultural structure, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels: Provided, That a feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;

(6) Construction or modification of navigational aids such as channel markers and anchor buoys;

(7) Construction on shorelands by an owner, lessee or contract purchaser of a single-family residence for their own use or for the use of their family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to chapter 90.58 RCW. "Single-family residence" means a detached dwelling designed for and occupied by one family including those structures and developments within a contiguous ownership which are a normal appurtenance. An "appurtenance" is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and the perimeter of a wetland. On a statewide basis, normal appurtenances include a garage; deck; driveway; utilities; fences; installation of a septic tank and drainfield and grading which does not exceed two hundred fifty cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark. Local circumstances may dictate additional interpretations of normal appurtenances which shall be set forth and regulated

Exhibit C

Shoreline Master Program Limited Amendments Ordinance

within the applicable master program. Construction authorized under this exemption shall be located landward of the ordinary high water mark;

(8) Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single-family and multiple-family residences. A dock is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities or other appurtenances. This exception applies if either:

(i) In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars; or

(ii) In fresh waters the fair market value of the dock does not exceed ten thousand dollars, but if subsequent construction having a fair market value exceeding two thousand five hundred dollars occurs within five years of completion of the prior construction, the subsequent construction shall be considered a Substantial Development for the purpose of this chapter.

(iii) For purposes of this section salt water shall include the tidally influenced marine and estuarine water areas of the state including the Pacific Ocean, Strait of Juan de Fuca, Strait of Georgia and Puget Sound and all bays and inlets associated with any of the above;

(9) Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored groundwater from the irrigation of lands;

(10) The marking of property lines or corners on state-owned lands, when such marking does not significantly interfere with normal public use of the surface of the water;

(11) Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed or utilized primarily as a part of an agricultural drainage or diking system;

(12) Any project with a certification from the governor pursuant to chapter 80.50 RCW;

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

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

(ii) The activity will have no significant adverse impact on the environment including but not limited to fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;

(iii) The activity does not involve the installation of any structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;

(iv) A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to ensure that the site is restored to preexisting conditions; and (v) The activity is not subject to the permit requirements of RCW 90.58.550;

Exhibit C

Shoreline Master Program Limited Amendments Ordinance

(14) The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the department of agriculture or Ecology jointly with other state agencies under chapter 43.21C RCW;

(15) Watershed restoration projects as defined herein. Local government shall review the projects for consistency with the shoreline master program in an expeditious manner and shall issue its decision along with any conditions within forty-five days of receiving all materials necessary to review the request for exemption from the applicant. No fee may be charged for accepting and processing requests for exemption for watershed restoration projects as used in this section.

(i) "Watershed restoration project" means a public or private project authorized by the sponsor of a watershed restoration plan that implements the plan or a part of the plan and consists of one or more of the following activities:

(A) A project that involves less than ten miles of stream reach, in which less than twenty-five cubic yards of sand, gravel, or soil is removed, imported, disturbed or discharged, and in which no existing vegetation is removed except as minimally necessary to facilitate additional plantings;

(B) A project for the restoration of an eroded or unstable stream bank that employs the principles of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or

(C) A project primarily designed to improve fish and wildlife habitat, remove or reduce impediments to migration of fish, or enhance the fishery resource available for use by all of the citizens of the state, provided that any structure, other than a bridge or culvert or in-stream habitat enhancement structure associated with the project, is less than two hundred square feet in floor area and is located above the ordinary high water mark of the stream.

(ii) "Watershed restoration plan" means a plan, developed or sponsored by the Department of Fish and Wildlife, Ecology, the department of natural resources, the department of transportation, a federally recognized Indian tribe acting within and pursuant to its authority, a city, a county, or a conservation district that provides a general program and implementation measures or actions for the preservation, restoration, re-creation, or enhancement of the natural resources, character, and ecology of a stream, stream segment, drainage area, or watershed for which agency and public review has been conducted pursuant to chapter 43.21C RCW, the State Environmental Policy Act;

(16) A public or private project that is designed to improve fish or wildlife habitat or fish passage, when all of the following apply:

(i) The project has been approved in writing by the Department of Fish and Wildlife;

(ii) The project has received hydraulic project approval by the Department of Fish and Wildlife pursuant to chapter 77.55 RCW; and

Exhibit C

Shoreline Master Program Limited Amendments Ordinance

(iii) The local government has determined that the project is substantially consistent with the local shoreline master program. The local government shall make such determination in a timely manner and provide it by letter to the project proponent.

(iv) Fish habitat enhancement projects that conform to the provisions of RCW 77.55.181 are determined to be consistent with local shoreline master programs, as follows:

(A) In order to receive the permit review and approval process created in this section, a fish habitat enhancement project must meet the following and (II) of this subsection:

(I) A fish habitat enhancement project must be a project to accomplish one or more of the following tasks: Elimination of human-made fish passage barriers, including culvert repair and replacement; or restoration of an eroded or unstable stream bank employing the principle of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or Placement of woody debris or other in-stream structures that benefit naturally reproducing fish stocks.

The Department of Fish and Wildlife shall develop size or scale threshold tests to determine if projects accomplishing any of these tasks should be evaluated under the process created in this section or under other project review and approval processes. A project proposal shall not be reviewed under the process created in this section if the department determines that the scale of the project raises concerns regarding public health and safety; and

(II) A fish habitat enhancement project must be approved in one of the following ways: By the Department of Fish and Wildlife pursuant to chapter 77.95 or 77.100 RCW; or By the sponsor of a watershed restoration plan as provided in chapter 89.08 RCW; or

- By the department as a Department of Fish and Wildlife-sponsored fish habitat enhancement or restoration project;
- Through the review and approval process for the jobs for the environment program;
- Through the review and approval process for conservation district-sponsored projects, where the project complies with design standards established by the conservation commission through interagency agreement with the United States Fish and Wildlife Service and the natural resource conservation service;
- Through a formal grant program established by the legislature or the Department of Fish and Wildlife for fish habitat enhancement or restoration; and
- Through other formal review and approval processes established by the legislature.

(B) Fish habitat enhancement projects meeting the criteria of (p)(iii)(A) of this subsection are expected to result in beneficial impacts to the environment. Decisions pertaining to fish habitat enhancement projects meeting the criteria of (p)(iii)(A) of this subsection and being reviewed and approved according to the provisions of this section are not subject to the requirements of RCW 43.21C.030 (2)(c).

(C)(I) A hydraulic project approval permit is required for projects that meet the criteria of (p)(iii)(A) of this subsection and are being reviewed and approved under this section. An applicant shall use a joint aquatic resource permit application form developed by the

Exhibit C

Shoreline Master Program Limited Amendments Ordinance

Office of Regulatory Assistance to apply for approval. On the same day, the applicant shall provide copies of the completed application form to the Department of Fish and Wildlife and to each appropriate local government. Local governments shall accept the application as notice of the proposed project. The Department of Fish and Wildlife shall provide a fifteen-day comment period during which it will receive comments regarding environmental impacts. Within forty-five days, the department shall either, issue a permit, with or without conditions, deny approval, or make a determination that the review and approval process created by this section is not appropriate for the proposed project. The department shall base this determination on identification during the comment period of adverse impacts that cannot be mitigated by the conditioning of a permit. If the department determines that the review and approval process created by this section is not appropriate for the proposed project, the department shall notify the applicant and the appropriate local governments of its determination. The applicant may reapply for approval of the project under other review and approval processes.

(C)(II) Any person aggrieved by the approval, denial, conditioning, or modification of a permit under this section may formally appeal the decision to the hydraulic appeals board pursuant to the provisions of this chapter.

(D) No local government may require permits or charge fees for fish habitat enhancement projects that meet the criteria of (p)(iii)(A) of this subsection and that are reviewed and approved according to the provisions of this section.

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

Chapter 7 - GENERAL STANDARDS AND REGULATIONS

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

7.010 Buffers and Setbacks:

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

Policies:

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

Regulations:

- (a) **Critical Area Ordinance Applicability:** Critical Areas that are within the shoreline jurisdiction are regulated by the Critical Areas Regulations, (~~Ordinance 4965-2008~~ Ord. 5301 Section 3 (Exh B) (part), 2016; Ord. 4965 Section 7 (part), 2006), codified under BMC 20.14 which is herein incorporated into this SMP however, the following sections of the Critical Area Ordinance do not apply:
 - BMC 20.14.145(d) Exemptions for Forest Practices;
 - BMC 20.14.145(f) Exemptions for activities within improved Right-of-Way;
 - BMC 20.14.155 Reasonable Use Exception;
 - ~~BMC 20.14.200 Definition of "Wetlands".~~
 - ~~BMC 20.14.330(f)(1) Standard Wetland Buffer Widths;~~
 - ~~BMC 20.14.340(f) & (g) Mitigation Replacement and enhancement Ratios;~~
 - ~~BMC 20.14.730(d) Table 1: Water Type Buffer Standard.~~
 - BMC 20.14.330(f) Category III and IV Wetlands;
 - BMC 20.14.330(g) Category IV Wetlands

Exhibit D

Shoreline Master Program Limited Amendment Ordinance

- BMC 20.14.330(h)(3) Reducing Wetland Buffer Widths; and
- BMC 20.14.730(d)(5) Buffer Reduction;
- BMC 20.14.730 (d)(8) Habitat Conservation Area Buffers;

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

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

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

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

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

Exhibit D

Shoreline Master Program Limited Amendment Ordinance

from a certified bank are used, replacement ratios should be consistent with the requirements of the bank's certification.

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

(d) (b) Shoreline Buffers and Setbacks:

- (1) The following table defines required buffers and setbacks for Type S waters. Buffers and setbacks for all other non-shoreline waters (Type F, Type Np, and Type Ns) are defined in BMC 10.14.730(d), Table 1, ~~supersedes the buffers and setbacks established for Fish and Wildlife Habitat Conservation Areas in (BMC 20.14.730(d))~~ as follows:

DESIGNATION	Minimum Building Setback	Buffer Width Standard
<u>URBAN CONSERVANCY</u>	15 feet beyond buffer	175 feet
<u>SINGLE FAMILY & MULTI FAMILY RESIDENTIAL</u>		
Lot depth less than 125'	5 feet beyond buffer	20% of lot depth
Lot depth 125' to 199' ²	10 feet beyond buffer	20% of lot depth
Lot depth greater than 200'	15 feet beyond buffer	30% of lot depth (Maximum of 100')
<u>RECREATIONAL</u>	15 feet beyond buffer	100 feet
<u>COMMERCIAL / INDUSTRIAL / DOWNTOWN WATERFRONT</u>	15 feet beyond buffer	50 feet
<u>ISOLATED</u>	None	None
1. Please note: For all designations, setbacks and buffers listed above the following shall apply: 2. Where lot depth is less than 150 feet on Commercial or Recreational lots, the buffers listed above may be reduced to 20% of the lot depth. 3. In no case shall a buffer be less than 10' or greater than 100' in the Shoreline Residential Designation. 4. Buffers are measured from the Ordinary High Water Mark.		

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

Exhibit D

Shoreline Master Program Limited Amendment Ordinance

- (3) **Determining Lot Depth:** Areas inundated with water are not included in the calculation for lot depth, therefore the measurement may be taken from the OHWM. For lots with varying lot depth, the average depth may be used.
- (4) **Habitat Management Plans:** Within shoreline jurisdiction, the requirements for a Habitat Management Plan as provided in BMC 20.14.730€ and depicted within Table 2: Wildlife Habitat Conservation Areas shall be determined on a case-by-case basis only as needed to incorporate Fish & Wildlife Conservation Areas not addressed by the requirements of 7.030 Mitigation Sequencing for No Net Loss of Ecological Functions. The provisions of the Critical Area Ordinance (BMC 20.14.740) relating to Habitat Management Plans may ~~reduce~~ also be used to justify a reduction in the width of a shoreline buffer to no less than ten (10) feet provided enhancement features are installed that will provide a greater habitat function than the prescribed buffer would.
- (5) **Setback and Buffer Averaging:** The Director may grant modifications to the Fish and Wildlife Habitat Conservation Area buffer and setbacks required provided:
- (i) Sixty (60%) percent or more of like structures along the shoreline within the same numbered block as the subject property are setback less than the required buffer/setback required by the SMP. The average of the like structures may be used as a modified buffer for the proposal; and
 - (ii) In addition to the buffer, a minimum of a 5' setback shall be required for the structure; and
 - (iii) No new structure may have a buffer of less than ten (10') feet.
- (6) **Fences:** Fences are allowed to be erected in the side yard abutting the fish and wildlife conservation area buffer, but are prohibited within the buffer. Fences may also be erected upland of the buffer including within the shoreline setback area. General development standards for fences are located in BMC 20.44.020. Guardrails may be erected in association with pedestrian access areas provided they do not function as a fence and comply with the International Building Code.
- ~~(a) **Stormwater:** The provisions of the Critical Area Ordinance (BMC 20.14.730(d)(6)) relating to Stormwater Management shall apply within shoreline jurisdiction only to buffers of 100 feet or greater width.~~
- ~~(b)~~**(a) Exemptions:** The following development activities are not subject to fish and wildlife habitat area buffers and setbacks, provided they are constructed and maintained in a manner that minimizes adverse impacts on shoreline ecological functions, and further provided that they comply with all the applicable regulations in BMC Title 20 and this Program:
- (1) Those portions of an approved water-oriented development that require a location waterward of the ordinary high water mark, and/or within their associated buffers and setbacks;
 - (2) Development activities on lots that are physically and functionally separated from shoreline by an improved paved public or private road or railroad or similar facility and/or by one or more existing developed lots under separate ownership such that the ecological functions provided by buffers do not occur. This provision shall not apply to such a facility within a development proposal or contiguous ownership that can be feasibly relocated to accommodate buffers.

Exhibit D

Shoreline Master Program Limited Amendment Ordinance

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

7.090 Use Matrix and Height Table:

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

KEY: X=Prohibited P= Permitted CU= Conditional Use	Urban Conservancy	Single Family Residential	Multi-Family Residential	Recreation	Commercial	Downtown Waterfront	Industrial
Unlisted Uses:	CU	CU	CU	CU	CU	CU	CU
UPLAND USES							
Boat Sales, Storage and Repair	X	X	X	CU	P	P	P
Commercial uses such as but not limited to: general retail, general office, clinics, restaurants, drinking places, personal services, athletic fields, restaurants, community facilities, and entertainment uses. (See Zoning Code for specific allowed uses by zone)	X	X	X	X	P	P	P

Exhibit E

Shoreline Master Program Limited Amendments Ordinance

KEY: X= Prohibited P= Permitted CU= Conditional Use	Urban Conservancy	Single Family Residential	Multi-Family Residential	Recreation	Commercial	Downtown Waterfront	Industrial
Community, Cultural, Educational Facilities	CU	P	P	P	P	P	X
Golf Courses	X	CU	CU	X	X	X	X
Hotels and Lodging	X	X	X	X	P	P	X
Industrial	X	X	X	X	X	X	P
Worship and Religious Facilities	X	CU	P	CU	P	P	X
PARKING & UTILITIES							
Parking Serving Primary Use Within the Shoreline Jurisdiction	P	P	P	P	P	P	P
Parking Not Serving Primary Use Within the Shoreline Jurisdiction	X	X	X	X	CU	CU	CU
Transportation facilities that serve uses within the shoreline	P	P	P	P	P	P	P
Utilities that serve uses within the shoreline	P	P	P	P	P	P	P
RESIDENTIAL							
Adult Family Homes, Daycare, & Bed and Breakfasts	CU	P	P	X	P	P	X
Commercial/Residential mixed	X	X	X	X	P	P	X
Multi-Family Residential	X	X	P	X	P	P	X
Single Family Residential	P	P	P	XP	XP	P	X
SHORELINE MODIFICATIONS (All uses must meet applicable code criteria see Ch. 9)							
Boat Launch	CU	CU	CU	CU	CU	CU	CU
Aquaculture (including commercial, non-commercial, and geoduck)	CU	X	X	CU	CU	CU	CU
Ecological Restoration / Enhancement	P	P	P	P	P	P	P
Docks, Piers and Other In-Water Structures	P	P	P	P	P	P	P
Dredging	P	P	P	P	P	P	P
Flood Hazard Reduction	P	P	P	P	P	P	P
Mooring Buoys	P	P	P	P	P	P	P
Marinas	CU	CU	CU	CU	CU	CU	CU
Stabilization - New and Replacement	P	P	P	P	P	P	P
Stormwater Management Facilities	P	P	P	P	P	P	P
RECREATION AND PUBLIC ACCESS							
Recreation, Non-Water-Oriented	CU	CU	CU	CU	CU	CU	CU
Recreation, Water-Oriented	P	P	P	P	P	P	P
Trails, public pedestrian and bicycle not	P	P	P	P	P	P	P

Exhibit E

Shoreline Master Program Limited Amendments Ordinance

KEY: X= Prohibited P= Permitted CU= Conditional Use	Urban Conservancy	Single Family Residential	Multi-Family Residential	Recreation	Commercial	Downtown Waterfront	Industrial
including overwater trails							
OUTRIGHTLY PROHIBITED USES							
Adult Entertainment	X	X	X	X	X	X	X
Agriculture	X	X	X	X	X	X	X
Automobile Sales Service & Repair	X	X	X	X	X	X	X

Figure 7.090 (b) Height Restrictions:

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

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

- (a) Heights in the commercial & industrial districts may be increased to the zoning district height limit through a Conditional Use Permit provided:
- (1) The increase does not substantially block views from upland residential properties;
 - (2) Greater height is demonstrated to be needed for an essential element of an allowed use.
 - (3) The project may be required to include compensating elements that substantially enhance the visual and physical public access to the shoreline.
 - (4) It is demonstrated that No Net Loss of habitat function will be achieved.

(b) Single Family Residential heights may be increased to 35' with the employment of a pitched roof when:

- (1) The pitch of the roof is not less than 6:12
- (2) The pitched roof is oriented perpendicular to the shoreline. Minor gables or other roof features parallel to the shoreline may be permitted on a case by case basis provided such features do not extend past the pitched roof where views are intended to be preserved.
- (3) The pitched roof covers the entire structure.

Shoreline Master Program Limited Amendments Ordinance

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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April 25, 2017

The Honorable Patty Lent
City of Bremerton
345 Sixth Street, Suite 600
Bremerton, WA 98337

**Re: City of Bremerton Shoreline Master Program Limited Amendment –
Conditional Approval, Ordinance 5300**

Dear Mayor Lent:

I would like to take this opportunity to commend the City of Bremerton (City) for its efforts in developing the proposed amendments to the Shoreline Master Program (SMP). It is obvious that a significant effort was invested by your staff. The amendments make changes to the City's SMP in order to make it consistent with the City's recently updated Comprehensive Plan and incorporate updated provisions from the City's Critical Areas Ordinance. We have completed our review of the proposal for consistency with the Shoreline Management Act and implementing guidelines.

As we have already discussed with your staff, the Washington State Department of Ecology (Ecology) identified specific changes necessary to make the proposal approvable. These required changes are detailed in Attachment B. Additional recommended changes are included in Attachment C. Ecology's findings and conclusions related to the City's proposed SMP amendment are contained in Attachment A.

Pursuant to RCW 90.58.090 (2)(e), at this point, the City may:

- Agree to the proposed changes, or
- Submit an alternative proposal. Ecology will then review the alternative(s) submitted for consistency with the purpose and intent of the changes originally developed by Ecology and with the Shoreline Management Act.

Final Ecology approval will occur after the City responds to Ecology communicating the City's decision on the required and recommended changes. Ecology's final approval will be in the form of a letter, and will be sent upon receipt of the City's written notification that the required changes are acceptable to the City, or after the City and Ecology have reached an agreement on alternative language that meets the statutory and Guidelines requirements.

Shoreline Master Program Limited Amendments Ordinance

The Honorable Patty Lent
April 25, 2017
Page 2

Please provide your written response within 30 days to the Director's Office at the following address:

WA State Department of Ecology
Attention: Director's Office
PO Box 47600
Olympia, WA 98504-6700

Thank you again for your efforts to continue to improve the City's SMP. We look forward to receiving your written response and concluding this SMP amendment in the near future. If you have any questions or would like to discuss Ecology's proposed changes, please contact our regional planner, Misty Blair, at Misty.Blair@ecy.wa.gov/(425) 649-4309.

Sincerely,



Maia D. Bellon
Director

Enclosures

By Certified Mail [91 7108 2133 3939 7125 5436]

cc: Allison Satter, City of Bremerton
Misty Blair, Ecology
Joe Burcar, Ecology

**ATTACHMENT A: FINDINGS AND CONCLUSIONS
FOR PROPOSED LIMITED AMENDMENT TO THE CITY OF BREMERTON'S
SHORELINE MASTER PROGRAM**

SMP Submittal accepted July 13, 2016, Ordinance No. 5300
Prepared by Misty Blair on April 17, 2017

Brief Description of Proposed Amendment:

The City of Bremerton has submitted to Ecology for review a limited amendment to its Shoreline Master Program (SMP). The City Council adopted the amendment (Ordinance No. 5300) on May 18, 2016. The purpose of the limited amendment is to incorporate updated Critical Areas regulations and ensure consistency between the SMP and recently updated Comprehensive Plan. The Critical Areas regulations were recently updated to incorporate best available science, eliminating the need for separate critical areas regulations within the SMP. The City has opted to remove the redundant regulations from the SMP and incorporate more of critical areas regulations as a means to provide the same level of critical areas protection. SMP environment designation maps were amended to match recent Land Use Map changes, particularly to recognize the Medium Density Residential (MDR) and Multifamily Designation (MR) within the shoreline jurisdiction and accurately reflect the existing and planned multifamily residential development in these areas.

Regional staff recommends approval of the proposed limited amendment subject to both required changes (Attachment B) and recommended changes (Attachment C).

FINDINGS OF FACT

Need for amendment. The proposed changes are intended as minor adjustments to portions of the City of Bremerton SMP. According to the City, the proposed amendments are needed: to provide consistency between the SMP and the Comprehensive Plan; for ease of implementation of the critical areas regulations; and to accurately reflect the existing and planned development patterns within SMP Map areas B, C, and E. The original City SMP was approved by Ecology in 1977 with major amendments in 1989, 1992 and with amendments for the Downtown Development Standards in 2003. The City's SMP comprehensive amendment process pursuant to RCW 90.58.080 and 100 was completed in December 2013.

SMP provisions to be changed by the amendment as proposed: The following sections of the existing City SMP are proposed for change:

Section 4.020 Maps

- Map B & Map C – Re-designating a portion of shoreline from “Single Family Residential” to “Multi-Family Residential” shoreline designation.
- Map E – Re-designating a portion of shoreline from “Commercial” to Multi-Family Residential” shoreline designation.

Section 5.010, incorporating the following updated Critical Areas Regulations

- BMC 20.14.200, Definitions of “Wetlands”
- BMC 20.14.330(f)(1) Standard Wetland Buffer Widths
- BMC 20.14.340(f) & (g) Mitigation Replacement and Enhancement Ratios
- BMC 20.14.730(d) Table 1: Water Type Buffer Standard

Shoreline Master Program Limited Amendments Ordinance

City of Bremerton SMP Limited Amendment, Attachment A

April 17, 2017

Page 2 of 5

BMC 20.14.730(d)(5) Buffer Reduction

BMC 20.14.730(d)(8) Habitat Conservation Area Buffer

Section 7.010, deleting the above referenced Critical Areas Regulation exclusions and the following Regulations: (b) Wetland Buffers, and (c) Wetland Mitigation,

Section 7.090, modifying the Use Matrix Table to permit Single Family Residential within the Recreation and Commercial shoreline environment designations.

Amendment History, Review Process: The city indicates the proposed SMP amendments originated from a local planning process related to the City's Comprehensive Plan and Critical Areas Ordinance (CAO) updates. This process began with a Planning Commission Workshop on September 15, 2014. The City commissioned a CAO Gap Analysis that was completed by The Watershed Company on July 7, 2015. The stated secondary purpose of this analysis was to compare the CAO with relevant sections of the City's Shoreline Master Program in order to bring the two regulatory documents into alignment with each other. Affidavits of publication provided by the City indicate notice of the hearing was published in the Kitsap Sun on April 7, 2016. The record shows that a public hearing regarding the SMP Amendment before the Planning Commission was held on April 19, 2016. The City received one comment on May 18, 2016 from the Suquamish Tribe, this comment was subsequently submitted again during the state public comment period and is included in the comment response summary (Attachment D). The associated Critical Areas Amendment, effecting the provisions of Bremerton Municipal Code (BMC) 20.14 were provided to Ecology for review and all recommendations contained within Paul Anderson's May 11, 2016 comment letter were incorporated into the final adopted version.

The Planning Commission unanimously recommended the proposed limited amendments to the Shoreline Master Program. City Council held an additional public hearing and considered the proposed SMP limited amendment on May 18, 2016. With passage of Ordinance No. 5300, on May 18, 2016, the City authorized staff to forward the proposed amendments to Ecology for approval.

The proposed SMP amendments were received by Ecology for state review and verified as complete on July 13, 2016. Notice of the state comment period was distributed to state task force members and interested parties identified by the City on August 3, 2016, in compliance with the requirements of WAC 173-26-120, and as follows: The state comment period began on August 3, 2016 and continued through August 19, 2016. No public hearing was held during the state comment period. Four (4) comment letters were received during the comment period. Ecology sent all written comments it received along with a summary matrix table to the City on September 16, 2016. The City requested and was provided additional time to respond to comments. On January 3, 2017 the City submitted to Ecology its responses to issues raised during the state comment period. A copy of the City's response along with Ecology's response to public comments is included as Attachment D.

Consistency with Chapter 90.58 RCW: The proposed amendment has been reviewed for consistency with the policy of RCW 90.58.020 and the approval criteria of RCW 90.58.090(3), (4) and (5). The City has also provided evidence of its compliance with SMA procedural requirements for amending their SMP contained in RCW 90.58.090(1) and (2).

Shoreline Master Program Limited Amendments Ordinance

City of Bremerton SMP Limited Amendment, Attachment A

April 17, 2017

Page 3 of 5

Consistency with “applicable guidelines” (Chapter 173-26 WAC, Part III): The proposed amendment has been reviewed for compliance with the requirements of the applicable Shoreline Master Program Guidelines (WAC 173-26-171 through 251 and 173-26-020 definitions).

Consistency with Limited Amendment Criteria: The proposed amendment has also been reviewed for compliance with WAC 173-26-201(1)(c) of the SMP Guidelines. The amendment is necessary to improve consistency with the Act’s goals, policies and implementing rules applicable to shorelines of the state within the local government (WAC 173-26-201(1)(c)(i)(D) and to correct errors and omissions (WAC 173-26-201(1)(c)(i)(E). The City of Bremerton is not currently conducting a comprehensive shoreline master program (WAC 173-26-201(1)(c)(ii). The proposed amendments will not foster uncoordinated and piecemeal development of the state’s shorelines (WAC 173-26-201(1)(c)(iii). The amendment is consistent with all applicable policies and standards of the Act (WAC 173-26-201(1)(c)(iv). All procedural rule requirements for public notice and consultation have been satisfied (WAC 173-26-201(1)(v). The master program guidelines analytical requirements and substantive standards have been satisfied, as applicable to the amendments. The amendments will not result in a net loss of shoreline ecological functions (WAC 173-26-201(1)(c)(vi).

Consistency with SEPA Requirements: The City submitted evidence of SEPA compliance in the form an issued Addendum to a Determination of Significance with Adoption of Existing Environmental Document for the City of Bremerton 2016 Comprehensive Plan Update which included the proposed SMP amendments on November 3, 2015. Ecology did not comment.

Other Studies or Analyses supporting the SMP update: Ecology also reviewed the following documents prepared by the City in support of the SMP amendment:

- A July 14, 2015 technical memorandum to the City from The Watershed Company providing a Critical Areas Ordinance Gap Analysis, Identified as Attachment VI; and,
- The City’s updated Critical Areas Ordinance, identified as Attachment VII (Portions of Ordinance 5301 effective June 3, 2016), as well as the entirety of Ordinance 5301; and,
- The City’s updated Land Use Maps, identified as Attachment VIII (Portion of Ordinance 5299 effective June 3, 2016); and,

Summary of Issues Raised During The Public Review Process: The City’s SMP limited amendment drafting/public review process coincided with the City’s Comprehensive Plan Update and Critical Areas Regulations update. During the local public participation period, only one comment was received related to the SMP limited amendment. During the Ecology public comment period four (4) comment letters were received. Public comments centered on the following topics:

- One comment was received supporting the limited amendment and requesting no changes.
- One comment was received requesting the limited amendment be denied based on a lack of information regarding the Chico Creek and Gorst Creek Watersheds, specifically related to their contributing and draining basins.
- One comment was received requesting that the City add a statement to the Applicability section (BMC 20.16.510) acknowledging that the Navy does not have to comply with the City’s SMP requirements.
- One comment letter contained several concerns related to CAO provisions which are proposed for incorporation into the SMP.

Shoreline Master Program Limited Amendments Ordinance

City of Bremerton SMP Limited Amendment, Attachment A

April 17, 2017

Page 4 of 5

CONCLUSIONS OF LAW

After review by Ecology of the complete record submitted and all comments received, Ecology concludes that the City's proposed limited SMP amendment, subject to and including Ecology's required changes (itemized in Attachment B), is consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions). This includes a conclusion that the proposed SMP amendment, subject to required changes, contains sufficient policies and regulations to assure that no net loss of shoreline ecological functions will result from implementation of the new master program amendments (WAC 173-26-201(2)(c)(5) and WAC 173-26-186(8)).

Ecology also concludes that a separate set of recommended changes to the submittal (identified during the review process and itemized in Attachment C) would be consistent with SMA policy and the guidelines and would be beneficial to SMP implementation. These changes are not required, but can, if accepted by the City, be included in Ecology's approved SMP amendments.

Consistent with RCW 90.58.090(4), Ecology concludes that those SMP segments relating to critical areas within Shoreline Management Act jurisdiction provide a level of protection to critical areas located within shorelines of the state that assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources.

Ecology concludes that the City has complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents.

Ecology concludes that the proposed amendments satisfy the criteria for approval of limited amendments found in WAC 173-26-201(1)(c).

Ecology concludes that the City has complied with the requirements of RCW 90.58.130 and WAC 173-26-090 regarding public and agency involvement in the SMP amendment process.

Ecology concludes that the City has complied with the purpose and intent of the local amendment process requirements contained in WAC 173-26-100, including conducting public hearings, notice, consultation with parties of interest and solicitation of comments from tribes, government agencies and Ecology.

Ecology concludes that the City has complied with requirements of Chapter 43.21C RCW, the State Environmental Policy Act.

Ecology concludes that the City's SMP amendment submittal to Ecology was complete pursuant to the requirements of WAC 173-26-110 and WAC 173-26-201(3)(a).

Ecology concludes that it has complied with the procedural requirements for state review and approval of shoreline master program amendments as set forth in RCW 90.58.090 and WAC 173-26-120.

Shoreline Master Program Limited Amendments Ordinance

City of Bremerton SMP Limited Amendment, Attachment A

April 17, 2017

Page 5 of 5

DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed amendments to this SMP are consistent with the policy of the Shoreline Management Act, the applicable guidelines and implementing rules, once required changes set forth in Attachment B are approved by the City. Ecology approval of the proposed amendments, with required changes, is effective 14 days from Ecology's final action approving the amendment.

As provided in RCW 90.58.090(2)(e)(ii) the City may choose to submit an alternative to all or part of the changes required by Ecology. If Ecology determines that the alternative proposal is consistent with the purpose and intent of Ecology's original changes and with RCW 90.58, then the department shall approve the alternative proposal and that action shall be the final action on the amendment.

Shoreline Master Program Limited Amendments Ordinance

Attachment B – Ecology Required Changes

The following changes are necessary to comply with the SMA (RCW 90.58) and the SMP Guidelines (WAC 173-26, Part III) or improve clarity:

ITEM	SMP Submittal PROVISION (Cite)	TOPIC	BILL FORMAT CHANGES (underline = additions; strikethrough = deletions)	RATIONALE
1	5.010(c)(2) Applicability – Development Permit Compliance	Incorporation of Critical Areas Regulations	(2) Critical Areas in the shoreline jurisdiction are regulated by the Critical Areas Regulations, (Ordinance 4965-2008) (Ord. 5301 §3 (Exh. B) (part), 2016: Ord. 4965 §7 (part), 2006), codified under BMC 20.14 which is herein incorporated into this SMP however, the following sections of the Critical Area Ordinance do not apply: (i) BMC 20.14.145(d) Exemptions for Forest Practices; (ii) BMC 20.14.145(f) Exemptions for activities within improved right-of-Way; and (iii) BMC 20.14.155 Reasonable Use Exception; (iv) BMC 20.14.330(f) & (g) & (h)(3); and (v) BMC 20.14.730(d)(5) Buffer Reduction	PART 1: The City has incorporated their CAO regulations by reference and one of the stated purposes of this amendment is to incorporate the updated CAO provisions completed in 2016 as part of Ord. 5301. Therefore the Critical Areas Ordinance references throughout the SMP need to be updated to reflect the correct version of the CAO the City intends to utilize for regulating critical areas within the Shoreline jurisdiction. PART 2: Allowances included within BMC 20.14.330(f), (g), (h)(3) & 20.14.730(d)(5) - This is not consistent with the mitigation sequencing requirements of WAC 173-26-(2)(c)(i)(F) or No Net Loss of shoreline function and value principal of the SMA. This type of deviation from the BAS standard wetland protection and buffer standards should require a Shoreline Variance.
2	7.010 Buffers and Setbacks. Regulations:	Incorporation of Critical Areas Regulations	(a) Critical Area Ordinance Applicability: Critical Areas that are within the shoreline jurisdiction are regulated by the Critical Areas Regulations, (Ordinance 4965-2008) (Ord. 5301 §3 (Exh. B) (part), 2016: Ord. 4965 §7 (part), 2006), codified under BMC 20.14 which is herein incorporated into this SMP however, the following sections of the Critical Area Ordinance do not apply:	See Rationale above.

Shoreline Master Program Limited Amendments Ordinance

			• BMC 20.14.145(d) Exemptions for Forest Practices; • BMC 20.14.145(f) Exemptions for activities within Improved Right-of-Way; • BMC 20.14.155 Reasonable Use Exception; • BMC 20.14.330(f) Category III and IV Wetlands; • BMC 20.14.330(g) Category IV Wetlands; • BMC 20.14.330(h)(3) Reducing Wetland Buffer Widths; and • BMC 20.14.730(d)(5) Buffer Reduction	
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Shoreline Master Program Limited Amendments Ordinance

Attachment C – Ecology Recommended Changes

The following changes are recommended to clarify elements of the City's SMP and have been determined consistent with SMA (RCW 90.58) policy and the SMP Guidelines (WAC 173-26, Part III):

ITEM	SMP Provision	TOPIC	BILL FORMAT CHANGES (underline = additions, strikethrough = deletions)	RATIONALE
1	5.010(c)(h)	Shoreline Substantial Development Permit Process Exemptions	(17) The external or internal retrofitting of an existing structure with the exclusive purpose of compliance with the Americans with disabilities act of 1990 (42 U.S.C. Sec. 12101 et seq.) or to otherwise provide physical access to the structure by individuals with disabilities.	Consistency with RCW 90.58.030(3)(e)(xiii). The legislature added subsection (xiii) in 2016. This SDP Exemption exists regardless of whether it is explicitly in the City's SMP it may be more likely to be utilized if it is included within the City's SMP.
2	7.010(b)(4)	Regulations: Shoreline Buffers and Setbacks - Habitat Management Plans	(4) <u>Habitat Management Plans:</u> Within shoreline jurisdiction, the requirement for a Habitat Management Plan as provided in BMC 20.14.730(e) and depicted within Table 2: Wildlife Habitat Conservation Areas shall be determined on a case-by-case basis only as needed to incorporate Fish & Wildlife Conservations Areas not addressed by the requirements of 7.030 Mitigation Sequencing for No Net Loss of Ecological Functions. The provisions of the Critical Area Ordinance (BMC 20.14.740) relating to Habitat Management Plans may reduce also be used to justify a reduction in the width of a shoreline buffer, to no less than ten (10) feet, provided enhancement features are installed that will provide a greater habitat function than the prescribed buffer would.	City staff requested a recommended change to clarify how the incorporation of CAO provision BMC 20.14.730(e) and Table 2 of the same subsection will be implemented within shoreline jurisdiction. This CAO provision requires a Habitat Management Plan to establish appropriate CAO buffers for all properties located within 200 feet of fish and wildlife conservation areas such as the City's marine waters. Ecology concurs with City staff that individualized buffer standard for marine shorelines established through a Habitat Management Plan would not foster coordinated predictable development along the City's shoreline. The City completed an Inventory & Characterization and Cumulative Impacts Assessment which informed the City's shoreline buffers and evaluated the SMP for no net loss of shoreline ecological functions as part of the City's SMP Comprehensive Update completed in 2013. Proposed language was developed in collaboration with City staff to provide clarification that only Fish & Wildlife Conservation Areas not reviewed as part of a standard no net loss analysis would require the submittal of separate Habitat Management Plan.

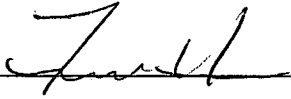
AFFIDAVIT OF PUBLICATION

Account #342133 AD#1680104
STATE OF WASHINGTON
COUNTY OF KITSAP

I, Teresa Hull, being first duly sworn on oath, deposes and says: That she is now, and at all times embraced in the publication herein mentioned was the principal clerk of the printers and publishers of KITSAP SUN; that said newspaper has been approved as a legal newspaper by order of the Superior Court of the County of Kitsap, in which County it is published and is now and has been for more than six months prior to the date of the publication hereinafter referred to, published in the English language continually as a daily newspaper in Bremerton, Kitsap County, Washington, a weekly newspaper in Kitsap County, Washington and is now and during all of said time, was printed in an office maintained in the aforesaid place of publication of said newspaper; that the following is a true text of an advertisement as it was published in regular issues (and not in supplement form) of said newspaper on the following date, to wit: And on

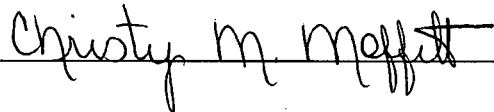
July 11, 2017

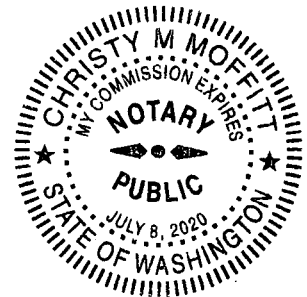
such newspaper was regularly distributed to its subscribers during all of said period. The full amount of the fee charged for the foregoing publication is the sum of \$62.16. This amount has not been paid in full.



(Signature of Principal Clerk)

Subscribed and sworn to before me this day of July 11, 2017.





ORDINANCE NO. 5327

AN ORDINANCE of the City Council of the City of Bremerton, Washington, repealing and replacing Ordinance 5300 with adoption of this ordinance for the limited amendments to the City of Bremerton Shoreline Master Program.

PASSED by the City Council on the 5th day of July, 2017.

The full text of this ordinance is available from the City Clerk's Office, 345 Sixth Street, Suite 600, Bremerton, WA 98337.
JULY 11, 2017 AD#1680104