

The following changes are proposed by the City of Olympia to clarify the provisions of the City's updated SMP addressing nonconforming uses, buildings and other structures. Except as noted all changes required and recommended by the Department of Ecology on April 22, 2015, are acceptable to the City. Such changes are incorporated below as if original, i.e., are not indicated in bill-format.

ITEM	SMP PROVISION	TOPIC	BILL FORMAT CHANGES [<u>underline</u> -additions; striketrough -deletions]	CITY STAFF - DISCUSSION/RATIONALE
1	Chapter 3.80 (A); Page 87	Existing Buildings and Uses within Shorelines	Subject to the provisions of this Chapter, a use, lot, or structure lawfully existing prior to the effective date of this Shoreline Program or any amendment thereto, which is rendered nonconforming <u>by this Shoreline Program</u> may continue and may also be repaired, remodeled, and/or restored in the manner and to the extent that it existed upon the effective date of this Shoreline Program.	<i>Olympia's zoning nonconforming provisions differ from the proposed SMP; this proposed change would further emphasize that this provision is only with respect to the Shoreline Program. This proposal incorporates Ecology-required change "TT."</i>
2	Chapter 3.80 (B); Page 87	Existing Buildings and Uses within Shorelines	<u>In addition to and independent of the provisions below</u> , e Existing roads, trails, utility lines and similar linear facilities, together with any associated facilities such as pump stations or stormwater treatment ponds, which do not conform to the provisions of Chapter 18.34 may expand within existing easements and rights-of-ways. Modification or expansion outside of existing easements or rights-of-way which would otherwise be prohibited may be authorized by the decision maker upon finding there is no feasible alternative, the development is necessary for the public welfare, as proposed and designed including appropriate mitigation, and the development is not likely to result in a net loss of shoreline ecological functions.	<i>This proposed change would clarify the scope of this section and affirm that this provision is an additional exception for allowing expansion of regarding roads, trails, and other such facilities.</i>
3	Chapter 3.81 (A); Page 88	Alteration of Nonconforming Structures in Shoreline	<p>A. Shoreline Structures – The following regulations apply to nonconforming structures located in shoreline jurisdiction. <u>Alterations pursuant to this section shall not result in a net loss of shoreline ecological functions and processes. The applicant shall obtain all required permits or approvals prior to construction. All alterations shall comply with applicable development regulations.</u></p> <p>1. <u>Structures within Shoreline Setbacks</u> -- Alteration of structures located landward of the Ordinary High Water Mark within a required shoreline setback is limited to:</p> <p>a. For structures located partially within the shoreline setback, alterations shall be limited to the addition of height and expansion into areas outside the shoreline setback.</p> <p>b. For structures located entirely within the shoreline setbacks, alterations shall be allowed for the addition of height or expansion on</p>	<i>This section incorporates Ecology-recommended change 'OOO,' restructures the chapter to move general requirements to the introductory paragraph, and includes additional clarifying edits proposed by the City.</i>

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			<p>the upland side of the structure, or both.</p> <p>c. Interior and exterior remodels and the addition of upper stories are permitted. Except as provided above, such additions shall not extend beyond the existing or approved building footprint. Any <u>Expansion</u> of nonconforming structures that further encroach on the Ordinary High Water Mark setback by decreasing the distance between the structure and the Ordinary High Water mark shall require a <u>shoreline</u> variance.</p> <p>2. Overwater Structures – Alteration of structures located water-ward of the Ordinary High Water Mark is prohibited except:</p> <p><u>a. Alterations to the footprint or building envelope may be permitted when required by Washington State Department of Natural Resources for light penetration;</u></p> <p><u>ab. Alterations that do not increase or expand the building footprint nor increase the height</u> are permitted; and</p> <p>bc. Existing covered moorage may be maintained, repaired or replaced pursuant to WAC 173-27-040.</p> <p>c. Except for modifications required by the Washington Department of Natural Resources for light penetration, alteration to the footprint or building envelope are prohibited.</p> <p>3. Actions shall not result in a net loss of shoreline ecological functions and processes and the applicant shall obtain all required permits or approvals prior to construction.</p> <p><u>43. Structures within Vegetation Conservation Areas.</u> Alteration of structures located landward of the ordinary high water within a required vegetation conservation area (VCA) that include expansion of the building footprint shall not be permitted <u>is prohibited</u>. <u>Only</u> interior and exterior remodels and the addition of upper stories are permitted.</p> <p>5. All alterations shall comply with applicable development regulations in the Olympia Municipal Code.</p>	<p><i>This proposed alternative is intended to clarify the DNR-based exception clause by changing it from an 'exception to the exception' to an affirmative statement.</i></p> <p><i>Note that the proposed change to subsection A.3 regarding "Structures within Vegetation Conservation Areas" is an alternative to Ecology-required change "UU" and is intended to emphasize the required prohibition.</i></p>
4			<p>B. Unintentionally damaged or destroyed nonconforming structures.</p> <p>1. In the event that a structure or building that does not conform to the shoreline setback is damaged or destroyed by fire, explosion, act of nature, or act of public enemy, the structure may be restored within the</p>	

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			<p>existing footprint.</p> <p>2. In the event that a structure or building housing a nonconforming use is damaged or destroyed by fire, explosion, act of nature, or act of public enemy, such damage or destruction shall not constitute a discontinuation of the nonconforming use. In the event that a structure or building housing an existing use considered a “conditional” use is damaged or destroyed by fire, explosion, act of nature, or act of public enemy, such use may be re-established without obtaining a conditional use permit.</p> <p>32. In order to take advantage of this section, a complete application for a building permit must be submitted within one year of the unintended event that caused the destruction of the structure. The applicant loses their rights under this subsection if the building permit lapses without construction of the structure proposed under the building permit.</p>	<p><i>This change proposes to delete section B.2 because it relates to nonconforming <u>uses</u>, not structures. Nonconforming uses are addressed in Chapter 3.82 - see below.</i></p>
5	Chapter 3.82; Page 89	Existing Shoreline Uses	<p>3.82 18.34.920 – Existing Nonconforming Shoreline Uses and Lots</p> <p>A. <u>Conversion and discontinuation of n</u>Nonconforming uses in shoreline jurisdiction shall be governed by OMC 18.37.060(A) and (E).</p> <p>B., except eExpansion of nonconforming shoreline uses. The hearings examiner may authorize expansion of a use that does not conform to the <u>Shoreline</u> Master Program provided if the applicant can demonstrates <u>all</u> of the following:</p> <ol style="list-style-type: none"> 1. The use clearly requires a specific site location on the shoreline not provided for under this Chapter, and 2. Extraordinary circumstances preclude reasonable use of the property in a manner consistent with this Chapter. <u>Provided, however, that e</u>Expansion of uses in shoreline jurisdiction that are also nonconforming with zoning use restrictions shall not be authorized <u>are not authorized by this section. See OMC 18.37.060(B).</u> <p>3. The Hearing Examiner may grant a conditional use permit that allows a nonconforming use to change to another nonconforming use that would not normally be allowed in the district in which it is located; provided, that the following can be clearly demonstrated by the applicant:</p> <ol style="list-style-type: none"> a. The structure that houses the existing nonconforming use cannot be used for any permitted uses because of its particular design; and b. The proposed use will be more compatible with the permitted uses of the use district than the existing use; and 	<p><i>City-proposed changes in this section incorporate Ecology-recommended change ‘PPP’ and add further clarifying edits. Except as noted below, all are intended to avoid ambiguity.</i></p> <p><i>Subsections ‘3’ and ‘4’ are redundant with OMC 18.34.920(A) referenced in section ‘A’ above and need not be repeated.</i></p>

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			<p>c. Provisions have been made to safeguard the adjoining properties against any detrimental effects that might result from allowing the proposed use.</p> <p>4. Historic properties. The Hearing Examiner also may grant a conditional use permit for ten years to allow the following uses to change to another residential or commercial use that is not typically allowed in the district in which it is located:</p> <p>a. An existing commercial or institutional structure in a residential zone when such structure is on the National, State or Olympia Heritage Register; or</p> <p>b. An existing commercial or institutional structure within a National, State or Olympia Historic District, excluding the South Capital Historic Register; or</p> <p>c. An existing commercial or institutional structure conditioned on restoration of a structure to achieve Register status; provided, that the following can clearly be demonstrated by the applicant:</p> <p>1) The structure cannot be utilized for any of the uses normally permitted within that district; and</p> <p>2) The proposed use will not alter the historic features documented at the time of Register placement; and</p> <p>3) Provisions have been made to safeguard the adjoining properties and the neighborhood against any detrimental effects that might result from allowing the proposed use, subject to the requirements in 18.48.040, Additional Conditions.</p> <p>B. Nonconforming lots in shoreline jurisdiction shall be governed by OMC 18.37.080</p> <p>1. Except as provided by OMC 18.34.920(A), a nonconforming use, when abandoned or discontinued, shall not be resumed. Discontinuation or abandonment occurs under any of the following:</p> <p>a. When land used for a nonconforming use shall cease to be used for that particular use for twelve (12) consecutive months; or</p> <p>b. When a building designed or arranged for a nonconforming use shall cease to be used for that particular use for twelve (12) consecutive months; or</p> <p>c. When a building designed or arranged for a conforming use but used for a nonconforming use shall cease to be used for such nonconforming use for twelve (12) consecutive months.</p>	<p><i>Similarly, subsection 'B' was redundant with OMC 18.34.920(A) referenced in section 'A' above and need not be repeated.</i></p>

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			<p>2. The Hearing Examiner may, by conditional use permit, allow a discontinued or abandoned use to resume operations if it can be proven that all of the following conditions exist:</p> <p>a. That discontinuation or abandonment was caused by a condition over which the owner and operator of such use had no control; and</p> <p>b. That it is impossible for the owner to change the use of the premises to a permitted use without causing a hardship to himself; and</p> <p>c. That resumption of the nonconforming use will not have a detrimental effect on surrounding properties.</p>	
6	New Chapter 3.83; to be added at page 90	Existing Nonconforming Shoreline Lots	<p><u>OMC 18.34.930 – Existing Nonconforming Shoreline Lots</u></p> <p><u>An undeveloped lot, tract, parcel, site, or division of land located landward of the ordinary high water mark which was established in accordance with local and state subdivision requirements prior to the effective date of the Shoreline Master Program which does not conform to the present lot size standards of the Program may be developed if the lot conforms with OMC 18.70.080 and the development conforms to all other requirements of the Master Program.</u></p>	<p><i>As an alternative to a portion of Ecology recommended change ‘PPP,’ which would add nonconforming ‘lots’ to chapter 3.82; for clarity the City proposes this new section specific to nonconforming shoreline lots.</i></p>
7	Chapter 3.17 (C); page 40	Official Shoreline Map	<p>C. Where uncertainty or conflict occurs in the exact location of a shoreline designation boundary, the Administrator shall interpret the boundaries based upon:</p> <ol style="list-style-type: none"> 1. The coordinates listed in <i>Shoreline Environmental Designations for the City of Olympia</i>; 2. Boundaries indicated as approximately following lot, tract, or section lines; 3. Boundaries indicated as approximately following roads or railways shall be construed to follow their centerlines; and 4. Boundaries indicated as approximately parallel to or extensions of features indicated in 2 or 3 above shall be so construed. 	<p><i>This section of the SMP references a document entitled “Shoreline Environmental Designations for the City of Olympia.” Ecology staff’s recommendation “W” proposed that clause “1” be deleted because, as Ecology staff correctly noted, the version of that document in the City’s prior submittal did not correspond with the version of the map submitted. The City of Olympia proposes an alternative: to retain the version of this SMP section in the October 1, 2013 submittal (as shown at left) and to adopt the corrected and updated version of the referenced document that accompanies this submittal – see ‘Attachment C.’</i></p>

3.80 18.34.900 – Existing Buildings and Uses within Shorelines

- A. Subject to the provisions of this Chapter, a use, lot, or structure lawfully existing prior to the effective date of this Shoreline Program or any amendment thereto, which is rendered nonconforming by the shoreline program may continue and may also be repaired, remodeled, and/or restored in the manner and to the extent that it existed upon the effective date of this Shoreline Program.
- B. In addition to and independent of the provisions below, existing roads, trails, utility lines and similar linear facilities, together with any associated facilities such as pump stations or stormwater treatment ponds, which do not conform to the provisions of Chapter 18.34 may expand within existing easements and rights-of-ways. Modification or expansion outside of existing easements or rights-of-way which would otherwise be prohibited may be authorized by the decision maker upon finding there is no feasible alternative, the development is necessary for the public welfare, as proposed and designed including appropriate mitigation, and the development is not likely to result in a net loss of shoreline ecological functions.

Comment [TS1]: Proposed clarification

Comment [TS2]: To clarify scope of this section.

3.81 18.34.910 – Alteration of Nonconforming Structures in Shoreline Jurisdiction

~~A.~~ Shoreline Structures – The following regulations apply to nonconforming structures located in shoreline jurisdiction. Alterations pursuant to this section shall not result in a net loss of shoreline ecological functions and processes. The applicant shall obtain all required permits or approvals prior to construction. All alterations shall comply with applicable development regulations.

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Comment [TS3]: Reformatted to move general provisions to the front of section. Section to be re-outlined accordingly.

- 1. Structures within Shoreline Setbacks – Alteration of structures located landward of the Ordinary High Water Mark within a required shoreline setback is limited to:
 - a. For structures located partially within the shoreline setback, alterations shall be limited to the addition of height and expansion into areas outside the shoreline setback.
 - b. For structures located entirely within the shoreline setbacks, alterations shall be allowed for the addition of height or expansion on the upland side of the structure, or both.
 - c. Interior and exterior remodels and the addition of upper stories are permitted. Except as provided above, such additions shall not extend beyond the existing or approved building footprint. Any expansion of nonconforming structures that further encroach on the Ordinary High Water Mark setback by decreasing the distance between the structure and the Ordinary High Water mark shall require a shoreline variance.
- 2. Overwater Structures – Alteration of structures located water-ward of the Ordinary High Water Mark is prohibited except:
 - a. ~~Except for~~ Alterations to the footprint or building envelope may be permitted when required by Washington State Department of Natural Resources for light penetration prohibited.
 - a.b. Alterations that do not increase or expand the building footprint nor increase the height are permitted; and
 - b.c. Existing covered moorage may be maintained, repaired or replaced pursuant to WAC 173-27-040.
 - c. ~~Except for modifications required by the Washington Department of Natural Resources for light penetration, alterations to the footprint or building envelope are prohibited.~~

Comment [TS4]: New subtitle consistent with format of section 2 below

Comment [TS5]: Moved from former 'c' below and rephrased for clarity to avoid 'exception to the exception' style.

Comment [TS6]: Added to be consistent with and reinforce provision above.

~~3.~~

~~Actions shall not result in a net loss of shoreline ecological functions and processes and the applicant shall obtain all required permits or approvals prior to construction.~~

4.3. Structure within Vegetation Conservation Areas. Alteration of structures located landward of the ordinary high water within a required vegetation conservation area (VCA) that include expansion of the building footprint ~~shall not be permitted is prohibited.~~ Only interior and exterior remodels and the addition of upper stories are permitted.

Comment [TS7]: Subtitle added consistent with style above.

Comment [TS8]: Rephrased to emphasize prohibition.

5. ~~All alterations shall comply with applicable development regulations in the Olympia Municipal Code.~~

B. Unintentionally damaged or destroyed nonconforming structures.

1. In the event that a structure or building that does not conform to the shoreline setback is damaged or destroyed by fire, explosion, act of nature, or act of public enemy, the structure may be restored within the existing footprint.

~~2. In the event that a structure or building housing a nonconforming use is damaged or destroyed by fire, explosion, act of nature, or act of public enemy, such damage or destruction shall not constitute a discontinuation of the nonconforming use. In the event that a structure or building housing an existing use considered a "conditional" use is damaged or destroyed by fire, explosion, act of nature, or act of public enemy, such use may be re-established without obtaining a conditional use permit.~~

Comment [TS9]: Proposed to be deleted – this section relates to nonconforming uses, not structures. Uses are addressed below.

3. In order to take advantage of this section, a complete application for a building permit must be submitted within one year of the unintended event that caused the destruction of the structure. The applicant loses their rights under this subsection if the building permit lapses without construction of the structure proposed under the building permit.

3.82 18.34.920 – Existing Nonconforming Shoreline Uses and Lots

Comment [TS10]: Proposed change for clarity. Nonconforming provisions for uses and lots differ and combining may lead to lack of clarity. See new section 3.82 proposed below.

A. Conversion and discontinuation of nNonconforming uses in shoreline jurisdiction shall be governed by OMC 18.37.060(A) and (E).

B. ~~except e~~Expansion of nonconforming shoreline uses. The hearings examiner may authorize expansion of a use that does not conform to the Shoreline Master Program ~~provided if~~ the applicant ~~can~~ demonstrates all of the following:

1. The use clearly requires a specific site location on the shoreline not provided for under this Chapter, and
2. Extraordinary circumstances preclude reasonable use of the property in a manner consistent with this Chapter. Provided, however, that eExpansion of uses in shoreline jurisdiction that are also nonconforming with zoning use restrictions ~~shall not be authorized are not authorized by this section.~~ See OMC 18.37.060(B).

Comment [TS11]: Clarifying 'not authorized' revisions to ensure that if Olympia relaxes zoning nonconforming use provision to allow some expansion, this SMP provision would not preclude such.

~~3. The Hearing Examiner may grant a conditional use permit that allows a nonconforming use to change to another nonconforming use that would not normally be allowed in the district in which it is located; provided, that the following can be clearly demonstrated by the applicant:~~

- a. ~~The structure that houses the existing nonconforming use cannot be used for any permitted uses because of its particular design; and~~

- ~~b. The proposed use will be more compatible with the permitted uses of the use district than the existing use; and~~
- ~~c. Provisions have been made to safeguard the adjoining properties against any detrimental effects that might result from allowing the proposed use.~~

Comment [TS12]: This section is redundant with OMC 18.34.920 (A) referenced above.

~~4. Historic properties. The Hearing Examiner also may grant a conditional use permit for ten years to allow the following uses to change to another residential or commercial use that is not typically allowed in the district in which it is located:~~

- ~~a. An existing commercial or institutional structure in a residential zone when such structure is on the National, State or Olympia Heritage Register; or~~
- ~~b. An existing commercial or institutional structure within a National, State or Olympia Historic District, excluding the South Capitol Historic Register; or~~
- ~~c. An existing commercial or institutional structure conditioned on restoration of a structure to achieve Register status; provided, that the following can clearly be demonstrated by the applicant:~~
 - ~~1) The structure cannot be utilized for any of the uses normally permitted within that district; and~~
 - ~~2) The proposed use will not alter the historic features documented at the time of Register placement; and~~
 - ~~3) Provisions have been made to safeguard the adjoining properties and the neighborhood against any detrimental effects that might result from allowing the proposed use, subject to the requirements in 18.48.040, Additional Conditions.~~

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~~B. Nonconforming lots in shoreline jurisdiction shall be governed by OMC 18.37.080~~

- ~~1. Except as provided by OMC 18.34.920(A), a nonconforming use, when abandoned or discontinued, shall not be resumed. Discontinuation or abandonment occurs under any of the following:~~
 - ~~a. When land used for a nonconforming use shall cease to be used for that particular use for twelve (12) consecutive months; or~~
 - ~~b. When a building designed or arranged for a nonconforming use shall cease to be used for that particular use for twelve (12) consecutive months; or~~
 - ~~c. When a building designed or arranged for a conforming use but used for a nonconforming use shall cease to be used for such nonconforming use for twelve (12) consecutive months.~~
- ~~2. The Hearing Examiner may, by conditional use permit, allow a discontinued or abandoned use to resume operations if it can be proven that all of the following conditions exist:~~
 - ~~a. That discontinuation or abandonment was caused by a condition over which the owner and operator of such use had no control; and~~
 - ~~b. That it is impossible for the owner to change the use of the premises to a permitted use without causing a hardship to himself; and~~
 - ~~c. That resumption of the nonconforming use will not have a detrimental effect on surrounding properties.~~

Comment [TS13]: This section is also redundant with OMC 18.34.920 (A).

Comment [TS14]: Clauses below related to nonconforming uses, not lots. See proposed section below combining provisions of WAC 173-27-080 with local code.

ATTACHMENT B

An undeveloped lot, tract, parcel, site, or division of land located landward of the ordinary high water mark which was established in accordance with local and state subdivision requirements prior to the effective date of the Shoreline Master Program which does not conform to the present lot size standards of the Program may be developed if the lot conforms with OMC 18.70.080 and the development conforms to all other requirements of the Master Program.

Comment [TS15]: Proposed new section to specifically address legal nonconforming lots of record.

Shoreline Environmental Designations for the City Olympia

The coordinates and other descriptions below are provided as an aid in identifying the locations of shoreline environment designation boundaries. See OMC 18.34.310. The coordinates below are in NAD 1983 State Plane Washington South FIPS 4602 Feet. Except as noted below, the lines between environmental designations extend at right angles to the OHWM. These coordinate provide beginning points for determining such lines. Note that the various shoreline environments do not overlap.

Waterbody	Reach	Starting Point X Coordinate	Starting Point Y Coordinate	End Point X Coordinate	End Point Y Coordinate
Budd Inlet	BUDD-2	1037527.8206	642154.5619	1037736.1112	641628.7926
Budd Inlet	BUDD-3A	1037736.1112	641628.7926	1039131.5129	637127.8922
Budd Inlet	BUDD-3B	1039131.5129	637127.8922	1039858.7355	632901.9705
The portion of Reach BUDD-3B designated as "Urban Intensity" is that portion westerly of the easterly rights-of-way lines of West Bay Drive and Olympic Way and westerly of a line extending due south from the point of intersection of Olympic Way and Fourth Avenue rights-of-way. The southern limit of Reach BUDD-3B is the southerly right-of-way line of Fifth Avenue SW					
Budd Inlet	BUDD-4	1039858.7355	632901.9705	1041060.9884	633296.5524
The southern limit of Reach BUDD-4 in the vicinity of Fifth Avenue SW is the southerly right-of-way line of Fifth Avenue; in the area to the east more than 200 feet from Budd Inlet the provisions of Reach CAP-6 are applicable.					
Budd Inlet	BUDD-5A	1041060.9884	633296.5524	1041027.9284	635570.4022
Budd Inlet	BUDD-5B	1041027.9284	635570.4022	1041079.1255	637985.7760
Budd Inlet	BUDD-5C	1041079.1255	637985.7757	1043282.6519	635209.4840
Budd Inlet	BUDD-6A	1043282.6519	635209.4840	1043803.6440	634085.3934
Within Reach BUDD-6A the Urban Conservancy designation is applicable to the upland 100 feet nearest the OHWM and the Shoreline Residential designation is applicable to all other upland areas within the Reach.					
Budd Inlet	BUDD-6B	1043803.6440	634085.3934	1043822.3152	636905.9232
Within Reach BUDD-6B the Urban Conservancy designation is applicable to the upland 100 feet nearest the OHWM and the Urban Intensity designation is applicable to all other upland areas within the Reach.					
Budd Inlet	BUDD-7	1043822.3152	636905.9232	1043107.3278	641373.9303
Budd Inlet	BUDD-8	1043107.3278	641373.9296	1041437.6464	644482.1875
Capitol Lake	CAP-1	1042299.7218	624935.6256	1041307.6874	625538.6874
Capitol Lake	CAP-2	1040979.3475	625709.6949	1041069.5166	625659.6576
Capitol Lake	CAP-3A	1041307.6874	625538.6874	1040019.5879	630041.0383
Capitol Lake	CAP-3B	1040019.5879	630041.0383	1039868.3313	630642.5955
Capitol Lake	CAP-4	1039063.8687	630263.9289	1039603.1153	626209.0554
Capitol Lake	CAP-5	1038621.2019	629911.3368	1039397.8513	628541.6203
Capitol Lake	CAP-6	1039868.3313	630642.5955	1039858.7615	632779.5108
The southwesterly terminus of Reach CAP-6 in the vicinity of Marathon Park is a line 50 feet easterly of and parallel to the the east edge of the sidewalk associated with the Deschutes Parkway. See note above re relationship to BUDD-4.					
Capitol Lake	CAP-7	1039858.7615	632779.5088	1038927.7023	630661.9373
See above regarding relationship to BUDD-3B					