



DATE: October 27, 2010

TO: Chair Ferris and Members of the Planning Commission

FROM: Shoreline Master Program Update Team
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SUBJECT: Shoreline Master Program—Nonconforming Uses and Structures November 3, 2010 Planning Commission Study Session

The study session on November 3 will address nonconforming development in the context of the Shoreline Master Program (SMP) update. This memo first summarizes the legal context for regulation of nonconforming uses and structures. Second, this memo provides proposed definitions for maintenance, repair, and reconstruction of non-conforming uses and structures, and proposes thresholds that trigger compliance with new SMP requirements as they would be applied to different types of nonconforming development. Planning Commission discussion of these issues will shape preparation of the revised draft that is scheduled for release at year end.

ACTION REQUESTED

Staff seeks Planning Commission direction on the regulatory concepts proposed to govern legally nonconforming uses and structures. Specifically, feedback on the scope of each proposed definition, and proposed thresholds for each type of nonconforming development will be requested as we move through the packet materials.

SUMMARY OF OCTOBER MEETING

At the Commission's October 20 study session, staff presented preliminary code language for Setback Approach with Flexible Menu (Option A). Included in this presentation was a summary of other major components affecting residential development including vegetation conservation and landscaping standards supported by preliminary draft code language. Meeting support materials included guidance on establishing an appropriate setback width based on science-based criteria, additional information on cumulative impacts and no net loss, a comparison with Redmond's prescriptive option, specific code language on setbacks from Redmond's Master Program, a comparison of the range of regulatory approaches in the local area, and a detailed options menu table which tied objectives of a particular menu item to improved function and relative ecological contribution. Commission members raised the following issues during their

deliberations in a question and answer discussion format with staff that led to final direction on preparation of a revised draft SMP.

- What are appropriate setback dimensions?
- Why is the issue of backsliding from Critical Area Ordinance requirements important?
- What ecological functions are similar between stream and lake environments?
- Could there be different standards for different lakes?
- What is the source of the 25/25 SMP Update concept versus the 50 foot critical area buffer/setback? Can it be revised or reduced?
- What is the difference between a buffer and the vegetation conservation setback?
- If we can't backslide, then why are we backing away from a 25 foot buffer and instead allowing for a 25 foot vegetation conservation setback that is less restrictive?
- Why can't we reduce the setback from the CAO requirements if we are no longer managing shorelines as critical areas? What is the scientific justification for keeping the full 50 feet?
- How does the precautionary principle relate to the protection of private property rights?
- How do we differentiate between lake and stream science? What ecological concepts or functions are transferable?
- Is woody debris important in a lake environment?
- What is the economic or financial impact of the proposed regulations? What is the cost to property value and what is the cost in terms of actual construction?
- What is the difference between restoration and no net loss? Is the purpose of vegetation conservation no net loss or restoration? When is restoration required as a result of a development action?
- How does vegetation conservation protect human safety?
- What is the purpose of requiring tall trees?
- Can't we develop different standards for different conditions or different lake bodies for setbacks?
- Can we develop a different setback requirement for Phantom Lake?
- Why was the area allowed for recreational use limited to 40%?
- How is the requirement to add shoreline landscaping related to other development or redevelopment actions? What is the connection to the threshold?
- Why is the whole 60% of the 25 feet required to be planted for primary structures? Why not a ratio similar to the recreation space 1:1 ratio requirement?

At the end of its discussion, the Commission directed staff to include the Flexible Menu Option A in the revised draft SMP being prepared for release at the end of the year. : The Planning Commission also provided the following specific direction to guide staff preparation of this revised draft:

- Explore lake-specific regulatory solutions by recognizing unique environmental conditions.
- Decrease emphasis on providing coarse woody debris, because this is not a community priority.
- Consider "enforceability" of SMP code provisions and remove goals that would be more effectively achieved through education programs (e.g., pesticide application practices).

- Explore inclusion of a site specific study to achieve design objectives with mitigation that is tailored to unique site conditions.
- Provide a detailed plant list that integrates native and non-native plant material.

In addition to the direction received from the Planning Commission associated with preparation of the revised draft SMP, staff also committed to provide the following information:

- Summary of Legal Department role in the review of SMP impacts on private and public property rights. Included with these packet materials as Attachment 1.
- Economic analysis of the impacts of SMP. Scheduled first quarter of 2011.
- Annotation of the revised draft SMP to identify language that is taken from the Washington Administrative Code, and to identify the origin of the threshold numbers that are contained in the code.

BACKGROUND INFORMATION REGARDING REGULATION OF NONCONFORMING USES AND DEVELOPMENT

This section provides background information on the regulation of nonconforming uses and development in Washington. It includes a broad definition, a review of standards applicable to nonconforming uses and development, and references to relevant court and board cases. This section provides foundational information to support the Planning Commission discussion of regulatory concepts described in the next section of this memorandum.

Generally a nonconforming use or development (refers to a structure or lot) is that use or development that conformed to applicable codes in effect at the time of their creation but that no longer comply due to changes to the code requirements. Such uses or structures are referred to as lawfully existing or legally established, and are typically allowed to continue after the effective date of the code change.

Nonconforming uses and developments have long been regulated under Washington's common law, which is the body of law that has developed in our courts, rather than from statutes or constitutions. Washington's zoning enabling statutes are silent regarding the regulation of nonconforming uses and developments, so jurisdictions have flexibility in regulating nonconformities within the framework of constitutional protections and the common law. Nonconforming uses are uniformly disfavored and Washington courts have repeatedly acknowledged the desirability of eliminating nonconforming uses because allowing them to continue in perpetuity is contrary to the purpose of zoning ordinances, which confine certain classes of buildings and uses to certain geographic locations.

Defining When a Use or Structure is Legally Nonconforming

A nonconforming use or structure (collectively "use") is a use that was legally established before the enactment of a zoning ordinance and that is allowed to continue after the effective date of the ordinance. Amendments to the City's Shoreline Master Program, such as changes in setbacks, shoreline environment designations, and other regulations may result in some legally established structures and uses becoming nonconforming with the amended SMP. An example of a nonconforming structure in the shoreline could be a single-family residence that does not meet

current SMP setback requirements. Although the use (residential) conforms, the structure does not meet the setback requirements. Piers and docks could also be nonconforming structures if they do not meet the current SMP standards.

Nonconforming Uses Are Afforded Protection

Nonconforming uses are always afforded some protection, in that they may not be immediately terminated; rather nonconforming uses are allowed to continue until, as one commentator states, they “gradually fade away,¹” or until they are phased out or amortized by local ordinance. Under certain circumstances, a legally established nonconforming use may be intensified, but generally not expanded.² Finally, nonconforming uses are subject to later enacted statutes or ordinances regulating the manner or operation of use. Bellevue citizens have historically valued protections on their ability to maintain, repair, and modify nonconforming structures. This flexibility helps foster redevelopment and reinvestment in property, and can help avoid property decline that can impact neighborhood character and livability. Support for a flexible solution to addressing nonconformities ultimately gave rise to the “footprint” exception for legally established structures located within critical areas buffers and the “existing circumstances” provisions of the Bel-Red Overlay Part of the Land Use Code. The need for continued flexibility in the SMP update was endorsed by the Planning Commission on October 20, when staff was directed to incorporate the “footprint” exception for legally established structures that will be located within the primary structure setback when the revised draft is prepared.

Demonstrating that a Use or Structure is Legally Established

To establish a legal nonconforming use, a property owner must demonstrate: (1) the use began before the applicable zoning ordinance was adopted; (2) the use was lawful before the zoning ordinance was adopted; (3) the landowner did not abandon the use after the ordinance was adopted; and (4) the use was continuous, not occasional or intermittent.³ The Bel-Red Overlay Part of the Land Use Code included a list of the types of documents that can be used to demonstrate when a use was established and whether it had been continuous over time. Such an approach could add predictability to the permit process and should be incorporated in some form into the SMP update.

Regulating Nonconforming Development in Shoreline Jurisdiction

The Shoreline Management Act (“SMA” or the “Act”) does not specifically address nonconforming uses, but the SMA authorizes both the Washington State Department of Ecology (“Ecology”) and local jurisdictions to adopt necessary and appropriate rules to carry out the provisions of the Act. RCW 90.58.140(3) and .200. Ecology adopted rules addressing nonconforming uses, which are codified at WAC 173-27-080. These are default rules, and apply only if a jurisdiction’s SMP does not address nonconforming uses. Thus, the state rules require

¹ William B. Stoebeck, Judson Falknor Professor Law Emeritus, University of Washington, cited in 17 Wash. Prac., Real Estate § 4.21 (2d. ed.).

² *City of University Place*, 144 Wn.2d at 649 (citing *Keller v. City of Bellingham*, 92 Wn.2d 726, 731-32, 600 P.2d 1276)(1979).

³ *Jefferson County v. Lakeside Industries, ABC Corp.*, 106 Wn. App. 380, 385, 23 P.3d 542 (2001).

regulation of nonconforming development pursuant to local regulations, or pursuant to state law if no local rule is adopted.

The Shoreline Overlay District (LUC 20.25E.055) contains the city's provisions to regulate nonconforming uses in the shoreline. A copy of LUC 20.25E.055 is appended as Attachment 2. Currently, shorelines are deemed critical areas and contain critical areas setbacks and buffers. Consequently, the code distinguishes between nonconforming structures inside and outside of the buffer and setback. Further, structures within the shoreline critical area buffer or structure setback are further divided between primary structures and nonprimary structures, other than docks and bulkheads, which are addressed separately (LUC 20.25E.080.E and .N).

Generally, the code allows lawful nonconforming uses to continue, provided the uses are not enlarged, intensified, increased, or altered in any way that increases their nonconformity. Outside the critical area buffer, if a structure is damaged and requires repair not exceeding 75% of replacement cost of the structure, the structure may be reconstructed in its original footprint. If the value exceeds 75% of the replacement cost, then the reconstructed structure must comply with the LUC and SMP. Within the shoreline critical area or buffer, the provisions allow minor repair and reconstruction within the original footprint if a structure is destroyed by fire or other unforeseen circumstances. If the established thresholds for repairs or replacement are exceeded, then the structure must be brought into compliance with the LUC and the SMP. Expansion of structures into the shoreline setback and buffer is prohibited. The City's nonconforming provisions also provide performance standards for when the nonconforming development is located in the area of special flood hazard.

Decision-Making at the Shoreline Hearings Board

The Shoreline Hearings Board (the "Board" or "SHB"), hears appeals of shoreline permitting decisions, and over the years has heard several cases addressing nonconforming development. Cases before the board are fact-specific and involve analysis of the relevant jurisdiction's SMP provisions, and the state policies for shoreline regulation set forth in RCW 90.58.020. These cases often arise from either the denial or granting of a shoreline variance. Several cases from the SHB regarding nonconforming uses and structures demonstrates the Board's decision-making follows state common law and addresses site-specific facts and SMP specific law:

- Purpose of the shoreline setback is to phase out residential use within the setback area. *Garlick et al. v. Whatcom County*, SHB No. 95-6, Sept. 1995 (Final).
- Improvements that do not increase nonconformity of use and provide an environmental benefit may satisfy variance criteria. *Guy Fox v. Ecology*, SHB No. 00-025 (2001) (Final).
- Allowing expansion into the setback violated local SMP, SMA, and was adverse to the public welfare. *Davis v. Pierce County*, SHB No. 03-021 (FFCL and Order) (2004).
- Increasing nonconformity (including height) in setback not allowed because the setback extends vertically as well as horizontally. *Jukanovich v. Ecology*, SHB No. 06-013 (FFCL and Order) (2009).

PROPOSED REGULATORY CONCEPTS FOR NONCONFORMING DEVELOPMENT

This section provides proposed concepts for regulation of legally established nonconforming uses including implementation details for the footprint exception for primary structures in the primary structure setback, loss of legally nonconforming status for uses, definitions of maintenance, repair and reconstruction, and specific recommendations for development rendered nonconforming by the SMP. Staff requests that the Planning Commission provide feedback on each of the following concepts to provide direction during preparation of the revised SMP. Particular attention is requested on the methods and the thresholds associated with each approach that dictates when compliance with current regulations is triggered.

Footprint Exception for Legally Established Primary Structures

During the Critical Area Update process, staff developed an exception process to ensure that primary structures within a critical area buffer or setback were not deemed nonconforming. This was especially important given the expansion of some buffers, notably wetland buffers, which, in response to new scientific findings, were increased to take in a large number of residences which had not confronted critical area regulation under previous versions of the code. The so-called “footprint” exception resulted in the buffer being automatically modified to exclude the footprint of the primary structure thereby rendering the structure legally conforming. Non-primary structures were specifically excluded from this approach and were thus deemed nonconforming if located in the buffer or the associated setback.

Staff recommends retaining this same approach for primary structures located within the primary structure setback. A primary structure is the structure on the site that houses the principle use. For residential uses, the primary structure is that structure that contains the residential dwelling units. The definition of primary structure does not include structures that contain only certain functions or equipment that support the primary use, such as accessory structures, garages, or mechanical equipment. The impact of this exception is that the primary residence may be rebuilt within the existing developed footprint established by the foundation and is considered legally conforming to the code.

However, because their nonconforming status stems from the City’s initial adoption of an SMP in 1974, staff recommends that legally established primary residences that encroach on the Vegetation Conservation Setback, in part or in whole, be excluded from using the footprint exception. Primary structures falling into this category may rebuild but only to the extent that they conform to the nonconforming requirements outlined below.

Staff seeks direction on two issues: (1) retention of the footprint exception for primary residences within the primary structure setback; and, (2) recognition that structures located within the first 25 feet from OHWM (the vegetation conservation setback) should continue as nonconforming under the provisions of the SMP as they have been since 1974.

Loss of Legally Nonconforming Status

In most cases, abandonment, or discontinuance of use will terminate legal nonconforming status. Generally the failure to maintain a use for 12 continuous months is the standard indication that abandonment has occurred. Loss due to storm or disaster is not proposed to constitute abandonment provided that a property owner initiates action toward rebuilding within 12 months of the event. Staff proposes keeping a clear time limitation for determining whether a use or a structure is abandoned. This approach has resulted in process certainty and predictability in application of the code for property owners subject to nonconforming provisions in other geographical areas of the City.

Staff seeks direction on whether failure to maintain use for 12 continuous months should be the standard indication that abandonment has occurred.

Maintenance, Repair, and Reconstruction

The continuation of legally nonconforming uses can interfere with a community's ability to achieve new policy. However, barriers to property improvement and reinvestment can also impact community character and livability in the early years of policy implementation. Consequently, balanced standards are necessary to address what constitutes permitted maintenance, repair and reconstruction, and what standards should apply to address particular development types rendered nonconforming by the SMP update. Since primary structures within the primary structure setback are not subject to nonconforming rules, the focus of this section is on the following types of development:

- Legally nonconforming primary structures in the vegetation conservation setback;
- Accessory structures over 200 square feet in the primary structure setback;
- All accessory structures in the vegetation conservation setback;
- Other ancillary development;
- Legally established overwater structures;
- Existing piers and docks not meeting proposed standards;
- Shoreline stabilization not meeting proposed standards;

Maintenance Definition

Maintenance is proposed to encompass those ordinary and routine activities necessary to prevent deterioration caused by natural causes. The focus would be on those actions a property owner might take, in advance, to avoid future deterioration. Examples of maintenance would include washing, painting, caulking, rewiring. Maintenance would not include replacing any part of a structure.

Staff seeks direction that this is an appropriate definition of maintenance.

Repair Definition

Repair is proposed to include those activities necessary to return a structure into good condition after decay and damage, without changing the structure's dimensions or function or exceeding 50 percent of the replacement value of the structure. The focus would be on those actions undertaken to restore a development to a state comparable to its original, lawfully established condition within a reasonable period after decay or partial destruction has occurred. Partial destruction would mean only a fraction of the structure or development is affected. Consequently repair involves only a part of the structure at any one time, not the entire structure, or even the preponderance of the structure; hence the requirement that repair stay under a 50 percent valuation threshold. Activities that exceed these standards would be more consistent with the definition of reconstruction or remodeling. Likewise, a repair would need to be undertaken or accomplished within a reasonable time period after decay or partial destruction. Repairs would include replacing components of a structure such as decking, structural members, piles, re-siding, re-roofing, and replacement of electrical or mechanical equipment.

Staff recommends that the Commission consider a functional definition of repair broad enough to allow for minor substitutions of material—steel piles for wooden ones—even when those changes may result in a modest change in the dimension or appearance of the structure. Except where necessary to reduce environmental impact or hazard, no repair could increase the footprint of the structure or increase its nonconformity.

Staff seeks direction on whether this definition, and the 50 percent threshold contained in it, represents an appropriate definition of repair.

Reconstruction and Remodeling Definition

Repair involving more than 50 percent of replacement value of an existing structure without changing the structure's dimensions or functions would be considered reconstruction. For legally established structures in the vegetation conservation setback, reconstruction would typically be allowed up to 75 percent of replacement value for damage due to storm or natural disaster. As outlined in the definition of repair above, staff recommends a functional approach to the concept of reconstruction that would allow for minor substitutions of materials even if their use results in modest changes in dimensions or appearance.

Staff seeks direction on whether this definition, and the thresholds contained in it, represents an appropriate definition of reconstruction.

Legally Established Primary Structures in the Vegetation Conservation Setback

Maintenance and repair of a legally established primary structure within the vegetation conservation setback is proposed to be permitted up to the 50 percent threshold outlined above. Complete reconstruction or remodeling over this threshold would require compliance with code requirements since the structure does not enjoy the footprint exception applicable to primary

residences in the primary structure setback. Where relocation outside the setback is not feasible, a variance would be required.

Where damage requiring reconstruction is the result of storm damage or other natural disaster the threshold is proposed to be set at 75 percent of the replacement value of the structure, thereby giving a property owner additional flexibility to rebuild given that the damage is the result of an event outside their control. Destruction beyond the 75 percent threshold would require conformance with the code.

An alternative approach could be to allow rebuilding without the 75 percent threshold test but only to the extent that reconstruction does not expand, enlarge, or otherwise increase the non-conformity. This alternative approach could be combined with a site specific shoreline report implementing a revegetation standard or other mitigation that would reduce the impact of the structure. Potential mitigation could include items from the options list or additional elements including other restoration projects that are demonstrated to result in an improvement to existing shoreline ecological functions and processes.

Staff seeks direction on two issues: (1) Is the proposed method of addressing legally established nonconforming development in the vegetation conservation setback using specific thresholds for repair and reconstruction the approach favored by the Commission; or (2) would the Commission prefer a mitigation-based approach for damage or other natural disaster?

Legally Established Accessory Structures over 200 Square Feet in the Primary Structure Setback

Allowance for these structures to be maintained and repaired up to the 50 percent threshold is proposed. Reconstruction or expansion above that threshold is proposed to be permitted via the options menu or a special shoreline area report outlining increased net environmental benefit. Where damage requiring reconstruction is the result of storm damage or other natural disaster the threshold is proposed to be set at 75 percent of the replacement value of the structure, thereby giving a property owner additional flexibility to rebuild given that damage is the result of an event outside their control.

Staff seeks direction on this approach and to the specific thresholds contained within.

Legally Established Accessory Structures in the Vegetation Conservation Setback

Maintenance and repair of legally established accessory structures is proposed to be permitted up to the 50 percent threshold. Work beyond that threshold would be considered reconstruction and requires moving the structure out of the vegetation conservation setback. Where relocation outside the setback is not feasible, a variance would be required. If such a structure is damaged due to storm or natural disaster beyond the 50 percent threshold, reconstruction is proposed to be allowed without a variance.

Staff seeks direction on this approach and to the specific thresholds contained within.

Legally Established Overwater Structures

Maintenance and repair of legally established overwater structures is proposed to be permitted up to the 50 percent threshold. However, if such a structure is damaged due to storm or natural disaster over that threshold, reconstruction would be required to comply with code requirements.

Staff seeks direction on this approach and to the specific thresholds contained within.

Legally Established Piers and Docks and Shoreline Stabilization

Proposed regulations governing piers, docks, and shoreline stabilization measures for residential development were presented to the Commission on July 21 and September 8. During these meetings the Commission indicated the direction taken on docks, piers, and shoreline stabilization was appropriate for further development and inclusion in the revised draft. Under the draft concepts presented, and under policies included in the working draft published on May 12, existing docks, piers, and shoreline stabilization measures could be retained, maintained, and replaced subject to compliance with specific performance standards. Expansion of existing docks, piers, and shoreline stabilization measures would require compliance with additional requirements.

The Commission provided sufficient direction at previous meetings.

ACTION REQUESTED AND NEXT STEPS

Staff seeks Planning Commission direction on the regulatory concepts proposed to govern legally nonconforming uses and structures. Specifically, feedback on the scope of each proposed definition, and proposed thresholds for each type of nonconforming development will be requested as each regulatory concept is discussed.

Table 1. Proposed Planning Commission Schedule

November 3	Non-Conforming Development
November 17	Use tables, shoreline environments
December 8	Bundle remaining issues (continued)
December (mid-to-late)	Release revised draft
January 2011	Open House Introduce revised draft
February 2011	Public Hearing (date to be set by Planning Commission)

ATTACHMENTS

1. Legal Opinion summarizing review of SMP impacts on private and public property
2. LUC 20.25E.055



To: Chair Ferris and Members of the Planning Commission

From: Lacey Madche, Assistant City Attorney

Date: October 26, 2010

RE: Ordinance Review – Shoreline Master Program

This memorandum addresses the legal review that occurs prior to City Council consideration of ordinances implementing land use regulations, such as the Shoreline Master Program regulations currently under review by the Planning Commission. This memorandum summarizes the key concepts considered by the legal department in its review of ordinances impacting private and public property.

A. Constitutional Review.

The constitutional basis for local planning and land use or development regulations is provided in the police power provisions of the Washington State Constitution, which provides: “[a]ny county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.” Consequently, to ensure a land use ordinance complies with the Washington State Constitution and is consistent with the City’s police power, the legal department ensures that that land use regulations have a substantial relation to the public, health, safety, or general welfare.

The legal department, as well, ensures that land use regulations do not require public expenditure of funds contrary to those provisions in the Washington State Constitution that prohibit gifts of public funds or property to citizens.¹

B. Statutory Review.

In addition to reviewing ordinances for constitutional consistency, the legal department ensures that land use regulations comply with the statutory requirements contained in Chapter 35A.63 RCW (Optional Municipal Code). The Optional Municipal Code, among other things, authorizes municipalities to take action on matters (e.g., implementing land use regulations) of local concern so long as that action is neither prohibited by the Washington Constitution nor in conflict with other laws or regulations. In this regard, the legal department ensures land use regulations are not in conflict with other local regulations and state statutes, including Chapter 90.58 RCW (Shoreline Management Act).

¹ Refer to Const. art. VIII, §§ 5, 7.

Additionally, the legal department ensures that land use ordinances comply with Chapters 36.70 and 36.70A of the RCW RCW (Local Planning Act and the Growth Management Act). Those state statutes require local jurisdictions to ensure that its regulations allow orderly physical development and that development regulations are consistent with comprehensive plan policies.

Finally, the legal department reviews land use regulations to ensure compliance with Chapter 43.21C RCW (the State Environmental Policy Act) and other statutory provisions relating to the form and public process requirements for adoption of the ordinance.

C. Recognizing and Protecting Private Property Rights.

A key consideration in reviewing an ordinance for compliance with constitutional and statutory requirements, whether the land use regulation under consideration recognizes and protects private property rights as required by law.² In particular, the legal department ensures that proposed regulatory or administrative actions do not unconstitutionally infringe upon private property rights. The legal department reviews land use ordinances to ensure consistency with the body of case law defining constitutional protection against regulations that go “too far” in burdening a property owner’s use and enjoyment of their land.

It is common practice in Bellevue and other jurisdictions to ensure that land use regulations include a “safety valve;” a provision that ensures some minimum amount of development on an individual lot if, as a result of all applicable development regulations, a property owner is left with an un-usable building pad. While legal department review is designed to ensure that the regulations as written properly protect constitutional property rights, it is difficult to predict how the combination of regulations will impact each given parcel. The availability of an exception process that ensures a minimum amount of reasonable use is an important tool to allow tailoring of regulations for a lot that is uniquely burdened by the combination of applicable rules of development.

Please let me know whether you have questions or require additional information on the legal department’s review of proposed ordinances implementing land use regulations.

² With regard to shorelines, refer to RCW 90.58.020 and WAC 173-26-176(3)(h) for legislative policy statements recognizing the importance of balancing public interest in the shorelines, preservation of shoreline ecological function, and private use and ownership of shorelands.

20.25E.055 Nonconforming development.

See performance standards at LUC [20.25H.180](#) for provisions relating to the  repair, remodeling, expansion or reconstruction of structures located in the area of special flood hazard. Any alterations to existing structures allowed under this section shall also comply with those provisions. In the event of conflict, the provisions for the area of special flood hazard shall govern.

A. Definitions.

“Nonconforming development” means a Shoreline Overlay District use or structure which was lawfully constructed or established prior to the effective date of the Shoreline Management Act or the Bellevue Shoreline Master Program, whichever is applicable, or amendments thereto, but which does not conform to present regulations or standards of the Master Program or policies of the Shoreline Management Act.

B. Nonconforming Development Outside the Shoreline Critical Area and Shoreline Critical Area Buffer.

1. Nonconforming development may be continued; provided, that it is not enlarged, intensified, increased, or altered in any way which increases its nonconformity;
2. A nonconforming development which is moved any distance must be brought into conformance with this part and the Shoreline Management Act;
3. If a nonconforming development is damaged to an extent not exceeding 75 percent replacement cost of the original structure, it may be reconstructed to those configurations existing immediately prior to the time the structure was damaged, so

long as restoration is completed within one year of the date of damage.

C. Nonconforming Development Within the Shoreline Critical Area or Shoreline Critical Area Buffer.

1. Existing Primary Structures. See LUC 20.25H.035.B.
2. Existing Nonprimary Structures (Other Than Docks and Bulkheads). A structure (other than a primary structure, a dock or a bulkhead) legally established within a shoreline critical area or critical area structure setback prior to August 1, 2006, shall be considered a nonconforming structure. If no modifications to a nonconforming structure are proposed, then the structure may continue without coming into compliance with the regulations of this part and Part [20.25H](#) LUC. Compliance may in whole or in part be required when changes to a structure are proposed, as follows:
 - a. Repair and remodeling of a nonconforming structure is limited to minor, nonstructural repairs, and repairs of mechanical systems within or supporting the structure. If repair or remodeling exceeds these limits, the structure shall be brought into compliance with existing Land Use Code requirements, including requirements of this part and Part [20.25H](#) LUC.
 - b. Expansion of existing nonconforming structures, other than as allowed under LUC [20.25H.055](#), into the shoreline critical area and critical area buffer is prohibited.
 - c. If an existing nonconforming structure is destroyed by fire, explosion or other unforeseen circumstance requiring repairs consistent with those allowed under subsection C.2.a above, it may be repaired within the footprint existing at the time of destruction; provided, that such repair is commenced within one year

of the date of destruction and diligently pursued. Areas of temporary disturbance resulting from the reconstruction shall be restored pursuant to a mitigation plan approved by the Director under LUC [20.25H.210](#). If such a structure is destroyed and requires structural or other repairs more extensive than those allowed under subsection C.2.a above, then any reconstruction of such structure shall be in compliance with existing Land Use Code requirements, including requirements of this part and Part [20.25H](#) LUC.

3. Docks and Bulkheads.

a. Bulkheads. Legally established bulkheads may be repaired and replaced in accordance with LUC 20.25E.080.E.

b. Moorage. Legally established covered and uncovered moorage may be repaired and replaced in accordance with LUC 20.25E.080.N

D. Nonconforming Uses.

1. If a nonconforming use is discontinued for 12 consecutive months or for 12 months during any two-year period, any subsequent use shall be conforming. It shall not be necessary to show that the owner of the property intends to abandon such nonconforming use in order for the nonconforming rights to expire; and

2. A nonconforming use shall not be changed to another nonconforming use, regardless of the conforming or nonconforming status of the building or structure in which it is housed. (Ord. [5681](#), 6-26-06, § 6; Ord. [4055](#), 3914, 9-25-89, § 7)