



PLANNING & DEVELOPMENT SERVICES

DALE PERNULA, AICP, DIRECTOR

JACK MOORE, CBCO, BUILDING OFFICIAL

Memorandum

To: Skagit County Planning Commission

From: Betsy Stevenson, AICP, Senior Planner, Team Supervisor

Date: November 13, 2012

Re: SMP Update Items for Discussion

14.26.600 - .640 Pre-existing Structures, Uses and Substandard Lots

Introduction - Section 14.26.600 introduces a new way of looking at pre-existing, nonconforming uses and structures. In the past, it was the intent of the codes to regulate them in a way that would lead to their eventual elimination. That has changed over time and maintaining and repairing nonconforming structures is usually acceptable practice.

Pre-existing Single Family Residences 14.26.620

Background - With the requirement to update the Shoreline Master Program, we are required to integrate our critical areas regulations into the SMP, for those critical areas that fall within shoreline jurisdiction. Section 14.24, Critical Areas Ordinance, was updated (2009) and included some changes to the critical areas buffers, which had to comply with various regulations and standards found within the Growth Management Act. The buffers that are being established in the SMP Update, although different from the existing SMP standards, are consistent with those established in the CAO. This means that many single family residences that have been constructed in compliance with the regulations will be within the shoreline/CAO buffer once the new SMP becomes effective. This has caused much concern among shoreline property owners around the state, prompting legislation (RCW 90.58.620) that provides the basis for recognizing such single family residences described above as conforming structures.

Under Current SMP – Under the current policies and regulations of the SMP, if the owner of a single family residence that was legally established (either prior to the enactment of the Shoreline Management Act and our SMP, or under the rules found in the SMP and SMA), but is located within the shoreline setback/buffer area, proposes an addition or remodel of that residence that would also be within the setback/buffer area, the owner would be required to obtain a shoreline variance that goes to public hearing before the Hearing Examiner. The proposal would also require a CAO variance, (since the two sections of code have not been

integrated). Since the criteria and regulations for these variance processes are separate, proposals are reviewed under both and the fees for both are charged.

Under proposed new section 14.26.600 – The proposed new section of the SMP that addresses pre-existing structures and uses specifically addresses single family residences, taking advantage of the flexibility offered by Ecology and the recent legislation. By integrating the critical areas standards into the new SMP for areas within shoreline jurisdiction, the SMP will provide some flexibility for owners of single family residences.

Option 1 (proposed 14.26.620(3)(a)(i-vi)) The proposed enlargement or expansion of the residence (as described above) may be approved by the Shoreline Administrator if all the following criteria are met:

- ✓ Structure must be located landward of the OHWM.
- ✓ The proposed enlargement/expansion doesn't extend further toward the shoreline than the existing primary residential structure, further into the minimum sideyard setback or further into the critical area or its buffer than the existing primary residential structure.
- ✓ The project does not expand the footprint of the existing structure by more than 200 square feet .
- ✓ The area between the structure and the shoreline and/or critical area buffer must meet the vegetation conservation standards of the SMP.
- ✓ The project will not cause adverse impacts to shoreline and/or critical area ecological functions and/or processes.
- ✓ If the existing structures, proposed remodel or expansion is within the special flood hazard area, the requirements of SCC 14.34, Flood Damage Prevention, must also be met.

Option 2 If all of the above criteria cannot be met, then the owner would have to apply for a variance. In keeping with the intent to provide some options and site specific design flexibility, the variance process will be improved, in keeping with the procedures outlined in Skagit County Code 14.24.140 and .540 (from the CAO). These requirements provide some options for landowners. Buffer width reductions will be considered, provided the mitigation sequencing criteria have been considered, the buffer that is degraded is enhanced and/or restored and some other variance criteria are evaluated. The variance process is broken down further, so that

- a) If the buffer width is reduced by less than 25% of the required buffer and meets the additional criteria review test outlined, the proposal could be approved and a protected critical area (PCA) site plan would be created, approved and recorded, showing the extent of the development and any required mitigation.
- b) If the buffer width is reduced by more than 25%, but not more than 50%, an administrative variance would be appropriate. This process, a Level I described in Section 14.06 of the Skagit County Code, does not require a public hearing, but does require notification of nearby landowners, publication and posting the notice of development application. It also provides a comment period prior to an administrative decision being made.
- c) If the buffer width is decreased by more than 50%, then a variance in accordance with the Level II procedures outlined in Section 14.06 would be followed. This type of variance would require a public hearing before the Hearing Examiner.

Some additional language that may prove confusing is the use of **appurtenance** and **appurtenant structure**. In 14.26.620(1) Applicability, it refers to **appurtenances** and lists

them. This description comes from the guidelines, WAC 173-27-040(2) which list exempt activities. (2)(g) describes under what circumstances the construction of a single family residence and normal appurtenances would be exempt from the requirement to obtain a substantial development permit. They would have to be located landward of the OHWM and the perimeter of a wetland.

In 14.26.620(2), the term **appurtenant structure** is used, and under (2)(b) notes that **appurtenant structures** are garages, sheds and other legally established structures. They do not include bulkheads and other shoreline modifications or over-water structures. This description comes from the new legislation, RCW 90.58.620 which provided local governments the means to authorize pre-existing single family residential structures and appurtenant structures not meeting the new standards for setbacks, buffers or yards; area; bulk; height; or density as conforming structures. This reference is more limited than what is found under the WAC guidelines for exempt activities, so the distinction may seem inconsistent, but it actually is important to have them both and clearly indicate which is being considered.

Replacement of a single family residential structure is also allowed, provided the replacement is requested, approved and completed within a specified amount of time and that other regulations would not preclude the replacement of the structure.

Pre-existing Structures 14.26.600

This section applies to legally established structures that don't meet the SMP standards, other than single family residences. It allows for the repair and maintenance of the structure and for expansion, if the expansion conforms to the SMP standards (i.e. the expansion is beyond or outside the buffer area and meets the other standards). If the expansion does not conform, then a variance would be required.

Replacement of the structure is also allowed, provided the replacement is requested, approved and completed within a specified amount of time and that other regulations would not preclude the replacement of the structure.

Pre-existing Over-water Structures Located in Hazardous Areas 14.26.630

This section applies to over-water structures that were legally established, but by virtue of their location, are nonconforming with regard to the regulations of Chapter 14.26 the SMP, Chapter 14.34 Flood Damage Prevention, or Chapter 14.24 Critical Areas. These would be over-water structures located in hazardous areas, such a special flood hazard areas and geologically hazardous areas.

As noted in the draft code section, some additional work is needed to coordinate the language that will be placed here to address these over-water structures. It is the intent of this section to look very carefully at these pre-existing nonconforming structures and provide a mechanism to eliminate such structures, for life safety reasons. Some additional work on the language will need to be reviewed by other departments and agencies, so it doesn't conflict with their regulations or standards.