**(DRAFT) AGENDA**
**Regular Meeting - Bremerton Planning Commission**
**(Subject to PC approval)**
**March 20, 2012**
**5:30 P.M.**
**345 – 6th Street**
**Meeting Chamber – First Floor**

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**I. CALL TO ORDER**
**II. ROLL CALL (quorum present)**
**III. APPROVAL OF THE AGENDA**
**IV APPROVAL OF MINUTES:**
- February 21, 2012 Regular meeting.

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**V. PUBLIC MEETING**

**A. Call to the Public:** Public comments on any item not on tonight's agenda

**B. Workshop**
**1.** Shoreline Master Program Update to discuss nonconforming provisions and the applicability of Substitute Senate Bill 5451.

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**VI. BUSINESS MEETING**

**A. Chair Report:** Chairman Jose

**B. Director Report:** Andrea Spencer

**C. Old Business:**

**D. New Business**

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**VII. ADJOURNMENT: The next regular meeting of the Planning Commission is**
April 17, 2012
**Planning Commission meeting packets are available on-line at**
**www.ci.bremerton.wa.us**

DRAFT
Subject to March 20, 2012 Approval

# CITY OF BREMERTON

## PLANNING COMMISSION
## MINUTES OF REGULAR MEETING
## February 21, 2011

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**CALL TO ORDER:**

Chair Jose called the regular meeting of the Bremerton Planning Commission to order at 5:30 p.m.

**ROLL CALL**

**Commissioners Present**
Chair Jose
Vice Chair Cockburn
Commissioner Hoell
Commissioner Lambert
Commissioner Mosiman
Commissioner Tift

**Staff Present**
Nicole Floyd, Current Planner, Department of Community Development

**Others Present**

*Quorum Certified*

**APPROVAL OF AGENDA**

**Chair Jose** announced that Ms. Floyd would provide the director's report on behalf of Ms. Spencer, who was ill.

**COMMISSIONER HOELL MOVED TO APPROVE THE AGENDA AS PRESENTED. COMMISSIONER TIFT SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.**

**APPROVAL OF MINUTES**

**Commissioner Tift** noted that his comments about the typographical errors in the documents presented by Mr. Sherrard were not reflected in the minutes. **Chair Jose** responded that while Commissioner Tift's specific comment was not included in the minutes, his thoughts were captured on Page 5 (middle paragraph).

**Chair Jose** noted that in the second bullet point on Page 5, the word "Minett" should be "Manette." The Commissioners commented that they are pleased with the format and comprehensiveness of the new minutes.

**COMMISSIONER HOELL MOVED TO APPROVE THE MINUTES OF JANUARY 17, 2012 AS AMENDED. COMMISSIONER TIFT SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.**

**PUBLIC MEETING**

**Call to the Public** (public comments on any item not on the agenda)

**Chair Jose** asked if there were any comments from citizens. Seeing none, he closed this public portion of the meeting.

**Workshop: Shoreline Master Program (SMP) Update (Revisions Relating to Definitions, Buffers and Setbacks, Vegetation Conservation, and Height Limits)**

**Ms. Floyd** advised that the Commission has completed their review of each element of the Draft SMP, and tonight's workshop discussion would focus on fine tuning the following sections to make sure they are correct: Definitions, Buffers and Setbacks, Vegetation Management Plans, and Height Limits for structures. She referred to the Staff Report that was included in the Commission's packet, specifically noting applicable comment letters from the Department of Ecology (DOE) and Dana Hamar, a shoreline property owner. She reviewed that Mr. Hamar's letter restates his desire for a height limit of 28 feet or greater.

**Ms. Floyd** reviewed that at their March 20th meeting, the Commission will have a workshop discussion about nonconformities and House Bill 5451. The Planning Commission is tentatively scheduled to conduct a public hearing on April 17th to review the entire SMP document and ultimately forward a recommendation to the City Council. Once approved by the City Council, the document will be presented to the DOE for a public hearing and final approval. She emphasized that the document would not be implemented until it receives final approval from the DOE, which could take up to six months.

**Ms. Floyd** reiterated that the SMP only applies to new development within 200 feet of the shoreline. Existing structures can be repaired and maintained without meeting all the criteria established in the SMP. Unless necessitated by complete destruction caused by a natural disaster, replacing an existing structure would require compliance with the newly adopted SMP. The Commission and staff reviewed each of the SMP elements as follows:

Definitions

- **No Net Loss** – *"No Net Loss of ecological function is the maintenance of existing shoreline ecological processes and functions at the level that existed at the time of approval of the major update to the Shoreline Management Program in 2012 and reflected in the shoreline inventory and characterization, or for a development project, the conditions that existed prior to initiation of use or alterations of the shoreline that result in adverse impacts on ecological processes and functions.*

  *On a Citywide basis, No Net Loss means that the ecological processes and functions are maintained. Regulations may result in localized cumulative impacts or loss of some localized ecological processes and functions, as long as the ecological processes and functions of the system are maintained. Maintenance of ecological processes and functions may require compensating measures that offset localized degradation.*

  *On a project basis, No Net Loss means that a permitted use or alteration of shoreline will not result in deterioration of the existing condition of shoreline ecological functions. No Net Loss is achieved both through avoidance and minimization of adverse impacts as well as compensation for impacts that cannot be avoided. Compensation may include on-site or off-site restoration of ecological functions to compensate for localized degradation."*

**Ms. Floyd** recalled that the Commission and staff have reviewed recent court cases and had lengthy discussions regarding the definition for No Net Loss. She advised that the current draft definition has received favorable feedback from the DOE, and they have indicated they might recommend its use to other jurisdictions. She summarized that the first paragraph of the proposed definition is intended to be a generalized statement about what the term No Net Loss is aiming to achieve. The second paragraph is intended to point out how the SMP, in its completeness, achieves the idea of No Net Loss. It makes it clear that the City's regulations will ensure that ecological processes and functions will not be degraded. She noted that the definition allows for some degradation, as long as it offset in some other way. Recognizing that new construction could result in some habitat loss, the third paragraph makes it clear that while new construction would still be allowed, the developer would have to compensate by enhancing the ecological functions of the surrounding area so there is No Net Loss.

**Commissioner Hoell** commented that she appreciates that the definition for No Net Loss has been expanded, since this was a significant issue in many of the public comments received thus far. She said she was also pleased to hear that the DOE supports the proposed definition.

- **Photic Zone** – *"The upper layer of a body of water delineated by the depth to which enough sunlight can penetrate to permit photosynthesis."*

**Ms. Floyd** explained that the updated draft definition was taken from scientific documents. She expressed her belief that the new draft definition sums up meaning of "Photic Zone" in a more concise fashion.

- **Setback** – *"For the purposes of this chapter, the setback is the horizontal distance required between the finished exterior wall of a structure and the buffer line."*

**Ms. Floyd** advised that this definition was taken directly from the City's existing land use code, except the words "property line" were replaced with "buffer line." She clarified that shoreline setbacks refer only to that area between the buffer and the structure. All the other setbacks would be measured from the property lines and are addressed in the zoning code.

- **Will** – *"Used to express a command and or an inevitability."*

**Ms. Floyd** pointed out that this definition came directly from Webster's Dictionary.

Wetland Buffers and Setbacks

**Ms. Floyd** emphasized that when referring to wetland buffers and setbacks, they are really talking about the area that is within 200 feet of the shoreline. There are currently only two wetlands identified in the inventory where wetland buffers and setbacks would be applicable. She explained that the DOE commented that the proposed wetland buffers are not in line with their wetland guidance documents and do not address all types of wetlands that may exist in the shoreline environment. They indicated that they would like the City to add more wetland types and provide a wider variation to buffers based on existing habitat function. As per the DOE's guidance, a developer would be required to hire a biologist to fill out a form to identify characteristics of the wetland. The wetland would then be scored based on the information provided to determine how pristine it is. She said staff revised the SMP to match the DOE's guidance documents related to wetland buffers and found that in many cases the DOE's preferred buffers actually result in a reduction in buffer width from the City's original proposal.

**Ms. Floyd** advised that the DOE has asked the City to call out more differentiation between the various point levels, which seems reasonable. They also recommended the City add the following types of Category 1 Wetlands: Coastal Lagoons, Forested, and Estuarine. While none of these wetland types exist within the City now, they could appear later as a result of rising sea levels, etc. She explained that the buffers preferred by the DOE place more focus on the existing function of the wetland with very large buffers associated with highly functioning wetlands and smaller buffers associated with impaired wetlands. In some cases, the City's proposed buffer is greater, and in others it is lower. Staff is recommending that consistency with the DOE guidelines would be best.

**Commissioner Mosiman** inquired about the location of the City's two existing wetlands. **Ms. Floyd** answered that one is located at the end of Kitsap Lake right next to the park. The lagoon adjacent to Viking Fence in Gorst, which fills with water, may be considered a wetland.

**Ms. Floyd** said the DOE also recommended that the City increase their mitigation ratios, which are applied in cases where a developer needs to build over a portion of a wetland and must enhance or replace it elsewhere. While the State is not asking the City to change their proposed requirements for creating a new wetland or expanding an existing wetland, there are rare cases where there is no room to create a new wetland or expand the size of the existing wetland. The DOE is suggesting that the replacement ratios should be very high to discourage situations where a developer is only required to enhance the wetland but not increase its size. A replacement ratio of 12:1 would be very difficult to achieve because land is too valuable.

Buffer Averaging

**Ms. Floyd** recalled that the Commission requested that language for buffer averaging be added to the code so that a new residences would not be required to be built significantly further back than nearby properties. In response to this request, staff reviewed the existing language in the Bremerton Municipal Code (BMC) related to traditional front yard setbacks, as

well as SMP codes from other jurisdictions that allow for buffer averaging. Based on this research, staff is recommending that if 60% or more of like structures within 500 feet along the shoreline are setback less than the requirement, a developer would be allowed to average all of the existing setbacks to establish the required buffer. However, a minimum 10-foot buffer would be required, which must be vegetated per the vegetation management plan requirements. A 5-foot setback from the buffer would also be required to allow access around the property without encroaching into the buffer.

**Ms. Floyd** provided a picture to illustrate how the proposed new language would be applied to a vacant property on Shore Drive. She emphasized that the numbers identified on the illustration are estimates. She summarized that there are 16 properties within the 500-foot range of the subject property and the average buffer is about 20 feet. Using the proposed language, a 25-foot buffer (20-foot average buffer plus a 5-foot setback) would be required for any structure that is developed on the vacant lot. Application of the standard buffer requirement of 20% of the lot depth would also result in a 25-foot buffer. This illustrates that most of the lots have been developed consistent with the standard buffer requirement. **Ms. Floyd** also provided a picture to illustrate how the proposed new language would be applied to a property on Marine Drive, which is more rural and has larger buffers. She summarized that there are only 11 properties within the 500-foot range, and the average buffer would be about 70 feet. The standard buffer requirement would be 90 feet.

Fences

**Ms. Floyd** said that one of the most common questions the City receives about shorelines is whether a homeowner is allowed to construct a fence in the shoreline "yard." Staff suggests adding language that allows 6-foot fences in the buffers only when place on side property lines.

Vegetation Management Plan

**Ms. Floyd** explained that the proposed vegetation management plan requirements call for smaller buffers than those called out by the DOE. The City's goal is to minimize the overall size of buffers with the intent that the increased vegetation within the buffers will provide better overall habitat function than large buffers would. The DOE has cautioned staff that substantial rationale is necessary to allow for the relatively small buffers. Staff has responded with revisions to emphasize the achievement of No Net Loss through the vegetation management plan criteria. At the same time, the new language provides improved flexibility for property owners. She provided illustrations to point out that what is done in a buffer area makes more of a difference than how big the buffer is.

**Ms. Floyd** explained that the primary proposed change to the vegetation management plan section is to combine the commercial and residential requirements into one section. She reported that residential property owners have expressed concern about how trees could impact their views, and they have suggested that trees not be required in residential zones. She explained that while the City must require trees, they could be more flexible. As currently proposed, the plan must provide for planting of trees, shrubs and ground cover to a sufficient density to provide effective canopy cover and erosion control. It does not specify exact numbers. The proposed language also authorizes the Director to allow trees and shrubs to be placed in natural groupings to allow for view preservation and shoreline access trails. She explained that the new language allows a biologist to work with a property owner to come up with a site-specific vegetation management plan that meets the City's requirements and preserves view.

**Ms. Floyd** said that while the DOE commented that smaller trees actually grow better than larger trees, staff is recommending that at least 25% of the trees shall meet the a height requirement of at least 4 feet. She said changes were also made to the draft language to clarify that a vegetation management plan is not required for the maintenance and repair of existing development. Only new development would require a vegetation management plan. She provided examples to illustrate how the new language could be applied.

**Ms. Floyd** said that, considering all of the vegetation management plan requirements, staff does not believe it is realistic that the average homeowner would be able to complete the required technical documents. Staff is recommending that the plans for both commercial and residential development be prepared by qualified professionals.

Height

**Ms. Floyd** explained that there are only two areas designated as multi-family residential in the City. One is in the downtown area and the other is generally north of Manette along Wheaton Way. Currently, the height limit in downtown is 40 feet, and the height limit north of Manette is 35 feet. The chart in the original draft SMP implies that all multi-family residential designations would have a 40-foot height limit, and this was corrected to be consistent with existing zoning requirements. **Commissioner Tift** asked about the apartments located across from Evergreen Park. **Ms. Floyd** answered that only one small portion of this property is located within the 200-foot shoreline area. The current code allows the height on this property to be substantially higher.

**Ms. Floyd** said the existing code identifies a height limit of 25 feet for single-family residential development. However, an additional 10 feet is allowed if the increase does not impair views of the water from residential properties upland of the nearest public street and landward of the site. She advised that this provision is very difficult to interpret and implement. She recalled that at the request of the Commission, staff reviewed 15 other jurisdictions and found that the vast majority simply set height limits between 30 and 35 feet for residential structures along the shoreline without any additional criteria. This matches their height limits for residential zones located upland.

**Ms. Floyd** reminded the Commission that the primary concern regarding height is the blockage of view from upland properties, and view blockage will likely increase if height limits are increased. She provided three pictures to illustrate how the City measures building height, the variety of building heights and roof types that exist in the City, and how they can impair view. **Commissioner Hoell** referred to the picture of a structure with a pitched roof that is aligned perpendicular to the shoreline and noted that dormers could be added without exceeding the height limit to create almost the same view impairment as the structure with a pitched roof that is aligned parallel to the shoreline. **Ms. Floyd** said the City does not currently evaluate view when reviewing applications, but they could. She said staff is recommending a base 30-foot height limit, with the option of an additional 5 feet for a pitched roof that is not less than 6:12, oriented perpendicular to the shoreline, and covers the entire structure. She noted this is less than what most other jurisdictions allow, but it represents a 5-foot increase for residential properties along the shoreline in Bremerton. **Commissioner Hoell** asked why staff is recommending a roof pitch of 6:12 as a condition for additional height. **Ms. Floyd** said staff believes this is the minimum pitch necessary to provide views on both sides of the peak. She acknowledged that the steeper the pitch, the more costly the roof will be, and it will be up to the applicant to determine if the additional height is a good trade off. She provided illustrations of the same three houses to show what they would look like if they were 35 feet tall.

**Vice Chair Cockburn** recalled that the City originally expressed a desire to keep the height limit down on Shore Drive because they envisioned developing the upper shore as a walking path and they wanted to preserve the view. He also recalled previous Comprehensive Plan discussions about lowering the height limit as a tradeoff for eliminating the view corridor concept. He expressed concern that increasing the height to a maximum of 35 feet appears to be offering back what was gained from the tradeoff. **Ms. Floyd** recalled that there was some discussion about eliminating the view corridor on Shore Drive as part of a previous SMP amendment process in 2006, but the City Council voted to keep the view corridors in place along Shore Drive because of the walking path.

**Vice Chair Cockburn** asked if a short fence would be allowed on top of a tall seawall as a safety measure. **Ms. Floyd** answered that a guardrail would be allowed, but it would have to look like a guardrail and not a fence. She agreed that life safety issues must be adequately addressed and suggested that language could be added to make it clear that a guardrail would be appropriate in certain circumstances as applicable with the building code. **Chair Jose** asked staff to carefully consider how this issue could be addressed consistent with the current development code. **Ms. Floyd** said requirements for guardrails are laid out in the building code, and these same provisions could be emphasized in the SMP. **Chair Jose** cautioned that the language should be flexible enough to accommodate attractive guardrails.

**Commissioner Hoell** said she appreciated the expanded definition for No Net Loss, which provides a lot of clarity. She asked the Citizens Advisory Group to provide feedback about whether or not they are satisfied with the changes that have been made.

**Chair Jose** opened the public comment portion of the meeting.

**Alan Beam** commended staff for attempting to address all of the issues that have been raised. He suggested it would be helpful to provide definitions in the SMP for each of the wetland categories. While he understands why staff has proposed language that allows for varying buffers, he commented that the provision could "stand the concept of science on its head."

He reminded the Commission that the buffers are intended to provide a natural function to address and/or correct a problem. He said he is opposed to establishing buffers based on the depth of the property, and using a variable system to establish buffers could be challenged.

**Karen Danis** thanked the staff for recommending changes to the draft language relative to building height. The proposed height limits are far more reasonable and workable. She said she is still concerned about No Net Loss and staff's proposal that it be established on a lot-by-lot basis. She asked what would happen in later years if the shorelines on adjacent lots grow to be far more robust than they are now and adding an additional structure would not detract from the quality of the environment.

**Chair Jose** closed the public comment portion of the meeting.

**Commissioner Mosiman** asked how opportunities for marine mammal haul out would be impacted by a guardrail on top of a bulkhead. He recognized this may not be an issue with large bulkheads, but it could certainly be a problem for smaller ones. **Ms. Floyd** acknowledged that a solid fence on top of a bulkhead would make it difficult for marine mammal haul out and for vegetation to fall over the side of the bulkhead to provide shade and feed the fish with the bugs and leaf litter that fall off into the water. However, a guardrail would not result in the same problem. With the buffers being fully vegetated, they are not intended to be areas for children to play.

**Commissioner Hoell** asked staff to provide a definition for the word "benthic." **Ms. Floyd** said much of the language came from scientific documents, and she does not know what "benthic" means. She agreed to provide a response at a later time. **Commissioner Jose** suggested staff consider a synonym that is more understandable to replace the word "benthic."

**Commissioner Hoell** expressed her belief that the proposed changes make the SMP clearer. She reminded the Commission of their goal to make the document more user friendly. **Commissioner Lambert** agreed and added that she appreciates the complete staff commentary that was provided for each of the sections to put the changes into context.

**Chair Jose** requested more information about how the "financial surety" process would be managed and administered. **Ms. Floyd** explained that in the 1990's and earlier, there was no requirement that property owners maintain the vegetation that was required at the time of development. To address this issue, the City of Bremerton, along with most other jurisdictions in the area, established a bond program to ensure that the required vegetation is maintained for five years. Applicants are required to submit photographs each year. At the end of the five-year period, the City inspects the site. If they find that the vegetation is thriving, they release the bond to the applicant. The proposed SMP would implement this same type of bond program for vegetation management plans. **Chair Jose** asked how many City resources are required to manage the bond program. **Ms. Floyd** answered that each department handles their own bond program. She said she manages the Planning Department's current bond program, and it does not consume a lot of her time. However, she anticipates that bonds associated with vegetation management plans would be more difficult for staff to manage because the requirements are much greater.

**Chair Jose** asked what would be included in the cost of a five-year maintenance and monitoring plan. **Ms. Floyd** said it typically involves the cost of the plants, themselves. The bond language is written in a way to ensure that the bond is sufficient that most people would care enough to get their money back. She agreed that the language could be reworded to make it clearer. **Chair Jose** said he would be interested to know the typical value of plants. **Ms. Floyd** said that the value of plants varies, depending on existing vegetation, etc. She said staff proposed the number 150% to be consistent with the bond requirements found in other code documents.

**Chair Jose** referred to Mr. Beam's comment about the science behind buffer requirements. He expressed his belief that the concept of varying buffers is a good and fair compromise to balance both sides of the issue. He emphasized that the purpose of the SMP is to have No Net Loss on a citywide scale. **Ms. Floyd** agreed. She said Mr. Beam is suggesting that if 20 feet is good enough on one lot, why isn't it good enough on all the lots. Or if 100 feet is needed for one lot, why isn't 100 feet needed for all the lots? While this is a valuable and important question, the reality is that science would likely indicate that a 100-foot buffer is needed on all the lots. However, the Commission should keep in mind that the City is an urban, built environment and functions have already been degraded. They should also remember that the requirement is not that they bring shoreline areas back to their predevelopment condition, but that they achieve No Net Loss from today. She said staff

believes the proposed flexible buffer would be acceptable. **Chair Jose** observed that, as lots are redeveloped slowly over time, the line should start moving back towards where the goal really is.

## BUSINESS MEETING

### Chair Report

**Chair Jose** thanked the staff and public for their attendance and participation as they near the end of the SMP update process.

### Director Report

**Ms. Floyd** announced that the vacant assistant director position has been posted, and the deadline is March 15th.

**Ms. Floyd** reported that the City Council reviewed the Commission's recommendation for where opiate substitution treatment facilities should be allowed in the City. The City Council considered several different options and decided that they should be allowed in the institutional zone around the hospital and within the freeway corridor zone. They agreed that they should not be allowed in centers.

### Old Business

**Chair Jose** inquired about the status of the vacant Planning Commission position. **Ms. Floyd** replied that applications are still being accepted, but she had nothing further to report.

### New Business

There was no new business scheduled on the agenda.

## ADJOURNMENT

The Commission meeting was adjourned at 6:37 p.m.

Respectively Submitted by:

Andrea L Spencer
AICP, Executive Secretary

Greg Jose
Chair, Planning Commission

Commission Meeting Date: March 20, 2012 Agenda Item: V.B.1

# CITY OF BREMERTON, WASHINGTON
# PLANNING COMMISSION AGENDA ITEM

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|---|---|
| **AGENDA TITLE:** | **Workshop to discuss Nonconformities and Substitute Senate Bill 5451.** |
| **DEPARTMENT:** | *Community Development* |
| **PRESENTED BY:** | *Nicole Floyd, City Planner* |


**SUMMARY:**
This workshop is part of a series of workshops to discuss the Draft Shoreline Master Program (SMP) update. Each workshop focuses on a different set of topics and or sections of the code. The Planning Commission has held two previous workshops focusing on general nonconformities and how they are applicable to the Shoreline Master Program.

This workshop will focus on the potential impacts of utilizing the allowed language from Substitute Senate Bill (SSB) 5451in relationship to the nonconforming provisions of the Shoreline Master Program Update. In summary, the Bill was drafted to clarify The Department of Ecology's review authority over the Statewide SMP update process. Specifically, it is not Ecology's responsibility to determine what terms are used when referring to existing residential structures. Statewide, this means that there will continue to be substantial variation as to how local jurisdictions address nonconformities within the Shoreline. For Bremerton, it provides the opportunity to change how nonconformities are classified and how they are regulated.

This report aims to help provide a better understanding of the underlying issues surrounding the optional language changes to the nonconforming code section. Staff is asking the Planning Commission to provide direction by answering the following questions:

1. Should the City create an alternate name for legal nonconforming residential structures on the shoreline; and
2. Should the City allow for the full replacement of such residential structures an unlimited number of times?

Please keep these questions in mind when reading the report and reviewing the attachments, as the report is intended to help provide a wide range of data surrounding these two questions.


**ATTACHMENTS:**
Attachment I: Substitute Senate Bill 5451
Attachment II: Fannie Mae and Freddie Mac Lending Guidelines
Attachment III: Lender and Appraiser feedback
Attachment IV: Uniform Appraisal form
Attachment V: Articles regarding nonconforming loans

**RECOMMENDATION:**
Use the materials provided by Staff, consider public testimony, and provide clear direction to Staff regarding how to proceed in drafting language regarding existing shoreline residences.

## HOW DOES LOCAL GOVERNMENT USE THE TERM NONCONFORMING?

The term “nonconforming” is a popular term used regularly in many different industries; your local government uses it primarily to describe any existing development that does not conform to the regulations of today. The term “nonconforming”, or sometimes referred to as “grandfathered”, has been used in land use codes since the 1920’s when Cities were first beginning to create Comprehensive Plans and Zoning Codes for development as a way to protect property rights. While all jurisdictions address the topic a bit differently, they all address the following main issues:

1. Legal nonconformities: These are either structures or uses that were allowed when originally developed, and then the land use requirements changed. Typically this includes changes to setback requirements or changes to the allowed uses within an area. The legal nonconforming code provisions are intended to protect these uses and structures by ensuring they are “grandfathered”. These structures are acknowledged as a legal use and are allowed to remain in their existing state even though they do not conform to new regulations. (This report will focus primarily on this group)
2. Illegal nonconformities: These are uses or structures that were never constructed with approval from the City. A common example is the conversion of a garage into a living unit, or an addition to a house without permits. These illegal nonconformities are particularly problematic because it is very difficult to determine if they are constructed safely, after the fact. Sometimes these illegal structures or uses are prohibited and when the City is notified of their existence the property owner must work with the City to gain compliance. Often this requires removal of the illegal structure.
3. Destruction of Legal Nonconformities: Most jurisdictions establish criteria about when a “grandfathered” legal nonconformity ceases to maintain their legal nonconforming rights. While each jurisdiction is different, Bremerton’s code establishes this limit when more than 75% of the structure’s value is being voluntarily replaced. This rule does not apply, in the case of natural disaster or casualty not intentionally caused by the owner or tenant. In the case of fire, falling trees, flood, earthquake etc. a structure can be fully destroyed and fully rebuilt in the same footprint. This language is very important, as not all jurisdictions have it.

## WHAT WAS THE BILLS PURPOSE?

Substitute Senate Bill 5451 was drafted to provide direction to the Department of Ecology regarding how Ecology supervises the Statewide SMP update process. Ecology has the final review authority over what is adopted in all SMP updates, so they have a lot of power over what language is used in the new SMP. Confusion arose about Ecology’s authority over provisions for existing residential structures. In order to clarify their role, the Legislature provided direction that can be seen as supporting an individualistic approach; one where the local jurisdiction is given freedom to make a unique and area specific code. The Bill ensures that Ecology will stay focused on the big picture of achieving No Net Loss, and leave the details to each jurisdiction. This gives local jurisdictions the ability to choose names and set regulations as they see fit, so long as No Net Loss is achieved. Very specifically, Legislature addressed the following:

1. Ecology can approve local SMP’s that designate existing legal nonconforming residential structures as conforming; and
2. Ecology can approve a local SMP that allows for redevelopment or full replacement of a residential structure provided No Net Loss of habitat function is achieved.

To understand the value of these statements one must think of the issue in terms of No Net Loss. As one of the primary principles of the Statewide SMP update, Ecology is reviewing local SMP's to ensure there is No Net Loss of habitat function. So long as No Net Loss is achieved, the name seems inconsequential in terms of Ecology's responsibility. This allows local jurisdictions to tailor their code language to suit the needs of the community and match language in other areas of municipal code.

Many people believe that the term "nonconforming" sets a negative connotation and impacts property values and resale options. These concerns have been heard by the Legislature and local governments alike and are even cited in the Bill.

**NAME CHANGE**

As previously stated and as cited in the Bill, there is concern from shoreline home owners across the State who are worried about the implications of the new SMP regulations. Most SMP updates, including Bremerton's, are the first comprehensive update to the plan since the 1970's. Such an update almost always includes significant changes to existing shoreline regulations, which in turn means a significant increase in legal nonconformities.

The question homeowners most often ask is, "What implications will having a legal nonconforming structure have for me?" Since each jurisdiction has different parameters for legal nonconformities the answer varies greatly. Each City sets different goals and different requirements. This variation in requirements has led to a wide array of answers. Staff believes that this variation coupled with the complexity of the topic has lead to some confusion. In doing research for this report Staff came across a wide range of inaccurate statements (when applied in Bremerton), such as:

- If your house is burned down, you would not be able to rebuild it;
- No changes whatsoever will be allowed to your home;
- Your home will be required to be torn down by the government;
- Selling your home will be nearly impossible because standard home loans are not available for nonconformities.

Regardless of the accuracy of these statements, they are concerning (accuracy will be addressed later in the report). Due to these concerns, property owners across the State encouraged the Legislature to allow SMP's the option to utilize alternate wording, so that the term "nonconforming" could be avoided. Seeing that the name has nothing to do with the overarching goals of the SMP, the Legislature agreed to allow local jurisdictions the option of calling existing legal nonconforming residences by an alternate name should the local government deem it appropriate.

If you have ever changed your name, you know that it often sounds simpler than it really is. At first blush changing the name appears rather straight forward and easy. One could just swap out the words and be done, right? Wrong.

The Bill only allows for the name change to be applied to single family residences within the shoreline jurisdiction. All other types of structures within the shoreline jurisdiction including commercial, multi-family, bulkheads, docks, boathouses etc. are excluded and must keep the title of legal nonconforming. This means the whole code section cannot simply be changed, instead a new sub-section within the nonconforming chapter would need to be added. If the newly named sub-section is within the nonconforming chapter, will it have the desired impact?

Commonly, residences along the shoreline do not comply with both the shoreline and zoning code regulations. This is especially true in older cities like Bremerton. In these cases homes

would not be changing names, but adding another name. For example, homes would be called legal nonconforming per the zoning code ***and*** "existing conforming" per the shoreline code. This duality of names does not eliminate the term nonconforming, and therefore probably would minimize the desired result and would add to regulatory confusion.

Staff suggests that Planning Commission weigh the options carefully of adding an additional name for existing residences that do not comply with shoreline regulations. This revision would likely alleviate home owners concerns but would also add complexity to the code.

**DOES ADDING A NEW NAME CHANGE THE REQUIREMENTS?**

Interestingly, the name change itself does not necessarily change the regulations. Bremerton could have a special name for shoreline residences, without departing from the currently drafted regulations. In fact, the section about repair, maintenance, and expansion could be modified by adding the new name to the title. This would ensure the same provisions apply to all legally established existing structures. This includes exemptions and requirements, such as:

- Fire damage and destruction can be fully replaced provided the applicant applies for a building permit within 1 year of the casualty. This language is currently in the code and would apply to all legally established structures regardless of their name.
- Expansion of less than a 500 square footprint is allowed without any increase in native vegetation. This language is currently in the code and would apply across the board regardless of the name.
- Expansion into the buffer can be allowed in specific circumstances with an increase of native vegetation. Again, this is existing proposed language and would continue to apply to all existing legally established structures regardless of their name.

Alternately, Bremerton could significantly modify the applicability of the SMP in relation to legal existing residences by not only changing the name, but also by exempting them from the nonconforming regulations. In some ways this would be beneficial because they would be exempt from most provisions of the SMP, but in other ways they would be more restricted because they would not be able to utilize the nonconforming language intended to provide flexibility, such as provisions for expansions. The potential impacts of this are discussed later in the report. For now, it is important to recognize that adding a new name will not automatically change the regulations.

**WILL ADDING A NEW NAME FOR EXISTING LEGAL RESIDENCES HELP WITH HOME LOANS?**

One of the most common reasons listed as a benefit of adding a specific code section for existing residential structure is the concern that a legal nonconforming residence will not be able to be sold using traditional lending practices. This is probably the most concerning of all potential impacts cited because of the wide reaching implications. If true, this would cause a significant impact on Bremerton, not only in relationship to shoreline regulations, but nonconforming regulations as a whole. Due to the potential impacts, Staff spent considerable time researching this topic and has not been able to find evidence that supports the claim.

While the updated SMP will likely cause more homes to be legally nonconforming, there are already a plethora of existing legal nonconformities throughout Bremerton. The current nonconforming regulations have remained mostly unchanged since the adoption of the 1975 Zoning Code. Most houses on the market today are legally nonconforming in some facet or another. Noncompliance with any single code requirement causes a structure to be classified as legally nonconforming. The building code is updated every three years. Presumably homes built before 2009 may not comply with new regulations and are therefore could be legally

nonconforming. Often, people don't even know their house is considered a legal nonconformity. In fact, merely having an unpaved driveway is a nonconformity.

If lenders won't lend to a legal nonconformity, and Bremerton is full of legal nonconformities, how has this problem gone unnoticed since 1975? Even more perplexing, why is the focus only on single family residences on shoreline? In light of this topic Planners for the City of Bainbridge Island reviewed all waterfront home sales from July 2010 to July 2011 and found 33 home sales. Staff used aerial photographs to determine which homes were nonconforming in terms of shoreline regulations such as buffers. Of the 33 sales; 17 were conforming and 16 were nonconforming. The average assessed value, and average sale price are listed below. Based on this study it appears that the title of legal nonconforming moderately increased the value of the home (probably due to the homes proximity to the water), and did not impact the ability to sell it.

| | Sale Price Average | Average Assessed Value |
|---|---|---|
| Conforming | 1,597,519 | 964,265 |
| Nonconforming | 1,723,273 | 854,389 |

**WHAT DO THE LENDING GUIDELINES SAY?**

Since Fannie Mae and Freddie Mac own upwards of 95% of the traditional loans in the country, it is in mortgage companies' best interests to follow the Fannie Mae and Freddie Mac guidelines to increase the probability they will eventually purchase the loan. Fannie Mae and Freddie Mac each have separate guide books, each totaling upwards of 1,000 pages with very specific loan criteria. Both have specific sections that discuss land uses and nonconformities. The applicable sections are shown in Attachment II. While both books have different language, they both address the same concepts in terms of nonconformities; they will lend, so long as the nonconformity can be replaced. In other words, they are looking for a "money back guarantee". If it burns down, they want to be able to rebuild it.

Interestingly not all nonconformities are created equal in the eyes of Fannie Mae and Freddie Mac. The guidelines focus specifically on the use of the property, such as residential, or commercial rather than on other types of nonconformities that relate to the building's location on the property. These legal nonconforming uses are seen as more risky because many jurisdictions do not allow their replacement if destroyed. Fannie Mae even shows in a chart that says they will lend to an illegal nonconforming use (never permitted) provided the local jurisdiction will allow it to be rebuilt. Other types of nonconformities are not scrutinized the way nonconforming uses are because there are typically more clear assurances that they can be rebuilt in the case of fire or natural disaster. As has been the case since 1975, Bremerton allows for full rebuild in the case of fire not intentionally caused by the owner for all types of nonconformities, no change to this provision is proposed.

**WHAT DO APPRAISERS SAY?**

Just because the Fannie Mae and Freddie Mac guidelines allow for lending to legal nonconformities does not mean they are, actually, lending on these properties. Proponents of the alternate name have pointed out that loans are harder to secure due to the economy. Banks are being more careful in choosing loans. Proponents caution that even if the guidebooks say a nonconformity can get a loan, they are not as desirable in a highly competitive market.

In order to determine if loans are being denied due to their legal nonconforming status, Staff contacted local appraisers to ask for information. Since it is the appraiser that makes the determination that a property is nonconforming, it seemed reasonable to assume they would be a good source of information about what impacts that determination make. Staff called every appraiser in the phone book. Email correspondence from those willing to take the time to write a letter is shown in Attachment III.

Staff asked appraisers if they had ever witnessed a loan denied because of the properties legal nonconforming status. Of all the appraisers asked, no one had seen it happen to a legal nonconformity that could be rebuilt after fire. A few shared cautionary tales about legal nonconforming uses that were not allowed to rebuild after fire, but none had witnessed a problem for a legal nonconforming structure. In general they said that the term does not prohibit loans, but it is often seen as a red flag because of the wide variety of requirements from jurisdiction to jurisdiction. Due to the variety of requirements, specific attention must be paid by the appraisers to ensure the nonconformity can be rebuilt in the case of fire etc. This assurance is typically provided in the way of a letter from the jurisdiction or simply submitting a copy of the applicable code section. Due to the need for this additional documentation, it is widely understood that a loan for a nonconforming use will probably take a bit longer than a loan for a conforming use.

In an attempt to ensure consistency with Fannie Mae and Freddie Mac guidelines most appraisers use the Uniform Residential Appraisal Report Form (Attachment IV). This form specifically asks about the "zoning compliance" of the property. The following question is intended to ensure the appraiser has reviewed the property in terms of its ability to be rebuilt.

Zoning Compliance:
☐ Legal ☐ Legal Nonconforming (Grandfathered) ☐ No Zoning ☐ Illegal

Checking anything besides "legal" will require the appraiser to provide assurances that the structure can be rebuilt, such as a letter or code citation from the local jurisdiction. Appraisers said that it is not the term nonconforming that is impacting loans; it is code language that denies the rebuild after fire.

It is in the appraiser's choice when marking one of these boxes that many people believe the greatest impact from a new name will be gained. Since only one of the four boxes can be checked, proponents are hopeful that adding the term "conforming" to their shoreline residence will encourage appraisers to pick the "legal" box rather than "legal nonconforming", or any other box for that matter. If a structure has the title "conforming" chances are that appraisers will not choose the box with "nonconforming" in the title. This could expedite the appraisal process, because there would not be any "red flags" associated with the loan and therefore no need for a letter or code citation from the City confirming the structure can be rebuilt.

This should only be seen as a temporary or short term gain because it circumvents the lenders primary goal of ensuring the asset can be rebuilt. It is only a matter of time before lenders realize the "legal nonconforming" box is being circumvented and therefore the letter of assurance is also being circumvented. In order to ensure the "money back guarantee" Staff predicts that the form will eventually be modified to include a new box that better captures the intent of the question.

## WHAT DO LENDERS SAY?

In an ongoing search for answers, Staff contacted several mortgage lenders and asked them about what nonconforming means to them. Interestingly, lenders started talking about credit scores, bankruptcy, foreclosures, and jumbo loans. To be expected, Staff was confused, and wondered when the discussion would come to house setbacks, or anything related to land use.

Apparently, planners are not the only professionals who use the term "nonconforming" when discussing something that just doesn't comply with the rules. Staff learned that lenders use the term when referring to people: People who don't meet their loan criteria for whatever reason. Within the 1,000 plus pages of the Fannie Mae and or Freddie Mac guidance books there are very specific criteria about the applicants themselves. Anyone who does not meet those criteria will not be granted a loan because they are, themselves, nonconforming. Sometimes it is because of a low credit score, or because they have recently gone through a foreclosure; other times one can have great credit, but the loan amount is too high (Jumbo loans); nevertheless it has nothing to do with the land use designation of the property.

It has often been stated that Fannie Mae and Freddie Mac won't lend on a nonconformity. Without knowing that lenders are talking about different type of nonconformity, one could easily assume this related to land use. Based on the information gathered from lenders it seems most accurate to say that Fannie Mae and Freddie Mac won't lend to a nonconforming person, and require additional paperwork to lend to a nonconforming property.

## 100% REBUILD

Not only can the name for existing shoreline residences be modified, the regulations for these structures can be changed as well. Allowing the voluntary replacement of existing shoreline residences would alleviate property owners concerns about the long term impacts of the SMP on their property. The Commission could direct Staff to draft language that allows an exemption for single family residences on the shoreline from the 75% rule, thus allowing the full tear down and rebuild of a home without being required to comply with new buffers, setbacks, or vegetation requirements.

## HOW WOULD ALLOWING A 100% REBUILD IMPACT NO NET LOSS?

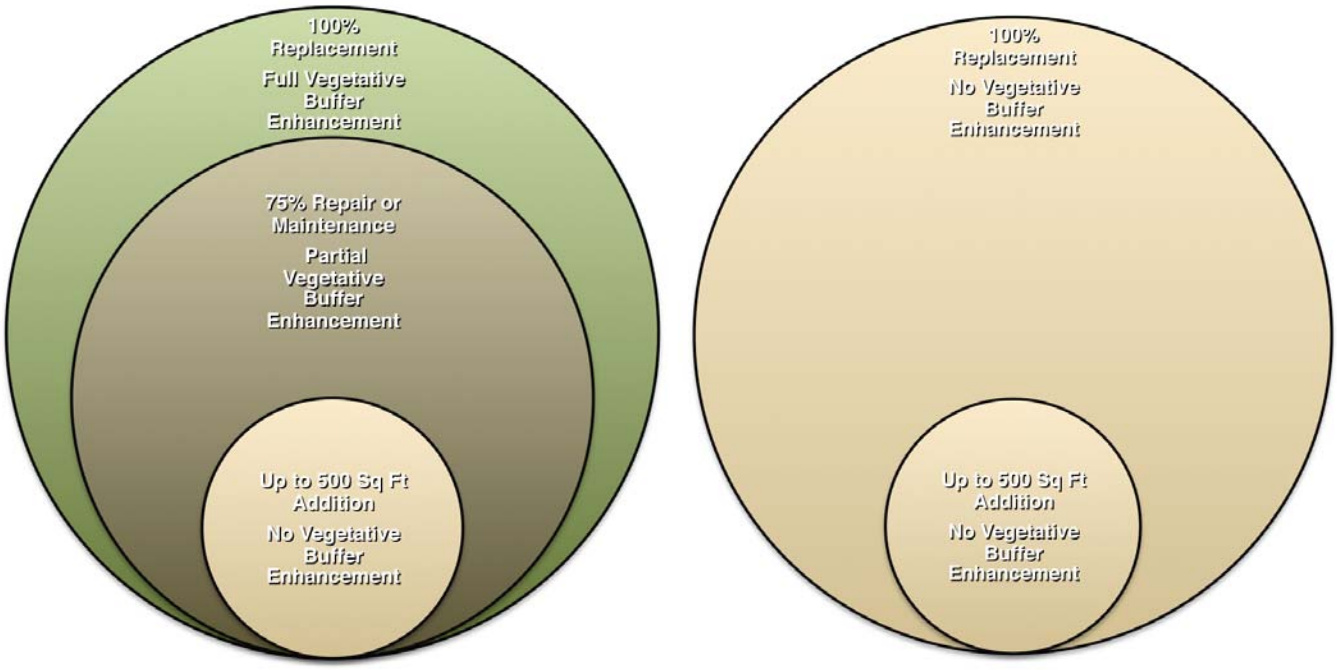
Remember that the Bill was drafted to give guidance to the Ecology about their review authority. In part, this guidance is ensuring local jurisdictions are allowed to develop unique codes so long as No Net Loss is achieved. When addressing No Net Loss it is important to remember that it is measured from today forward. This language is particularly important when thinking of existing structures. Since No Net Loss is measured from today forward, existing structures seem inherently exempt from the requirements of No Net Loss because the structures were built in the past. If we are to measure impacts from today forward, why would something built yesterday, last year, or beyond, be included at all?

Ecology has said that they should be included because existing structures actually do continue to impact habitat function long after they are built because of continued impacts from driveway runoff, pesticides, fertilizers, etc. but this has very little to do with the building itself. For example, if a home were torn down completely and rebuilt in the same exact footprint it might not impact habitat function any more than the old house did because it would not be increasing runoff, or any other impact to habitat. It is for this reason that Ecology will allow 100% rebuild provided the jurisdiction can clearly demonstrate No Net Loss.

Achieving No Net Loss is the key, and it is important to remember that No Net Loss allows for losses in one area provided there are gains in another. The goal is to achieve an overall

balance. In order to allow for smaller buffers than are recommended by Ecology the City has proposed to increase the overall function of buffers by increasing the vegetation required in these smaller buffers. These increases in vegetation are to be required when someone voluntarily expands or rebuilds their home. The concept is that over time this enhancement of buffers will provide equal to or better habitat function than simply requiring larger buffers for new development.

Part of the rationale for reduced buffers relies on the urban and developed nature of Bremerton. There are not very many undeveloped lots left, instead the shoreline is mostly developed. Regulations that only impact a few undeveloped lots will probably not afford the same habitat enhancement as those regulations that are applied to the majority of lots. Exempting the voluntary replacement of existing residences from providing vegetation will significantly reduce the overall impact the vegetation requirements are intended to provide over time. Exempting the vast majority of structures along the shoreline from future compliance with the regulations will require an increase in regulation (habitat protection) elsewhere in the code in order to achieve No Net Loss. The most obvious approach would include an overall increase in buffer widths. Increasing buffers may be appealing to the majority of residents because in this scenario the increase would only apply to new construction, exempting the replacement of existing structures.




**WOULD 100% REBUILD PROTECT EXISTING RESIDENCES?**

It is important to remember that as currently drafted, full rebuild is allowed in the case of natural disaster, so this topic only relates to construction projects voluntarily proposed by the homeowner. Proponents of the change suggest that without allowing for 100% rebuild a homeowner will run the risk of being required to tear down their home, when all they wanted to do was repair and maintenance.

In order to address this concern, Staff is providing an example of how the 75% rule is currently used. In 2008, the owner of 505 Shore Drive applied for an interior remodel of the duplex,

however much like the movie, “The Money Pit” every time he tore into a wall; he found more things that were in need of repair. Since 2008 the applicant has applied for several permit revisions and additional permits to cover the ever increasing scope of work. Originally a two story home with a second unit in the basement, the house has been almost completely removed. It has not, however, exceeded the 75% rule because it is based on the structures value. When the application was submitted the assessed value of the home was approximately $266,000. 75% of this value is $199,000. By using the assessed value, the scope of the project would need to be in excess of $199,000 in order to exceed the 75% rule. The applicant has provided the “bid price” for the work being done and has established that replacement of nearly the whole house will cost less than $120,000, or put another way, the work will consist of only 45% of the structures value even though very little of the original structure is remaining.



This example is intended to illustrate that repair and maintenance should be easily achieved without exceeding the 75% rule. This project is likely far more comprehensive than most repair and maintenance work, and still will not be required to comply with current shoreline regulations.

Exceeding the 75% rule when remodeling or maintaining a home is unlikely because applicants who voluntarily modify their homes are able to decide how much work should be done. In the unlikely event that a remodel is likely to exceed the 75% rule, the applicant can simply scale back the project.

If 100% rebuild were allowed, it would grant existing shoreline residences something like “celebrity status” much like a historic preservation regulations, except that a historic building must maintain its historic character. With no design criteria, this provision would allow for a structure to be fully torn down, and replaced with a new modern building in the exact same foot print over and over again. This essentially eliminates the concept of eventual compliance because each time the natural life of a structure is expired; a new structure is permitted in the exact same footprint.

Allowing for 100% rebuild would allow existing shoreline properties to construct a brand new home far closer to the shoreline than would be allowed on a vacant property. This is likely to be seen as unfair by those proposing to build on vacant land, and those who are upland and outside of the shoreline jurisdiction. The vast discrepancy between the application of requirements will be difficult to rationalize to citizens.

## NEIGHBORING JURISDICTIONS

All of the jurisdictions in Kitsap County are on a similar timeline for the SMP update adoption, and have all previously addressed this topic with their own Planning Commissions. Although no one has officially adopted their codes, their draft language includes the following:

Poulsbo:

- Maintains the chapter title of “Nonconforming Shoreline Uses and Structures”
- Added a section stating that primary residential structures can apply for a permit that establishes the status of the structure as “conforming”.
- Replacement is permitted when due to natural disaster or fire.
- Voluntary rebuild and expansions are only allowed through a variance.

Port Orchard:

- Modified the name of the chapter to “Existing Development” but continues to use the word nonconforming to describe such development, including “nonconforming structures”.
- Added a new section stating that, “Residential structures shall be deemed “Conforming” and not subject to the provisions of this section…”
- Allows for 100% replacement of legal nonconforming structures provided the nonconformity is not expanded. (This allows commercial structures to rebuild on the shoreline).

Kitsap County:

- Changed the name of the chapter to “Existing Development” and establishes that lawfully constructed structures built before the adoption date of the SMP shall be considered conforming.
- 100% rebuild is allowed outright (voluntary or fire)
- Expansions require mitigation such as vegetation enhancement.

Bainbridge Island:

- Continues to use the term “nonconforming” with no new section for existing shoreline residences.
- Maintains existing SMP language relating to redevelopment and 100% rebuild is already allowed per their code.
- Any development in the buffer (fire damage, replacement or new) requires native vegetation planting.
- Expansions require the planting of native vegetation.

**CONCLUSION:**

Substitute Senate Bill 5451was created by the Legislature to clarify the Department of Ecology’s review authority in terms of existing residential structures. The Bill clarifies that local jurisdictions have substantial flexibility in relation to this topic. With this flexibility comes significant responsibility to ensure the code is written in a way that balances a wide array of community values as well as achieving No Net Loss of habitat function.

Staff is looking to the Planning Commission to provide clear guidance about how to proceed. By discussing, deliberating, and answering the two questions raised, Staff will be equipped to prepare the final draft of the Shoreline Master Program that will be used for the Planning Commission Public Hearing. The questions to be answered by the Planning Commission are as follows:

1. Should the City create an alternate name for legal nonconforming residential structures on the shoreline; and

2. Should the City allow for the full replacement of such residential structures an unlimited number of times?

In answering these questions careful consideration should be given to the concerns raised by community members, the goal of achieving a user friendly and easy to understand code, consistency with zoning code provisions, and No Net Loss.

# FINAL BILL REPORT
# SSB 5451

**C 323 L 11**
Synopsis as Enacted

**Brief Description**: Concerning shoreline structures in a master program adopted under the shoreline management act.

**Sponsors**: Senate Committee on Natural Resources & Marine Waters (originally sponsored by Senators Ranker, Ericksen, Pridemore, Harper, Carrell, Hobbs, Rockefeller, Tom, White and Shin).

**Senate Committee on Environment, Water & Energy**
**Senate Committee on Natural Resources & Marine Waters**
**House Committee on Environment**
**House Committee on Local Government**

**Background**: The Shoreline Management Act (SMA) governs uses of state shorelines. The Department of Ecology (DOE) and local governments are authorized to adopt necessary and appropriate rules for implementing the provisions of SMA.

At the local level, the SMA regulations are developed in local shoreline master programs. All counties and cities with shorelines of the state are required to adopt master programs that regulate land use activities. Counties and cities are also required to enforce master programs within their jurisdiction. Local master programs have certain mandatory elements as appropriate, and local governments may include other elements necessary to implement the SMA requirements. Mandatory elements include:

- an economic development element for locating and designing water-dependent industrial projects and other commercial activities;
- a public access element to provide access to public areas;
- a recreational element to preserve and enhance shoreline recreational opportunities;
- a circulation element to locate transportation and other public facilities for shoreline use;
- a use element addressing the location and extent of shoreline use for housing, business, industry, transportation, agriculture, natural resources, recreation, education, public facilities, and other uses;
- a conservation element to preserve natural resources in shoreline areas;
- a historic, cultural, scientific, and educational element to protect buildings, sites, and areas with such values; and
- an element considering statewide interests in preventing and minimizing flood damage.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

A master program becomes effective when approved by DOE.

**Summary**: The act allows DOE approved new or amended master programs on or after September 1, 2011, to include provisions authorizing:

- qualifying residential structures and appurtenant structures to be considered conforming structures; and
- redevelopment, expansion, change with the class of occupancy, or replacement of the residential structure if it is consistent with the master program.

Appurtenant structures are defined to mean garages, sheds, and other legally established structures.

The act does not restrict the ability of a master program to limit redevelopment, expansion, or replacement of over-water structures or structures located in hazardous areas.

**Votes on Final Passage:**

| | | | |
|---|---|---|---|
| Senate | 47 | 0 | |
| House | 77 | 19 | (House amended) |
| Senate | 48 | 0 | (Senate concurred) |

**Effective:** July 22, 2011.

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE SENATE BILL 5451**

62nd Legislature
2011 Regular Session

Passed by the Senate April 18, 2011
YEAS 48 NAYS 0

President of the Senate

Passed by the House April 5, 2011
YEAS 77 NAYS 19

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5451** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

Secretary of State
State of Washington

# SUBSTITUTE SENATE BILL 5451

AS AMENDED BY THE HOUSE

Passed Legislature - 2011 Regular Session

**State of Washington 62nd Legislature 2011 Regular Session**

**By** Senate Natural Resources & Marine Waters (originally sponsored by Senators Ranker, Ericksen, Pridemore, Harper, Carrell, Hobbs, Rockefeller, Tom, White, and Shin)

READ FIRST TIME 02/21/11.

AN ACT Relating to shoreline structures in a master program adopted under the shoreline management act; adding a new section to chapter 90.58 RCW; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** (1) The legislature recognizes that there is concern from property owners regarding legal status of existing legally developed shoreline structures under updated shoreline master programs. Significant concern has been expressed by residential property owners during shoreline master program updates regarding the legal status of existing shoreline structures that may not meet current standards for new development.

(2) Engrossed House Bill No. 1653, enacted as chapter 107, Laws of 2010 clarified the status of existing structures in the shoreline area under the growth management act prior to the update of shoreline regulations. It is in the public interest to clarify the legal status of these structures that will apply after shoreline regulations are updated.

(3) Updated shoreline master programs must include provisions to ensure that expansion, redevelopment, and replacement of existing

structures will result in no net loss of the ecological function of the shoreline. Classifying existing structures as legally conforming will not create a risk of degrading shoreline natural resources.

NEW SECTION. **Sec. 2.** A new section is added to chapter 90.58 RCW to read as follows:

(1) New or amended master programs approved by the department on or after September 1, 2011, may include provisions authorizing:

(a) Residential structures and appurtenant structures that were legally established and are used for a conforming use, but that do not meet standards for the following to be considered a conforming structure: Setbacks, buffers, or yards; area; bulk; height; or density; and

(b) Redevelopment, expansion, change with the class of occupancy, or replacement of the residential structure if it is consistent with the master program, including requirements for no net loss of shoreline ecological functions.

(2) For purposes of this section, "appurtenant structures" means garages, sheds, and other legally established structures. "Appurtenant structures" does not include bulkheads and other shoreline modifications or over-water structures.

(3) Nothing in this section: (a) Restricts the ability of a master program to limit redevelopment, expansion, or replacement of over-water structures located in hazardous areas, such as floodplains and geologically hazardous areas; or (b) affects the application of other federal, state, or local government requirements to residential structures.

**--- END ---**

# B4-1.4-06, Appraisal Report Review: Subject Property Zoning (12/01/2010)

## Introduction

This topic contains information on subject property zoning, including:

- Subject Property Zoning
- Permissible Use of Land
- Highest and Best Use

## Subject Property Zoning

Lenders must ensure that the specific zoning class has been reported in the appraisal, along with a general statement as to what the zoning permits.

The appraisal must include a statement that the subject property presents a legal conforming use, a legal non-conforming (grandfathered) use, or an illegal use under the zoning regulations; or that there is no local zoning.

## Permissible Use of Land

Fannie Mae does not purchase or securitize mortgage loans on properties if the improvements do not constitute a legally permissible use of the land.

Certain exceptions to this policy are made provided the property is appraised and underwritten in accordance with the special requirements imposed as a condition to agreeing to make the exception.

| Property Type | Loan Eligible for Purchase or Securitization by Fannie Mae? |
|---|---|
| A property that is subject to certain land-use regulations, such as coastal tideland or wetland laws that create setback lines or other provisions that prevent the reconstruction or maintenance of the property improvements if they are damaged or destroyed. | No. |
| A property that represents a legal, but non-conforming, use of the land and the appraisal | Yes, if the mortgage is secured by a one- to four-unit property or a unit in a PUD project. |

| Property Type | Loan Eligible for Purchase or Securitization by Fannie Mae? |
|---|---|
| analysis reflects any adverse effect that the non-conforming use has on the value and marketability of the property. | |
| A property where the improvements from a project that represents a legal, but non-conforming, use of the land only can be rebuilt to current density in the event of partial or full destruction. | Yes, Fannie Mae will purchase or securitize a condo unit mortgage or co-op share loan, provided the mortgage file includes either a copy of the applicable zoning regulations or a letter from the local zoning authority that authorizes reconstruction to current density. |
| A one- or two-unit property that includes an illegal additional unit or accessory apartment (sometimes referred to as a mother-in-law, mother-daughter, or granny unit). | Yes, provided that:<br>• The illegal use conforms to the subject neighborhood and to the market.<br>• The property is appraised based upon its current use.<br>• The borrower qualifies for the mortgage without considering any rental income from the illegal unit.<br>• The appraisal must report that the improvements represent an illegal use.<br>• The appraisal report must demonstrate that the improvements are typical for the market through an analysis of at least three comparable properties that have the same illegal use.<br>• The lender ensures that the existence of the illegal additional unit will not jeopardize any future hazard insurance claim that might need to be filed for the property. |
| A three- to four-unit property that includes an illegal accessory apartment. | No. |

race, color, religion, sex, age, marital status, handicap, familial status or national origin of any person, or the age or racial composition of the neighborhood. (See Section 44.6(a) for unacceptable appraisal practices.)

**(d) Site section**

**1. Property characteristics**

The "Site" section of the appraisal report must accurately describe the physical characteristics of the site, site improvements, site view and available utilities, and must fully analyze any locational factors affecting the site.

- **Zoning**

  The appraisal report must accurately state:

  - The zoning classification
  - A description of the zoning classification
  - Whether the use of the subject property represents a legal, legal non-conforming or illegal use, or if there is no zoning

  The use of the Mortgaged Premises must conform to applicable zoning and use restrictions. Freddie Mac may, however, purchase a Mortgage secured by property that does not conform to applicable zoning and use restrictions, if the property is a legal non-conforming use (commonly referred to as grandfathered use). Units in attached Condominium Projects must be legal conforming.

  Any adverse effect of non-conforming use must be reflected in the opinion of market value and must also be addressed in the comments section of the appraisal report form.

- Highest and best use

  The Mortgaged Premises must represent the highest and best use of the property as improved (or as proposed per plans and specifications).

- **Utilities**

  The utilities serving the subject property must meet community standards. In addition, the comparable sales should have utilities similar to the subject property. When differences in utilities exist between the subject property and the comparable sales, any adjustments or lack of adjustments made to the comparable sales for significant differences must be explained in the comments area or on an attached addendum. In addition, the appraisal must evaluate the effect these differences have on the subject property's value or marketability.

- **Streets**

  The subject property must have legally appropriate ingress and egress. The streets serving the subject property must be maintained in a manner that generally meets community standards. In addition, the comparable sales should have street maintenance similar to the subject property. When differences exist between the ownership or maintenance of the subject property's streets and the comparable sale's streets, adjustments or lack of adjustments made to the comparable sales for the differences must be explained in the comments area or on an attached addendum. In addition, the appraisal must evaluate the effect these differences have on the subject property's value or marketability.

# Uniform Residential Appraisal Report

File #

The purpose of this summary appraisal report is to provide the lender/client with an accurate, and adequately supported, opinion of the market value of the subject property.

**SUBJECT**

| | | | |
|---|---|---|---|
| Property Address | City | State | Zip Code |
| Borrower | Owner of Public Record | County | |
| Legal Description | | | |
| Assessor's Parcel # | Tax Year | R.E. Taxes $ | |
| Neighborhood Name | Map Reference | Census Tract | |
| Occupant ☐ Owner ☐ Tenant ☐ Vacant | Special Assessments $ | ☐ PUD | HOA $ ☐ per year ☐ per month |
| Property Rights Appraised ☐ Fee Simple ☐ Leasehold ☐ Other (describe) | | | |
| Assignment Type ☐ Purchase Transaction ☐ Refinance Transaction ☐ Other (describe) | | | |
| Lender/Client | Address | | |

Is the subject property currently offered for sale or has it been offered for sale in the twelve months prior to the effective date of this appraisal? ☐ Yes ☐ No

Report data source(s) used, offering price(s), and date(s).

**CONTRACT**

I ☐ did ☐ did not analyze the contract for sale for the subject purchase transaction. Explain the results of the analysis of the contract for sale or why the analysis was not performed.

Contract Price $ | Date of Contract | Is the property seller the owner of public record? ☐ Yes ☐ No | Data Source(s)

Is there any financial assistance (loan charges, sale concessions, gift or downpayment assistance, etc.) to be paid by any party on behalf of the borrower? ☐ Yes ☐ No
If Yes, report the total dollar amount and describe the items to be paid.

**NEIGHBORHOOD**

Note: Race and the racial composition of the neighborhood are not appraisal factors.

| Neighborhood Characteristics | | | One-Unit Housing Trends | | | | One-Unit Housing | | Present Land Use % | |
|---|---|---|---|---|---|---|---|---|---|---|
| Location | ☐ Urban | ☐ Suburban | ☐ Rural | Property Values | ☐ Increasing | ☐ Stable | ☐ Declining | PRICE | AGE | One-Unit | % |
| Built-Up | ☐ Over 75% | ☐ 25–75% | ☐ Under 25% | Demand/Supply | ☐ Shortage | ☐ In Balance | ☐ Over Supply | $ (000) | (yrs) | 2-4 Unit | % |
| Growth | ☐ Rapid | ☐ Stable | ☐ Slow | Marketing Time | ☐ Under 3 mths | ☐ 3–6 mths | ☐ Over 6 mths | Low | | Multi-Family | % |
| Neighborhood Boundaries | | | | | | | | High | | Commercial | % |
| | | | | | | | | Pred. | | Other | % |

Neighborhood Description

Market Conditions (including support for the above conclusions)

**SITE**

| | | | |
|---|---|---|---|
| Dimensions | Area | Shape | View |
| Specific Zoning Classification | Zoning Description | | |

Zoning Compliance ☐ Legal ☐ Legal Nonconforming (Grandfathered Use) ☐ No Zoning ☐ Illegal (describe)

Is the highest and best use of the subject property as improved (or as proposed per plans and specifications) the present use? ☐ Yes ☐ No If No, describe

| Utilities | Public | Other (describe) | | Public | Other (describe) | Off-site Improvements—Type | Public | Private |
|---|---|---|---|---|---|---|---|---|
| Electricity | ☐ | ☐ | Water | ☐ | ☐ | Street | ☐ | ☐ |
| Gas | ☐ | ☐ | Sanitary Sewer | ☐ | ☐ | Alley | ☐ | ☐ |

FEMA Special Flood Hazard Area ☐ Yes ☐ No | FEMA Flood Zone | FEMA Map # | FEMA Map Date

Are the utilities and off-site improvements typical for the market area? ☐ Yes ☐ No If No, describe

Are there any adverse site conditions or external factors (easements, encroachments, environmental conditions, land uses, etc.)? ☐ Yes ☐ No If Yes, describe

**IMPROVEMENTS**

| General Description | | Foundation | | Exterior Description materials/condition | | Interior materials/condition | |
|---|---|---|---|---|---|---|---|
| Units ☐ One ☐ One with Accessory Unit | | ☐ Concrete Slab ☐ Crawl Space | | Foundation Walls | | Floors | |
| # of Stories | | ☐ Full Basement ☐ Partial Basement | | Exterior Walls | | Walls | |
| Type ☐ Det. ☐ Att. ☐ S-Det./End Unit | | Basement Area | sq. ft. | Roof Surface | | Trim/Finish | |
| ☐ Existing ☐ Proposed ☐ Under Const. | | Basement Finish | % | Gutters & Downspouts | | Bath Floor | |
| Design (Style) | | ☐ Outside Entry/Exit ☐ Sump Pump | | Window Type | | Bath Wainscot | |
| Year Built | | Evidence of ☐ Infestation | | Storm Sash/Insulated | | Car Storage ☐ None | |
| Effective Age (Yrs) | | ☐ Dampness ☐ Settlement | | Screens | | ☐ Driveway # of Cars | |
| Attic | ☐ None | Heating ☐ FWA ☐ HWBB ☐ Radiant | | Amenities | ☐ Woodstove(s) # | Driveway Surface | |
| ☐ Drop Stair | ☐ Stairs | ☐ Other | Fuel | ☐ Fireplace(s) # | ☐ Fence | ☐ Garage # of Cars | |
| ☐ Floor | ☐ Scuttle | Cooling ☐ Central Air Conditioning | | ☐ Patio/Deck | ☐ Porch | ☐ Carport # of Cars | |
| ☐ Finished | ☐ Heated | ☐ Individual | ☐ Other | ☐ Pool | ☐ Other | ☐ Att. ☐ Det. | ☐ Built-in |

Appliances ☐ Refrigerator ☐ Range/Oven ☐ Dishwasher ☐ Disposal ☐ Microwave ☐ Washer/Dryer ☐ Other (describe)

Finished area above grade contains: Rooms | Bedrooms | Bath(s) | Square Feet of Gross Living Area Above Grade

Additional features (special energy efficient items, etc.)

Describe the condition of the property (including needed repairs, deterioration, renovations, remodeling, etc.).

Are there any physical deficiencies or adverse conditions that affect the livability, soundness, or structural integrity of the property? ☐ Yes ☐ No If Yes, describe

Does the property generally conform to the neighborhood (functional utility, style, condition, use, construction, etc.)? ☐ Yes ☐ No If No, describe

# Uniform Residential Appraisal Report

File #

There are comparable properties currently offered for sale in the subject neighborhood ranging in price from $ to $

There are comparable sales in the subject neighborhood within the past twelve months ranging in sale price from $ to $

SALES COMPARISON APPROACH

| FEATURE | SUBJECT | COMPARABLE SALE # 1 | | COMPARABLE SALE # 2 | | COMPARABLE SALE # 3 | |
|---|---|---|---|---|---|---|---|
| Address | | | | | | | |
| Proximity to Subject | | | | | | | |
| Sale Price | $ | | $ | | $ | | $ |
| Sale Price/Gross Liv. Area | $ sq. ft. | $ sq. ft. | | $ sq. ft. | | $ sq. ft. | |
| Data Source(s) | | | | | | | |
| Verification Source(s) | | | | | | | |
| VALUE ADJUSTMENTS | DESCRIPTION | DESCRIPTION | +(-) $ Adjustment | DESCRIPTION | +(-) $ Adjustment | DESCRIPTION | +(-) $ Adjustment |
| Sale or Financing Concessions | | | | | | | |
| Date of Sale/Time | | | | | | | |
| Location | | | | | | | |
| Leasehold/Fee Simple | | | | | | | |
| Site | | | | | | | |
| View | | | | | | | |
| Design (Style) | | | | | | | |
| Quality of Construction | | | | | | | |
| Actual Age | | | | | | | |
| Condition | | | | | | | |
| Above Grade Room Count | Total / Bdrms. / Baths | Total / Bdrms. / Baths | | Total / Bdrms. / Baths | | Total / Bdrms. / Baths | |
| Gross Living Area | sq. ft. | sq. ft. | | sq. ft. | | sq. ft. | |
| Basement & Finished Rooms Below Grade | | | | | | | |
| Functional Utility | | | | | | | |
| Heating/Cooling | | | | | | | |
| Energy Efficient Items | | | | | | | |
| Garage/Carport | | | | | | | |
| Porch/Patio/Deck | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| Net Adjustment (Total) | | ☐ + ☐ - | $ | ☐ + ☐ - | $ | ☐ + ☐ - | $ |
| Adjusted Sale Price of Comparables | | Net Adj. % Gross Adj. % | $ | Net Adj. % Gross Adj. % | $ | Net Adj. % Gross Adj. % | $ |

I ☐ did ☐ did not research the sale or transfer history of the subject property and comparable sales. If not, explain

My research ☐ did ☐ did not reveal any prior sales or transfers of the subject property for the three years prior to the effective date of this appraisal.

Data source(s)

My research ☐ did ☐ did not reveal any prior sales or transfers of the comparable sales for the year prior to the date of sale of the comparable sale.

Data source(s)

Report the results of the research and analysis of the prior sale or transfer history of the subject property and comparable sales (report additional prior sales on page 3).

| ITEM | SUBJECT | COMPARABLE SALE # 1 | COMPARABLE SALE # 2 | COMPARABLE SALE # 3 |
|---|---|---|---|---|
| Date of Prior Sale/Transfer | | | | |
| Price of Prior Sale/Transfer | | | | |
| Data Source(s) | | | | |
| Effective Date of Data Source(s) | | | | |

Analysis of prior sale or transfer history of the subject property and comparable sales

Summary of Sales Comparison Approach

Indicated Value by Sales Comparison Approach $

RECONCILIATION

Indicated Value by: Sales Comparison Approach $ Cost Approach (if developed) $ Income Approach (if developed) $

This appraisal is made ☐ "as is", ☐ subject to completion per plans and specifications on the basis of a hypothetical condition that the improvements have been completed, ☐ subject to the following repairs or alterations on the basis of a hypothetical condition that the repairs or alterations have been completed, or ☐ subject to the following required inspection based on the extraordinary assumption that the condition or deficiency does not require alteration or repair:

Based on a complete visual inspection of the interior and exterior areas of the subject property, defined scope of work, statement of assumptions and limiting conditions, and appraiser's certification, my (our) opinion of the market value, as defined, of the real property that is the subject of this report is $ , as of , which is the date of inspection and the effective date of this appraisal.

# Uniform Residential Appraisal Report

File #

## ADDITIONAL COMMENTS

## COST APPROACH

COST APPROACH TO VALUE (not required by Fannie Mae)

Provide adequate information for the lender/client to replicate the below cost figures and calculations.

Support for the opinion of site value (summary of comparable land sales or other methods for estimating site value)

| | |
|---|---|
| ESTIMATED ☐ REPRODUCTION OR ☐ REPLACEMENT COST NEW | OPINION OF SITE VALUE ..... = $ |
| Source of cost data | Dwelling Sq. Ft. @ $ ..... =$ |
| Quality rating from cost service Effective date of cost data | Sq. Ft. @ $ ..... =$ |
| Comments on Cost Approach (gross living area calculations, depreciation, etc.) | |
| | Garage/Carport Sq. Ft. @ $ ..... =$ |
| | Total Estimate of Cost-New ..... = $ |
| | Less Physical / Functional / External |
| | Depreciation =$( ) |
| | Depreciated Cost of Improvements ..... =$ |
| | "As-is" Value of Site Improvements ..... =$ |
| Estimated Remaining Economic Life (HUD and VA only) Years | Indicated Value By Cost Approach ..... =$ |

## INCOME APPROACH

INCOME APPROACH TO VALUE (not required by Fannie Mae)

Estimated Monthly Market Rent $ X Gross Rent Multiplier = $ Indicated Value by Income Approach

Summary of Income Approach (including support for market rent and GRM)

## PUD INFORMATION

PROJECT INFORMATION FOR PUDs (if applicable)

Is the developer/builder in control of the Homeowners' Association (HOA)? ☐ Yes ☐ No Unit type(s) ☐ Detached ☐ Attached

Provide the following information for PUDs ONLY if the developer/builder is in control of the HOA and the subject property is an attached dwelling unit.

Legal name of project

Total number of phases Total number of units Total number of units sold

Total number of units rented Total number of units for sale Data source(s)

Was the project created by the conversion of an existing building(s) into a PUD? ☐ Yes ☐ No If Yes, date of conversion

Does the project contain any multi-dwelling units? ☐ Yes ☐ No Data source(s)

Are the units, common elements, and recreation facilities complete? ☐ Yes ☐ No If No, describe the status of completion.

Are the common elements leased to or by the Homeowners' Association? ☐ Yes ☐ No If Yes, describe the rental terms and options.

Describe common elements and recreational facilities

This report form is designed to report an appraisal of a one-unit property or a one-unit property with an accessory unit; including a unit in a planned unit development (PUD). This report form is not designed to report an appraisal of a manufactured home or a unit in a condominium or cooperative project.

This appraisal report is subject to the following scope of work, intended use, intended user, definition of market value, statement of assumptions and limiting conditions, and certifications. Modifications, additions, or deletions to the intended use, intended user, definition of market value, or assumptions and limiting conditions are not permitted. The appraiser may expand the scope of work to include any additional research or analysis necessary based on the complexity of this appraisal assignment. Modifications or deletions to the certifications are also not permitted. However, additional certifications that do not constitute material alterations to this appraisal report, such as those required by law or those related to the appraiser's continuing education or membership in an appraisal organization, are permitted.

**SCOPE OF WORK:** The scope of work for this appraisal is defined by the complexity of this appraisal assignment and the reporting requirements of this appraisal report form, including the following definition of market value, statement of assumptions and limiting conditions, and certifications. The appraiser must, at a minimum: (1) perform a complete visual inspection of the interior and exterior areas of the subject property, (2) inspect the neighborhood, (3) inspect each of the comparable sales from at least the street, (4) research, verify, and analyze data from reliable public and/or private sources, and (5) report his or her analysis, opinions, and conclusions in this appraisal report.

**INTENDED USE:** The intended use of this appraisal report is for the lender/client to evaluate the property that is the subject of this appraisal for a mortgage finance transaction.

**INTENDED USER:** The intended user of this appraisal report is the lender/client.

**DEFINITION OF MARKET VALUE:** The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he or she considers his or her own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions* granted by anyone associated with the sale.

*Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs which are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institutional lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgment.

**STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS:** The appraiser's certification in this report is subject to the following assumptions and limiting conditions:

1. The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it, except for information that he or she became aware of during the research involved in performing this appraisal. The appraiser assumes that the title is good and marketable and will not render any opinions about the title.

2. The appraiser has provided a sketch in this appraisal report to show the approximate dimensions of the improvements. The sketch is included only to assist the reader in visualizing the property and understanding the appraiser's determination of its size.

3. The appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in this appraisal report whether any portion of the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.

4. The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand, or as otherwise required by law.

5. The appraiser has noted in this appraisal report any adverse conditions (such as needed repairs, deterioration, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property or that he or she became aware of during the research involved in performing this appraisal. Unless otherwise stated in this appraisal report, the appraiser has no knowledge of any hidden or unapparent physical deficiencies or adverse conditions of the property (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) that would make the property less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, this appraisal report must not be considered as an environmental assessment of the property.

6. The appraiser has based his or her appraisal report and valuation conclusion for an appraisal that is subject to satisfactory completion, repairs, or alterations on the assumption that the completion, repairs, or alterations of the subject property will be performed in a professional manner.

**APPRAISER'S CERTIFICATION:** The Appraiser certifies and agrees that:

1. I have, at a minimum, developed and reported this appraisal in accordance with the scope of work requirements stated in this appraisal report.

2. I performed a complete visual inspection of the interior and exterior areas of the subject property. I reported the condition of the improvements in factual, specific terms. I identified and reported the physical deficiencies that could affect the livability, soundness, or structural integrity of the property.

3. I performed this appraisal in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.

4. I developed my opinion of the market value of the real property that is the subject of this report based on the sales comparison approach to value. I have adequate comparable market data to develop a reliable sales comparison approach for this appraisal assignment. I further certify that I considered the cost and income approaches to value but did not develop them, unless otherwise indicated in this report.

5. I researched, verified, analyzed, and reported on any current agreement for sale for the subject property, any offering for sale of the subject property in the twelve months prior to the effective date of this appraisal, and the prior sales of the subject property for a minimum of three years prior to the effective date of this appraisal, unless otherwise indicated in this report.

6. I researched, verified, analyzed, and reported on the prior sales of the comparable sales for a minimum of one year prior to the date of sale of the comparable sale, unless otherwise indicated in this report.

7. I selected and used comparable sales that are locationally, physically, and functionally the most similar to the subject property.

8. I have not used comparable sales that were the result of combining a land sale with the contract purchase price of a home that has been built or will be built on the land.

9. I have reported adjustments to the comparable sales that reflect the market's reaction to the differences between the subject property and the comparable sales.

10. I verified, from a disinterested source, all information in this report that was provided by parties who have a financial interest in the sale or financing of the subject property.

11. I have knowledge and experience in appraising this type of property in this market area.

12. I am aware of, and have access to, the necessary and appropriate public and private data sources, such as multiple listing services, tax assessment records, public land records and other such data sources for the area in which the property is located.

13. I obtained the information, estimates, and opinions furnished by other parties and expressed in this appraisal report from reliable sources that I believe to be true and correct.

14. I have taken into consideration the factors that have an impact on value with respect to the subject neighborhood, subject property, and the proximity of the subject property to adverse influences in the development of my opinion of market value. I have noted in this appraisal report any adverse conditions (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) observed during the inspection of the subject property or that I became aware of during the research involved in performing this appraisal. I have considered these adverse conditions in my analysis of the property value, and have reported on the effect of the conditions on the value and marketability of the subject property.

15. I have not knowingly withheld any significant information from this appraisal report and, to the best of my knowledge, all statements and information in this appraisal report are true and correct.

16. I stated in this appraisal report my own personal, unbiased, and professional analysis, opinions, and conclusions, which are subject only to the assumptions and limiting conditions in this appraisal report.

17. I have no present or prospective interest in the property that is the subject of this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or opinion of market value in this appraisal report on the race, color, religion, sex, age, marital status, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property or on any other basis prohibited by law.

18. My employment and/or compensation for performing this appraisal or any future or anticipated appraisals was not conditioned on any agreement or understanding, written or otherwise, that I would report (or present analysis supporting) a predetermined specific value, a predetermined minimum value, a range or direction in value, a value that favors the cause of any party, or the attainment of a specific result or occurrence of a specific subsequent event (such as approval of a pending mortgage loan application).

19. I personally prepared all conclusions and opinions about the real estate that were set forth in this appraisal report. If I relied on significant real property appraisal assistance from any individual or individuals in the performance of this appraisal or the preparation of this appraisal report, I have named such individual(s) and disclosed the specific tasks performed in this appraisal report. I certify that any individual so named is qualified to perform the tasks. I have not authorized anyone to make a change to any item in this appraisal report; therefore, any change made to this appraisal is unauthorized and I will take no responsibility for it.

20. I identified the lender/client in this appraisal report who is the individual, organization, or agent for the organization that ordered and will receive this appraisal report.

21. The lender/client may disclose or distribute this appraisal report to: the borrower; another lender at the request of the borrower; the mortgagee or its successors and assigns; mortgage insurers; government sponsored enterprises; other secondary market participants; data collection or reporting services; professional appraisal organizations; any department, agency, or instrumentality of the United States; and any state, the District of Columbia, or other jurisdictions; without having to obtain the appraiser's or supervisory appraiser's (if applicable) consent. Such consent must be obtained before this appraisal report may be disclosed or distributed to any other party (including, but not limited to, the public through advertising, public relations, news, sales, or other media).

22. I am aware that any disclosure or distribution of this appraisal report by me or the lender/client may be subject to certain laws and regulations. Further, I am also subject to the provisions of the Uniform Standards of Professional Appraisal Practice that pertain to disclosure or distribution by me.

23. The borrower, another lender at the request of the borrower, the mortgagee or its successors and assigns, mortgage insurers, government sponsored enterprises, and other secondary market participants may rely on this appraisal report as part of any mortgage finance transaction that involves any one or more of these parties.

24. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

25. Any intentional or negligent misrepresentation(s) contained in this appraisal report may result in civil liability and/or criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Section 1001, et seq., or similar state laws.

**SUPERVISORY APPRAISER'S CERTIFICATION:** The Supervisory Appraiser certifies and agrees that:

1. I directly supervised the appraiser for this appraisal assignment, have read the appraisal report, and agree with the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.

2. I accept full responsibility for the contents of this appraisal report including, but not limited to, the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.

3. The appraiser identified in this appraisal report is either a sub-contractor or an employee of the supervisory appraiser (or the appraisal firm), is qualified to perform this appraisal, and is acceptable to perform this appraisal under the applicable state law.

4. This appraisal report complies with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.

5. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

**APPRAISER**

Signature _____
Name _____
Company Name _____
Company Address _____
_____
Telephone Number _____
Email Address _____
Date of Signature and Report _____
Effective Date of Appraisal _____
State Certification # _____
or State License # _____
or Other (describe) _____ State # _____
State _____
Expiration Date of Certification or License _____

ADDRESS OF PROPERTY APPRAISED

_____
_____

APPRAISED VALUE OF SUBJECT PROPERTY $ _____

LENDER/CLIENT

Name _____
Company Name _____
Company Address _____
_____
Email Address _____

**SUPERVISORY APPRAISER (ONLY IF REQUIRED)**

Signature _____
Name _____
Company Name _____
Company Address _____
_____
Telephone Number _____
Email Address _____
Date of Signature _____
State Certification # _____
or State License # _____
State _____
Expiration Date of Certification or License _____

SUBJECT PROPERTY

☐ Did not inspect subject property
☐ Did inspect exterior of subject property from street
Date of Inspection _____
☐ Did inspect interior and exterior of subject property
Date of Inspection _____

COMPARABLE SALES

☐ Did not inspect exterior of comparable sales from street
☐ Did inspect exterior of comparable sales from street
Date of Inspection _____

## APPRAISER AND LENDER COMMENTS:

### *Appraisers:*

1. **A-1 Appraisals:**

From: Joel Sarver [mailto:joelsarver@qwestoffice.net]
Sent: Wednesday, January 11, 2012 4:19 PM
To: Nicole Floyd
Subject: legal nonconforming zoning

Dear Nicole, per your request about financibility of legal nonconforming homes:
A large percentage of homes in Kitsap county are on legal nonconforming sites (created prior to current zoning requirements).
I have been appraising in Kitsap county since 1986, and in my experience I do not recall a financing transaction that was denied by lenders simply because of nonconforming status.
Even bare land sites are generally buildable if created prior to current zoning and current setbacks are met.
If someone has a concern about financing of legal nonconforming sites, I would recommend that they talk to a lender about their concerns.

Joel Sarver A-1 Appraisals Inc.

2. **Cross Sound Appraisal:**

From: Michelle Wilkowski [mailto:mwilkowski@appraiserinc.com]
Sent: Wednesday, February 22, 2012 2:03 PM
To: Nicole Floyd
Subject: Re: FW: Nonconforming Question

The term non conforming has not had an impact on home loans in my experience. As far as I know the term non conforming does not have an impact as long as home can be 100% rebuilt in case of fire or other natural disaster. I have never seen a home loan denied because the home was non conforming.

Most of the time if a home is non conforming the client wants the appraiser explain if the home can be rebuilt. If the home can be rebuilt we usually don't see anymore requests for clarification or documentation on whether the structure is legal. Please let me know if I can help you further.

Michelle Wilkowski
NW Regional Appraisal Services

3. **Reems Appraisal Service:**

From: Kyle Morkert [mailto:kyle@reemsappraisal.com]
Sent: Friday, January 20, 2012 12:29 PM
To: Nicole Floyd
Subject: RE: Nonconforming Question

Hello Nicole,
In regard to your "nonconforming" question, here are my thoughts:

Anytime the term "nonconforming" is used in an appraisal, it will require detailed explanation. The lender/underwriter will want assurance that the current use of a property is of a legal nature, and that this use will continue to be of a legal nature in the foreseeable future. The lender will also require assurance that the improvements could be rebuilt if destroyed by fire or other causes. The term "nonconforming" is a red flag issue, but in my experience can be remedied through detailed explanation and/or a letter from the appropriate municipality indicating that the current use is and will continue to be of a legal nature regardless of circumstance.

Highest and Best Use analysis is the foundation of every appraisal assignment, and is defined as follows:
The reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are:
Legal permissibility, physical possibility, financial feasibility, and maximum profitability. In regard to residential appraisals, legal permissibility is the main criteria when faced with nonconforming issues.

In my experience, I have seen loans denied over nonconforming issues. Example: Established single family home located in an area recently converted from residential to commercial zoning. Under commercial zoning (in this example), new construction of single family homes is no longer allowed, but the existing residential structure and use are "grandfathered". In this case the subject residence, which would be collateral for a residential mortgage, could not be rebuilt in the event of being destroyed. Banks would typically not issue a residential mortgage on such a property since there is no guarantee that the collateral would remain intact.

I would also suggest contacting an experienced mortgage professional in regard to your question. I would expect that they would have additional/valuable insight into this matter.

Please let me know if you have any additional questions.

Kyle

## *Lenders:*

1. **Eagle Home Mortgage**:

From: Carolyn Kulp [mailto:CKulp@eaglehomemortgage.com]
Sent: Wednesday, March 07, 2012 11:25 AM
To: Nicole Floyd
Cc: Diane Dahl
Subject: RE: Mortgages

Hi Nicole,

Per our conversation…95% of all conventional loans are backed by Fannie Mae or Freddie Mac. This is why all lenders follow their guidelines, and sometimes even have an overlay of stricter guidelines of their own, depending on the loan. The only loans that do NOT end up being Fannie or Freddie are FHA, VA, USDA, Jumbo, other non-conforming products (ARM's etc), and portfolio (held on to by the mortgage company). If a loan is closed and found after the fact to not fit in Fannie or Freddie guidelines, it would need to "find a new investor" who would accept whatever it was that wasn't "within the guidelines", this is most of the 5%. Lenders do their best to make sure every loan is ok for Fannie or Freddie, but occasionally one isn't. Also, to clarify, FHA, VA, and USDA guidelines are VERY similar to Fannie/Freddie, but generally have stricter guidelines in most areas, especially the appraisal and property requirements. (Those loans are about 75% of all loans these days, 25% being conventional, in our office that is.)

It is imperative for properties to fit in these guidelines in order to find funding for the majority of buyers.

Let me know if I can be of further assistance!

Thank you,

Carolyn Kulp
Eagle Home Mortgage
Loan Officer
Production Assistant for Diane Dahl
253-851-7500 office
360-621-5581 cell
253-851-1072 fax

**2. Republic Mortgage Home Loans:**

From: Lampert, Jerry
Sent: Wednesday, January 11, 2012 5:13 PM
To: 'nicole.floyd@ci.bremerton.wa'
Subject: Legal Non-Conforming (Grandfathered USE) property mortgage funding

Hi Nicole, thank you for your questions tonight. As long as we can confirm with the city that the home can be rebuilt we can fund on properties appraised as Legal Non-Conforming (Grandfathered USE). The appraiser can also confirm that info and note it in the appraisal as well. For Mortgage Banking world we see the term Non-Conforming as a Conventional Loan above the Fannie Mae/Freddie Mac county Loan Limit of $417,000. Go here to read more. I hope I have helped...

All the best,
Jerry

**3. Cherry Creek Mortgage**:

From: Roberts, Holly [mailto:hroberts@ccmclending.com]
Sent: Saturday, January 14, 2012 6:46 AM
To: Nicole Floyd
Cc: Green, Brett
Subject: Legal Non-Conforming Uses and Mortgage Lending

Nicole,

Attached are current 1st quarter 2012 guidelines for Fannie Mae and Freddie Mac regarding "legal Non-Conforming" properties.

In my experience, the code being applied must also state that if the property were destroyed or damaged, it would have to be allowed to be rebuilt.

This information is not to be considered legal advice, nor relied upon to make decisions, it's merely intended to be utilized for informational purposes.

If I can be of any additional assistance, please let me know.

Thank you.

Holly S Roberts
Executive Assistant
Sr. Mortgage Banker
MLO-108259
Cherry Creek Mortgage Company
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Silverdale, WA 98383
(360) 620-4634 - Cell
(360) 698-7400 - Office
(360) 698-7413 – Fax

# NONCONFORMING LOAN ARTICLES

**1) Loans 101: www.loans-101.com/loans-limits/washington-convential-loans.html**
What are Conventional Loans and Conforming Loans?
By definition, a Conventional Loan is any mortgage that is not guaranteed or insured by the federal government. A conventional loan is generally referring to a mortgage loan that follows the guidelines of government sponsored enterprises (GSE's) like Fannie Mae or Freddie Mac. Conventional loans may be either "conforming" and "non-conforming". Conforming loans follow the terms and conditions set by Fannie Mae and Freddie Mac. Nonconforming loans don't meet Fannie Mae or Freddie Mac guidelines, but they are also considered conventional.

What factors determine if I am eligible for a Conventional Conforming Loan in Washington?
To be eligible for a Conforming Loan in Washington, your monthly housing costs (mortgage principal and interest, property taxes, and insurance) must meet a specified percentage of your gross monthly income. Your credit background will be considered. At least a 620 FICO credit score is generally required to obtain a conventional conforming loan approval. You must also have enough income to pay your housing costs plus all additional monthly debt.

**2) Carteret Mortgage: www.nva-morgage.com**
The simple definition of a "conforming loan" is: A loan you can get approved for at most any financial institution have good credit with no late payments on any accounts within 12 months, at least two years' job stability at the same job, have a substantial down payment, money for closing costs, at least two months house payments extra after all costs, and your income to debt ratio is under 38%. Rates for these loans are very close to what you read in the newspaper.

The simple definition of a "non-conforming loan" is: You have a job and can make the payments. Your credit is used only to determine your interest rate and the loan amount to value of the home ratio. This ratio is referred to as your "LTV" or "Loan To Value". There are many lenders who will lend to borrowers who are in foreclosure or who are currently in a bankruptcy. Borrowers who are in these situations often have the worst possible credit.

**3) Mortgage-X**
http://Mortgage-x.com/library/loans.htm

Conventional loans may be conforming and non-conforming. Conforming loans have terms and conditions that follow the guidelines set forth by Fannie Mae and Freddie Mac. These two stockholder-owned corporations purchase mortgage loans complying with the guidelines from mortgage lending institutions, packages the mortgages into securities and sell the securities to investors. By doing so, Fannie Mae and Freddie Mac, like Ginnie Mae, provide a continuous flow of affordable funds for home financing that results in the availability of mortgage credit for Americans.

Fannie Mae and Freddie Mac guidelines establish the maximum loan amount, borrower credit and income requirements, down payment, and suitable properties. Fannie Mae and Freddie Mac announces new loan limits every year.

The national conforming loan limit for mortgages that finance single-family one-unit properties increased from $33,000 in the early 1970s to $417,000 for 2006-2008, with limits 50 percent higher for four statutorily-designated high cost areas: Alaska, Hawaii, Guam, and the U.S. Virgin Islands. Since early 2008, a series of legislative acts have temporarily increased the one-unit limit to up to $729,750 in certain high-cost areas in the contiguous United States. Permanent limits, which apply to the Enterprises' acquisitions of certain mortgages originated prior to July 1, 2007, are set under the terms of the Housing and Economic Recovery Act of 2008 (HERA).

The 2011 conforming loan limits for first mortgages remain at the limits set in 2006, 2007, 2008, 2009 and 2010:

| | |
|---|---|
| One-family: | $417,000 |
| Two-family: | $533,850 |
| Three-family: | $645,300 |
| Four-family: | $801,950 |

**4) Financing Your Million Dollar Seattle Home: Jumbo (Non-Conforming) Mortgages**
www.morgageporter.com/reportingfromseattle.jumbononconforming/

Jumbo mortgages have been slowly returning since the "mortgage meltdown" and the pricing is becoming more competitive as lenders re-enter the non-conforming markets. Loan amounts that are higher than conforming loan limits have different underwriting guidelines than conforming, typically requiring additional reserves (assets) from the borrower, lower debt-to-income ratios and higher credit scores. It's not unusual to have underwriting require a second appraisal after reviewing the first one with a fine tooth comb. Because these loans are not backed by Fannie or Freddie, they tend to be scrutinized more than mortgage with a conforming loan amount.

The higher the loan amount is, the more reserves the borrower is required to have. One lender I work with requires 6 months reserves for loan amounts of 1 million or less and 12 months reserves if the loan amount is over 1 million.

In the greater Seattle area (King, Snohomish and Pierce Counties), a jumbo loan currently is any residential mortgage with a loan amount higher than $567,500 (click here for a list of loan amounts by county). If you're eligible for a VA loan, jumbos are a different story. This post will focus on non-conforming jumbos.

Non-conforming loans have several factors that impact pricing including credit score, loan to value and loan amounts. Here's a comparison of rates using a 30 year fixed based on current pricing based on home valued at 1.3 million, purchase with credit scores of 740 or higher and taxes and insurance included in the mortgage payment:

Loan amount of $1,000,0000: 5.625% priced w/1 point (APR 5.767) NOTE: 20% down payment would not work with this scenario as most lenders require 25% down when loan amounts are over 1 million.

Loan amount based on 75% loan to value: $975,000: 5.500% priced w/1 point (APR 5.641).

Loan amount based on 60% loan to value: $780,000: 5.375% priced w/1 point (APR 5.522).

For reference, I'm quoting 5.00% for a 30 year fixed a high balance conforming ($567,500 - $417,001 loan amount) at an 80% loan to value (apr 5.147). If the loan to value is 60% or lower, the rate is reduced to 4.875% (apr 5.024).

Loan amounts from 1.5 - 2 million typically require a down payment of 30%.

NOTE: Adjustable rate mortgages are available and 30 year fixed with interest only payments (requires more equity and higher credit scores than fully amortized jumbos). I'm using a 30 year fixed amortized for comparison sake to illustrate the difference in rates based on various down payments. For your personal rate quote for homes located in Washington state, please contact me.

**5) Wikipedia: www.wikipedia.com**

A non-conforming mortgage is a term in the United States for a residential mortgage that does not conform to the loan purchasing guidelines set by the Federal National Mortgage Association /Federal Home Loan Mortgage Corporation (Fannie Mae and Freddie Mac). Mortgages which are non-conforming because they have a dollar amount over the purchasing limit set by FNMA/FHLMC are often called "jumbo" mortgages. Mortgages which are non-conforming because they do not meet FNMA/FHLMC underwriting guidelines (such as credit quality or loan-to-value ratio) are often called "subprime" mortgages. Non-conforming loans must remain in a lender's portfolio, or be sold to other companies who purchase non-conforming loans, or be securitized, with the securities being sold to investors seeking non-conforming mortgage-backed securities. Consequently, a premium is paid by those obtaining non-conforming mortgages, generally .25 or .5 points more than the same loan would cost if it were conforming. The loan amount is adjusted every few years depending upon the average sales price of homes in the U.S.