



# PLANNING COMMISSION

## AGENDA

April 22, 2014

CITY OF OAK HARBOR  
PLANNING COMMISSION  
REGULAR MEETING  
CITY HALL

AGENDA  
April 22, 2014  
7:30 P.M.

ROLL CALL:        FAKKEMA \_\_\_\_\_ WASINGER \_\_\_\_\_  
                          JENSEN \_\_\_\_\_ PETERSON \_\_\_\_\_  
                          FIKSE \_\_\_\_\_ FREEMAN \_\_\_\_\_  
                          SCHLECHT \_\_\_\_\_

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1. **Approval of Minutes – February 25, 2014**
2. **Public Comment** – Planning Commission will accept public comment for items not otherwise on the agenda for the first 15 minutes of the Planning Commission meeting.
3. **BECKETT LANDING SUBDIVISION– Public Hearing**  
“Beckett Landing” is a proposed subdivision on 4.90 acres located south of the terminus of NW Prow Street, north of the existing and proposed Farm Place development, and west of the Paragon Place development and the Harbor Road. The applicant proposes 22 single-family detached lots, with associated street and utility improvements and native vegetation areas. The Planning Commission will conduct a public hearing and potentially make a recommendation to City Council.

**ITEM RESCHEDULED TO 5-27-14**

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4. **2014 COMPREHENSIVE PLAN AMENDMENT – SCENIC VIEWS – Public Meeting**  
Staff will resurrect the discussion related to Scenic Views within Oak Harbor. The last discussion related to this topic identified the scenic views that may warrant preservation. Staff will provide a refresher presentation to the Planning Commission.

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5. **MARITIME USES – Public Meeting**  
The City’s Comprehensive Plan was amended in 2012 to include Maritime Uses as a land use category. The lands adjacent to the Marina are now designated as Maritime. Staff will provide an overview of the land use designation and discuss a framework for creating zoning regulations for this land use category.

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6. **MEDICAL MARIJUANA – Public Meeting**  
A moratorium is presently in place prohibiting the establishment of medical marijuana collective gardens and marijuana dispensaries in Oak Harbor. Staff will present preliminary research to the Planning Commission that will begin the process of determining what permanent regulations should govern these uses.

# MINUTES

February 25, 2014

**PLANNING COMMISSION  
REGULAR MEETING  
CITY HALL – COUNCIL CHAMBERS  
February 25, 2014**

**ROLL CALL: Present:** Keith Fakkema, Sandi Peterson, David Fikse, Greg Wasinger, Kristi Jensen and Bruce Freeman

**Absent:** Ana Schlecht

**Staff Present:** Development Services Director, Steve Powers; Senior Planners, Cac Kamak and Ethan Spoo

Chairman Fakkema called the meeting to order at 7:30 p.m.

**PUBLIC COMMENT:**

No one came forth for comment.

**MINUTES: MR. FREEMAN MOVED, MR. FIKSE SECONDED, MOTION CARRIED TO APPROVE THE JANUARY 28, 2014 MINUTES AS PRESENTED.**

**ELECTRONIC MESSAGE CENTERS CODE UPDATE – Public Hearing**

Mr. Spoo introduced James Carpentier of the International Sign Association and the Northwest Sign Council. Mr. Carpentier was present to speak about the letter he provided to the City Council on November 6, 2013 regarding technical issues with the proposed electronic message centers (EMC) code.

Mr. Carpentier spoke about his experience assisting approximately 50 jurisdictions in crafting their electronic message center codes. Mr. Carpentier's suggestions for Oak Harbor were:

- Delete the white color-based restriction
  - Could be a 1st amendment issues related to content neutrality
  - Lanham Act/Trademark infringement issue
  - Recommended illumination standards addresses overly bright signs
- Utilize the industry standard for night time illumination of .3 footcandles vs. NITs
  - Much easier to enforce
- If Oak Harbor wants to allow animation then 2 second hold time is not needed
- If a hold time is desired then frame effects could be allowed that allows for animation (motion) at transition only
- Daytime limitations are not needed with automatic dimming – if desired he suggested 7,500 nits
- The transition between messages should be no greater than 1 second

Planning Commission questioned Mr. Carpentier about his suggestions asked him to expand on the 1<sup>st</sup> amendment issues and Lanham Act/Trademark infringement issue, daytime limitations, and transition between messages not greater than 1 second.

Mr. Spoo presented the staff report to the Planning Commission and displayed a presentation (Attachment 1). Mr. Spoo explained that the staff report presents a series of recommended

motions based on the November 6, 2013 letter from Mr. Carpentier to the City Council. Motions related to duration, animation, transition time, scrolling or moving text and brightness.

Mr. Fakkema opened the public hearing for public comment.

**Billie Cook** (Oak Harbor resident) stated that she attended the EMC demonstration said it was very good. She disagreed with not having a restriction on white backgrounds because a white background is too distracting. She asked that the restriction on white background be kept as well as the limitation on hours of operation.

Following Mr. Spoo's presentation the Planning Commission had a lengthy discussion mostly centered on the method for measuring and enforcing brightness standards. Mr. Fikse provided two hand-outs (Attachment 2). At the conclusion of their discussion the Planning Commission took the following actions.

### **DURATION**

**ACTION: MS. JENSEN MOVED, MR. PETERSON SECONDED A MOTION TO LEAVE THE DRAFT CODE LANGUAGE AS IS - "MESSAGES, TEXT, GRAPHICS, IMAGES, AND VIDEOS, MUST REMAIN ON-SCREEN FOR A MINIMUM OF TWO SECONDS."**

**VOTE: 4 IN FAVOR AND 1 OPPOSED (WASINGER)**

### **ANIMATION**

**ACTION: MS. PETERSON MOVED, JENSEN SECONDED A MOTION TO LEAVE THE DRAFT CODE LANGUAGE AS IS - "ANIMATION AND VIDEO CANNOT PORTRAY ACTION OR MOVEMENT AT SPEEDS FASTER THAN WHAT OCCURS IN REAL LIFE."**

**VOTE: 4 IN FAVOR AND 1 OPPOSED (FREEMAN)**

### **TRANSITION TIME**

**ACTION: MR. FIKSE MOVED, MR. WASINGER SECONDED DIRECT STAFF TO REVISE THE LANGUAGE IN SECTION 19.36.030 (5)(G)(VIII) TO DELETE "WHEN THE SIGN IS TRANSITIONING BETWEEN COLORS, GRAPHICS, IMAGES OR TEXT THE TRANSITION TIME MUST OCCUR WITHIN ONE SECOND AND NO LESS THAN .5 SECONDS."**

**VOTE: 4 IN FAVOR 1 OPPOSED (PETERSON)**

### **SCROLLING OR MOVING TEXT**

**ACTION: MS. JENSEN MOVED, MR. FREEMAN SECONDED A MOTION TO: LEAVE THE DRAFT CODE LANGUAGE AS IS - "SCROLLING OR MOVING TEXT IS PROHIBITED."**

**VOTE: UNANIMOUS**

## **BRIGHTNESS**

**ACTION: FIKSE MOVED, JENSEN SECONDED A MOTION TO: DIRECT STAFF TO REVISE THE LANGUAGE IN SECTION 19.36.030 (5)(G)(XII) SO THAT THE SECOND SENTENCE READS “DIGITAL SIGNS SHALL COME EQUIPPED WITH PHOTO CELL AUTOMATIC DIMMING TECHNOLOGY.”**

**VOTE: UNANIMOUS**

**ACTION: PETERSON MOVED FREEMAN SECONDED A MOTION TO: DIRECT STAFF TO REVISE THE BRIGHTNESS STANDARDS TO 90% BRIGHTNESS IN NITS DURING THE DAYTIME AND NO GREATER THAN 7% BRIGHTNESS IN NITS AT NIGHT WITH A MAXIMUM CAP OF 1000 NITS AT NIGHT.**

**VOTE: UNANIMOUS**

## **PUBLIC PARTICIPATION PLAN – Public Hearing**

Mr. Kamak noted that the agenda packet was missing his report which he handed out at the meeting (Attachment 3). Mr. Kamak reported that the Public Participation Plan (PPP) was presented to the Planning Commission in October 2013 and again at the January 28, 2014 meeting for discussion. The Planning Commission had no additions or recommendations so staff is asking the Planning Commission to forward a recommendation to the City Council to adopt the PPP. The PPP identifies procedures for providing “early and continuous public participation” in the amendment of the Comprehensive Plan and development regulations.

Mr. Fakkema opened the public hearing for public comment. Seeing none the public hearing was closed.

**ACTION: MS. PETERSON MOVED, MR. WASINGER SECONDED A MOTION TO FORWARD THE PUBLIC PARTICIPATION PLAN TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL. MOTION CARRIED.**

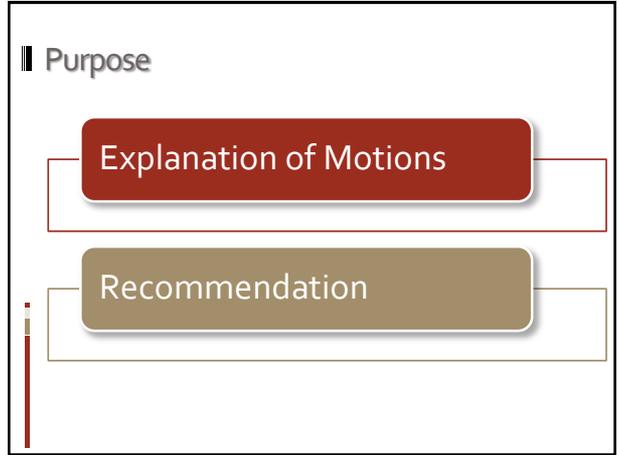
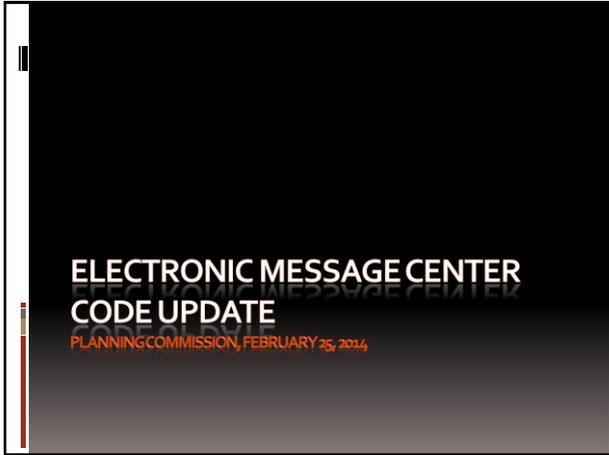
## **ANNUAL REPORT TO CITY COUNCIL – Public Meeting**

Mr. Powers reported that the City Council reviewed the annual report at the January 28, 2013 meeting and Ms. Schlecht volunteered to write a statement for Section 3 General Recommendations. Mr. Powers recommended that Planning Commission forward the report to the City Council for their information.

**ACTION: MR. FIKSE MOVED, MR. FREEMAN SECONDED A MOTION TO FORWARD THE ANNUAL REPORT TO THE CITY COUNCIL. MOTION CARRIED.**

**ADJOURN: 9:49 p.m.**

Minutes submitted by: Katherine Gifford



### Duration of Videos

- Draft Code: "messages, text, graphics, images, and *videos*, must remain on-screen for a minimum of two seconds."
- ISA: contradictory to have duration for a video
- Motion 1.A: leave draft language as is
- Motion 1.B: delete word "video"
- Motion 1.C: apply to "video segments"

A photograph of a digital sign on a street. The sign is blue and yellow with the text "Downtown Sidewalk Sales" and "Municipal". Above the sign is a blue "P" parking sign. The background shows a blue sky and a building.

### Speed of Animation and Video

- Draft Code: "Animation and video cannot portray action or movement at speeds faster than what occurs in real life."
- ISA: difficult to administer
- Motion 2.A: leave draft language as is
- Motion 2.B: direct staff to delete subject language

A photograph of a digital sign on a street. The sign is blue and yellow with the text "Downtown Sidewalk Sales" and "Municipal". A hand is holding a smartphone in front of the sign, displaying a video. The background shows a blue sky and a building.

### Transition Time

•Draft Code: "...the transition must occur within one second and no less than 0.5 seconds."

•ISA: should be discrete number...would be difficult to administer

•Motion 3.A: leave draft language as is

•Motion 3.B: direct staff to revise to be "one second or less."



### Scrolling or Moving Text

•Draft Code: "scrolling or moving text is prohibited."

•ISA: contradictory to allow animation, but prohibit moving text.

•Motion 4.A: leave draft language as is

•Motion 4.B: delete prohibition on scrolling or moving text.



### Brightness

•Draft Code: C3/C4/C5→1,500 nits night/13,000 nits day, C1/I/PIP/PBP/PF→ 1,000 nits night/8,000 nits day

•ISA: recommend 0.3 FC above ambient w/ autodim

•Motion 5.A: leave draft language as is

•Motion 5.B: revise language in accordance with ISA recommendation

•if nits chosen

•Motion 5.C: revise brightness measurement method...no measurement with sign turned off

### Recommendation

•Proceed by selecting motions reflecting Planning Commission preferences as regards issues raised by ISA.

Digital Sign Companies, Recommended Brightness Settings  
*All Companies Recommend Photo Cell Automatic Light Dimming Technology*

Daktronics

*Recommends the foot-candle approach used by the ISA*  
*Actual settings, 4-6% night time setting based on NITS.*

Watchfire

*Recommends a simple 10% night time setting based on NITS.*  
*No issues reported*  
*They don't recommend foot-candles*

YESCO

*Recommends a simple 5-10% night time setting based on NITS*  
*Recommends a simple 85-90% day time setting based on NITS*  
*They use % of NITS, and don't recommend foot-candles*

Recommendation  
Brightness Settings For Digital Signs

Motion 5.D.

*Recommend revising the brightness standards to rely on Photo Cell Automatic Light Dimming Technology, 85-90% during the day, and 5% (conservative) to 10% (liberal) at night, using a percentage of NITS, based on the technological specifications of sign.*

*See the table below.*

<u>Sign Brightness in NITS</u>	<u>10%</u>	<u>8%</u>	<u>7%</u>	<u>5%</u>
14,000	1,400	1,120	<b>980</b>	700
12,000	1,200	960	<b>840</b>	600
10,000	1,000	800	<b>700</b>	500
8,000	800	640	<b>560</b>	400

**City of Oak Harbor  
Planning Commission Report**

Date: February 25, 2014  
Subject: Public Participation Plan for the  
2016 Comprehensive Plan  
Update

**FROM:** Cac Kamak, AICP  
Senior Planner

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**PURPOSE**

This report presents the Public Participation Plan (PPP) for the 2016 Update to the Comprehensive Plan. Section 36.70A.140 of the Revised Code of Washington requires local governments to establish and broadly communicate to the public a Public Participation Plan (PPP) which identifies procedures providing for “early and continuous public participation” in the amendment of the Comprehensive Plan and development regulations implementing such plan.

**BACKGROUND**

The PPP was first introduced to the Planning Commission for review at its October 22, 2013 meeting. The PPP was discussed further at the January 23, 2014 Planning Commission meeting. Since early and continuous public participation is at the heart of all actions related to the Comprehensive Plan, having a PPP adopted early in the process provides an opportunity to the Planning Commission and the public to be aware of the ways to be involved in the 2016 Comprehensive Plan update process. Oak Harbor’s Municipal Code Chapter 18.15 also incorporates several requirements to keep the public informed on actions related to the Comprehensive Plan.

**DISCUSSION**

The Public Participation Plan (PPP) is attached to this memo for the Planning Commission’s review and recommendation. The PPP identifies the Planning Commission as the primary body to consider the amendments and hold hearings. Planning Commission meetings are not only an effective way to obtain public input but it is also an effective way to disseminate information to the public because the meetings are recorded and rebroadcasted on Channel 10 public access television. Planning Commission meetings are played an average of five times a week until the next meeting is recorded and ready for broadcast. The rebroadcasting of the Planning Commission meeting is an effective way to keep transparency in the decision making process.

A dedicated webpage under the City’s website has been created to provide access to all the information that is related to the 2016 update in one place. This webpage will have links to Planning Commission reports related to the update. A dedicated email address [2016update@oakharbor.org](mailto:2016update@oakharbor.org) has been created for easy public input and comments.

Other means of public input such as open houses, ad hoc committees, workshops, public displays, etc. have also been identified as outreach mechanisms. The decision to use these can be made based on the topic of discussion and the most effective way to gain public input on that specific topic.

**RECOMMENDATIONS**

The Planning Commission is requested to hold a public hearing on the Public Participation Plan and make a recommendation to the City Council.

2014 Comprehensive Plan

Amendment

Scenic Views

Public Hearing

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**CITY OF OAK HARBOR PLANNING COMMISSION**

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**TO:** PLANNING COMMISSION  
**FROM:** CAC KAMAK, SENIOR PLANNER  
**SUBJECT:** COMPREHENSIVE PLAN AMENDMENT – SCENIC VIEWS  
**DATE:** APRIL 22, 2014  
**CC:** STEVE POWERS, DEVELOPMENT SERVICES DIRECTOR

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**PURPOSE:**

The purpose of this memo is to provide a refresher on the Scenic View study initiated in 2012. The Planning Commission’s last discussion on this project was on April 23, 2013.

**BACKGROUND**

The City initiated a study on scenic views within Oak Harbor as part of the 2012 Comprehensive Plan Amendments Docket. The study was initiated with a public outreach effort that solicited photos from citizens on scenic views within Oak Harbor. A wide variety of photos were received from the public.

Prior to reviewing the numerous scenic views initially identified, the Planning Commission discussed a set of review criteria to use in evaluating the scenic views. The criteria were established based on various factors such as the viewpoints’ location on private or public property, the significance of a scenic landmark (Oak Harbor Bay, Mt. Baker etc.) and its visibility from public streets, parks and trails. The Planning Commission also weighted the criteria with scores since some factors warranted more importance than others.

Based on the public outreach and staff survey, a list of 27 views was compiled for the Planning Commission’s consideration. The views were discussed with the Planning Commission and each view was rated against the pre-established criteria. Attachment 1 to this memo provides the 27 views, the criteria and the results of the Planning Commission’s evaluation.

The criteria based evaluation narrowed the scenic views of interest to 9 potential views. These nine views were discussed in more detail by the Planning Commission on April 23, 2013. A copy of the April 23<sup>rd</sup> memo to the Planning Commission discussing the nine views is provided here as Attachment 2.

**DISCUSSION**

As a refresher, staff will provide a presentation of the nine scenic views again at the April 22, 2014 meeting so that the Planning Commission can refamiliarize themselves with the study. Copies of the presentation have been provided with this memo (Attachment 3).

This refresher on the scenic view study will provide an opportunity for the Planning Commission to reinitiate the discussion on the scenic views and provide additional feedback and direction. The additional feedback will help staff to create a draft of regulations and guidelines tailored specifically for each view. These regulations/guidelines can take the form of landscape restrictions, increased setbacks and staggered building heights.

**ACTION**

No action is required. This memo is intended primarily to refresh the Planning Commission on this study and initiate discussion.

# STUDY ON SCENIC VIEWS

2012 Comprehensive Plan Docket item

# Criteria for consideration

- View from public property
- View from a busy street
- View from pedestrian or bike routes
- View of a specific landmark
  - ▣ Strong City identity – Windmill, Oak Harbor Bay
  - ▣ Regional landmarks – Mt. Baker, Mt. Rainier,
- View across private property
  - ▣ Need to buy to protect view
  - ▣ Need to impose special zoning regulations

# Criteria

Proposed Criteria	Rating Score H = High M = Medium L = Low D = Deduct	Score
View from public property	H	100
View from streets		
SR 20	M	50
Arterial	M	50
Collector	L	25
Local	L	25
View from a pedestrian/pedestrian trail	H	100
View of a specific landmark	H	100
The need to buy property	D1	-100
The need for special zoning regulations	D	-50
<b>Additional Criteria</b>		
Entryway views	H	100
Waterfront connectivity	H	100
		Max - 550

# 1. Northbound SR 20 – Scenic Heights to Erie



# 1. Northbound SR 20 – Scenic Heights to Erie

Proposed Criteria	Rating Scale*	Score
View from public property	H	100
View from streets		
SR 20	M	50
Arterial	M	
Collector	L	
Local	L	
View from a pedestrian/bicycle trail	H	
View of a specific landmark	H	100
The need to buy property	D1	
The need for special zoning regulations	D	
Entry way views	H	100
Waterfront connectivity	H	
<b>Total</b>		<b>350</b>

## 2. Northbound SR 20 – Swantown to Scenic Heights



## 2. Northbound SR 20 – Swantown to Scenic Heights

Proposed Criteria	Rating Scale*	Score
View from public property	H	100
View from streets		
SR 20	M	50
Arterial	M	
Collector	L	
Local	L	
View from a pedestrian/bicycle trail	H	
View of a specific landmark	H	100
The need to buy property	D1	-100
The need for special zoning regulations	D	-50
Entry way views	H	100
Waterfront connectivity	H	
<b>Total</b>		200

### 3. Scenic Heights Trailhead



### 3. Scenic Heights Trailhead

Proposed Criteria	Rating Scale*	Score
View from public property	H	100
View from streets		
SR 20	M	
Arterial	M	
Collector	L	25
Local	L	
View from a pedestrian/bicycle trail	H	100
View of a specific landmark	H	
The need to buy property	D1	
The need for special zoning regulations	D	
Entry way views	H	
Waterfront connectivity	H	100
<b>Total</b>		<b>325</b>

## 4. SW Freund Street



## 4. SW Freund Street

Proposed Criteria	Rating Scale*	Score
View from public property	H	100
View from streets		
SR 20	M	
Arterial	M	
Collector	L	
Local	L	25
View from a pedestrian/bicycle trail	H	100
View of a specific landmark	H	100
The need to buy property	D1	
The need for special zoning regulations	D	-50
Entry way views	H	
Waterfront connectivity	H	
<b>Total</b>		<b>275</b>

25

## 5. Waterloo Rd and Scenic Heights



## 5. Waterloo Rd and Scenic Heights

Proposed Criteria	Rating Scale*	Score
View from public property	H	100
View from streets		
SR 20	M	
Arterial	M	
Collector	L	
Local	L	25
View from a pedestrian/bicycle trail	H	
View of a specific landmark	H	100
The need to buy property	D1	
The need for special zoning regulations	D	-50
Entry way views	H	
Waterfront connectivity	H	
<b>Total</b>		<b>175</b>

## 6. Swantown Rd – Kimbal Ave to SR 20



## 6. Swantown Rd – Kimbal Ave to SR 20

Proposed Criteria	Rating Scale*	Score
View from public property	H	100
View from streets		
SR 20	M	
Arterial	M	50
Collector	L	
Local	L	
View from a pedestrian/bicycle trail	H	100
View of a specific landmark	H	
The need to buy property	D1	-100
The need for special zoning regulations	D	-50
Entry way views	H	100
Waterfront connectivity	H	
<b>Total</b>		<b>200</b>

# 7. Swantown Rd and Fireside Lane



## 7. Swantown Rd and Fireside Lane

Proposed Criteria	Rating Scale*	Score
View from public property	H	100
View from streets		
SR 20	M	
Arterial	M	
Collector	L	25
Local	L	
View from a pedestrian/bicycle trail	H	
View of a specific landmark	H	
The need to buy property	D1	
The need for special zoning regulations	D	
Entry way views	H	
Waterfront connectivity	H	
<b>Total</b>		125

## 8. Barrington Drive and Fleet St intersection



## 8. Barrington Drive and Fleet St intersection

Proposed Criteria	Rating Scale*	Score
View from public property	H	100
View from streets		
SR 20	M	
Arterial	M	
Collector	L	
Local	L	25
View from a pedestrian/bicycle trail	H	
View of a specific landmark	H	100
The need to buy property	D1	
The need for special zoning regulations	D	-50
Entry way views	H	
Waterfront connectivity	H	
<b>Total</b>		<b>175</b>

## 9. Top of Fleet St



## 9. Top of Fleet St

Proposed Criteria	Rating Scale*	Score
View from public property	H	100
View from streets		
SR 20	M	
Arterial	M	
Collector	L	
Local	L	25
View from a pedestrian/bicycle trail	H	
View of a specific landmark	H	100
The need to buy property	D1	
The need for special zoning regulations	D	
Entry way views	H	
Waterfront connectivity	H	
<b>Total</b>		<b>225</b>

# 10. Fairhaven Drive and Barrington Drive



# 10. Fairhaven Drive and Barrington Drive

Proposed Criteria	Rating Scale*	Score
View from public property	H	100
View from streets		
SR 20	M	
Arterial	M	
Collector	L	
Local	L	25
View from a pedestrian/bicycle trail	H	
View of a specific landmark	H	100
The need to buy property	D1	
The need for special zoning regulations	D	-50
Entry way views	H	
Waterfront connectivity	H	
<b>Total</b>		<b>175</b>

# 11. Windjammer Park – Waterfront Trail



# 11. Windjammer Park – Waterfront Trail

Proposed Criteria	Rating Scale*	Score
View from public property	H	100
View from streets		
SR 20	M	
Arterial	M	
Collector	L	
Local	L	
View from a pedestrian/bicycle trail	H	100
View of a specific landmark	H	100
The need to buy property	D1	
The need for special zoning regulations	D	
Entry way views	H	
Waterfront connectivity	H	100
<b>Total</b>		<b>400</b>

## 1 2. Flintstone Park – Waterfront Trail



## 1 2. Flintstone Park – Waterfront Trail

Proposed Criteria	Rating Scale*	Score
View from public property	H	100
View from streets		
SR 20	M	
Arterial	M	
Collector	L	
Local	L	
View from a pedestrian/bicycle trail	H	100
View of a specific landmark	H	100
The need to buy property	D1	
The need for special zoning regulations	D	
Entry way views	H	
Waterfront connectivity	H	100
<b>Total</b>		<b>400</b>

# 13. Bayshore Drive – Dock St to Midway Blvd



High tide, Dec 4, 2012

# 13. Bayshore Drive – Dock St to Midway Blvd

Proposed Criteria	Rating Scale*	Score
View from public property	H	100
View from streets		
SR 20	M	
Arterial	M	50
Collector	L	
Local	L	
View from a pedestrian/bicycle trail	H	100
View of a specific landmark	H	100
The need to buy property	D1	
The need for special zoning regulations	D	
Entry way views	H	
Waterfront connectivity	H	100
<b>Total</b>		<b>450</b>

# 14. Pioneer Way – Midway Blvd to Regatta Drive



# 14. Pioneer Way – Midway Blvd to Regatta Drive

Proposed Criteria	Rating Scale*	Score
View from public property	H	100
View from streets		
SR 20	M	
Arterial	M	50
Collector	L	
Local	L	
View from a pedestrian/bicycle trail	H	100
View of a specific landmark	H	100
The need to buy property	D1	
The need for special zoning regulations	D	
Entry way views	H	
Waterfront connectivity	H	100
<b>Total</b>		<b>450</b>

# 15. Pioneer Way – Ireland to Midway Blvd



Pioneer Way, Dec 5, 2012



# 15. Pioneer Way – Ireland to Midway Blvd

Proposed Criteria	Rating Scale*	Score
View from public property	H	100
View from streets		
SR 20	M	
Arterial	M	50
Collector	L	
Local	L	
View from a pedestrian/bicycle trail	H	100
View of a specific landmark	H	100
The need to buy property	D1	-100
The need for special zoning regulations	D	-50
Entry way views	H	
Waterfront connectivity	H	100
<b>Total</b>		<b>300</b>

## 16. Pioneer Way – btw SR 20 and City Beach



# 16. Pioneer Way – btw SR 20 and City Beach

Proposed Criteria	Rating Scale*	Score
View from public property	H	100
View from streets		
SR 20	M	
Arterial	M	50
Collector	L	
Local	L	
View from a pedestrian/bicycle trail	H	
View of a specific landmark	H	100
The need to buy property	D1	-100
The need for special zoning regulations	D	-50
Entry way views	H	
Waterfront connectivity	H	100
<b>Total</b>		<b>200</b>

# 17. Jensen Street



# 17. Jensen Street

Proposed Criteria	Rating Scale*	Score
View from public property	H	100
View from streets		
SR 20	M	
Arterial	M	
Collector	L	
Local	L	25
View from a pedestrian/bicycle trail	H	
View of a specific landmark	H	
The need to buy property	D1	
The need for special zoning regulations	D	-50
Entry way views	H	
Waterfront connectivity	H	100
<b>Total</b>		<b>175</b>

# 18. Midway Blvd – SE 8<sup>th</sup> to Pioneer Way



# 18. Midway Blvd – SE 8<sup>th</sup> to Pioneer Way

Proposed Criteria	Rating Scale*	Score
View from public property	H	100
View from streets		
SR 20	M	
Arterial	M	50
Collector	L	
Local	L	
View from a pedestrian/bicycle trail	H	
View of a specific landmark	H	
The need to buy property	D1	
The need for special zoning regulations	D	
Entry way views	H	
Waterfront connectivity	H	100
<b>Total</b>		<b>250</b>

# 19. Regatta Drive— SE 8<sup>th</sup> to Pioneer Way



# 19. Regatta Drive— SE 8<sup>th</sup> to Pioneer Way

Proposed Criteria	Rating Scale*	Score
View from public property	H	100
View from streets		
SR 20	M	
Arterial	M	50
Collector	L	
Local	L	
View from a pedestrian/bicycle trail	H	100
View of a specific landmark	H	100
The need to buy property	D1	
The need for special zoning regulations	D	
Entry way views	H	
Waterfront connectivity	H	100
<b>Total</b>		<b>450</b>

## 20. Skagit Valley College



## 20. Skagit Valley College

Proposed Criteria	Rating Scale*	Score
View from public property	H	
View from streets		
SR 20	M	
Arterial	M	
Collector	L	
Local	L	
View from a pedestrian/bicycle trail	H	
View of a specific landmark	H	100
The need to buy property	D1	
The need for special zoning regulations	D	-50
Entry way views	H	
Waterfront connectivity	H	100
<b>Total</b>		150

## 21. Crosby Avenue by Cathlamet Drive



## 21. Crosby Avenue by Cathlamet Drive

Proposed Criteria	Rating Scale*	Score
View from public property	H	100
View from streets		
SR 20	M	
Arterial	M	
Collector	L	25
Local	L	
View from a pedestrian/bicycle trail	H	
View of a specific landmark	H	100
The need to buy property	D1	
The need for special zoning regulations	D	
Entry way views	H	
Waterfront connectivity	H	
<b>Total</b>		<b>225</b>

## 22. Crosby Avenue by Prow St



## 22. Crosby Avenue by Prow St

Proposed Criteria	Rating Scale*	Score
View from public property	H	100
View from streets		
SR 20	M	
Arterial	M	
Collector	L	25
Local	L	
View from a pedestrian/bicycle trail	H	
View of a specific landmark	H	
The need to buy property	D1	
The need for special zoning regulations	D	-50
Entry way views	H	
Waterfront connectivity	H	
<b>Total</b>		<b>75</b>

## 23. Airline Way



## 23. Airline Way

Proposed Criteria	Rating Scale*	Score
View from public property	H	100
View from streets		
SR 20	M	
Arterial	M	
Collector	L	25
Local	L	
View from a pedestrian/bicycle trail	H	
View of a specific landmark	H	100
The need to buy property	D1	
The need for special zoning regulations	D	-50
Entry way views	H	
Waterfront connectivity	H	
<b>Total</b>		<b>175</b>

## 24. SW 6<sup>th</sup> and Dyer St



## 24. SW 6<sup>th</sup> and Dyer St

Proposed Criteria	Rating Scale*	Score
View from public property	H	100
View from streets		
SR 20	M	
Arterial	M	
Collector	L	25
Local	L	
View from a pedestrian/bicycle trail	H	
View of a specific landmark	H	100
The need to buy property	D1	
The need for special zoning regulations	D	-50
Entry way views	H	
Waterfront connectivity	H	
<b>Total</b>		<b>175</b>

## 25. Southbound SR 20 and NE 16<sup>th</sup> Ave



## 25. Southbound SR 20 and NE 16<sup>th</sup> Ave

Proposed Criteria	Rating Scale*	Score
View from public property	H	100
View from streets		
SR 20	M	50
Arterial	M	
Collector	L	
Local	L	
View from a pedestrian/bicycle trail	H	
View of a specific landmark	H	100
The need to buy property	D1	
The need for special zoning regulations	D	
Entry way views	H	100
Waterfront connectivity	H	
<b>Total</b>		<b>350</b>

## 26. Dock Street – Barrington Dr to Bayshore Dr



## 26. Dock Street – Barrington Dr to Bayshore Dr



## 26. Dock Street – Barrington Dr to Bayshore Dr



## 26. Dock Street – Barrington Dr to Bayshore Dr

Proposed Criteria	Rating Scale*	Score
View from public property	H	100
View from streets		
SR 20	M	
Arterial	M	
Collector	L	
Local	L	25
View from a pedestrian/bicycle trail	H	100
View of a specific landmark	H	100
The need to buy property	D1	
The need for special zoning regulations	D	-50
Entry way views	H	
Waterfront connectivity	H	100
<b>Total</b>		<b>375</b>

## 27. Ft. Nugent Ave – Quince St to Nienhuis St



## 27. Ft. Nugent Ave – Quince St to Nienhuis St

Proposed Criteria	Rating Scale*	Score
View from public property	H	100
View from streets		
SR 20	M	
Arterial	M	50
Collector	L	
Local	L	
View from a pedestrian/bicycle trail	H	100
View of a specific landmark	H	100
The need to buy property	D1	
The need for special zoning regulations	D	
Entry way views	H	
Waterfront connectivity	H	
<b>Total</b>		<b>350</b>

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**CITY OF OAK HARBOR**

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**TO:** PLANNING COMMISSION  
**FROM:** CAC KAMAK, SENIOR PLANNER  
**SUBJECT:** 2012 COMPREHENSIVE PLAN AMENDMENTS – SCENIC VIEWS  
**DATE:** 4/23/13  
**CC:** STEVE POWERS, DEVELOPMENT SERVICES DIRECTOR

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Background: The City Council approved a study on scenic views in the 2012 Comprehensive Plan Amendment Docket. The study was intended to identify views that are currently available today and determine whether specific regulations are required to help preserve some of them for future generations.

Through a community wide input process and staff research, 27 views were identified for initial review. The Planning Commission reviewed the 27 views (Exhibit 1) and further narrowed the list to 9 scenic views at the January 26, 2013 meeting. The selected views are listed below. Staff will discuss the views in more detail at the meeting and present views from Google Maps and Google Earth along with photographs to determine the extents of the views and encourage discussion on ideas for protection.

1. Northbound SR 20 – Scenic Heights Street to Erie Street. This is a great entryway view into the community for the north bound traffic on SR 20. The highway drops down in elevation from the Swantown Avenue intersection and curves around the intersection on Scenic Heights as the view of Mt. Baker appears beyond the city landscape.
2. Waterfront Trail – Windjammer Park. The trail runs along the shoreline providing open views of the water and the mountains. There are some structures that can potentially be removed to improve the view. Additional guidelines can be discussed regarding landscaping or future structures.
3. Waterfront Trail – Flintstone Park. The trail continues along the shoreline in Flintstone Park providing open views of the water, marina and the mountains.
4. Bayshore Drive – Dock Street to Midway Blvd – This is a section of Bayshore Drive, along with the waterfront trail has open views of the water. There is a portion of Bayshore Drive currently with some natural vegetation that blocks some views.

5. Pioneer Way – Midway Blvd to Regatta Drive – This is also a section of roadway and trail that has an open view of the water. The shoreline has intermittent vegetation that are scattered along this stretch. Depending on the extents of the right-of-way, the vegetation may be on private property since properties across the street extend in to the tidelands.
6. Regatta Drive – SE 8<sup>th</sup> Avenue to Pioneer Way – This is another side entryway view into the community for people entering via Regatta Drive. The views of the marina and the water start to appear to the southbound traffic after SE 8<sup>th</sup> Avenue. The elevation drops down from there so the views are above the buildings. The view starts to be blocked close to SE 10<sup>th</sup> Avenue.
7. Southbound SR 20 at NE 16<sup>th</sup> Avenue – This is a great entryway view into Oak Harbor for the south bound traffic. The snow capped Olympic Mountains are visible as one approaches the NE 16<sup>th</sup> Avenue intersection on the highway. The view fades due to drop in elevation after the Best Western Inn.
8. Pioneer Way – Ireland Street to Midway Blvd – This is a great view of the water from Pioneer Way. The views here are across private property.
9. Dock Street – Barrington Drive to Bayshore Drive – There is a wider view of the bay from the top of Dock Street close to Barrington Drive. As the elevation drops the view becomes narrower and narrower due to the existing structures. The Planning Commission wanted to maintain a visual connection with the water from Dock Street.

In order to determine whether specific regulations are necessary to protect the above listed views, it is important to identify the extents of view that needs protection. Attached are a few aerial photographs with some view zones and sight lines identified. Additional photographs of the views will be presented at the meeting for discussion.

## EXHIBIT 1

	<b>Views</b>	<b>Rating Score (First round)</b>	<b>Qualified (Y/N) (Second round)</b>	<b>Reason</b>
1	Northbound SR 20 – Scenic Heights to Erie	350	Y	View from public highway (SR20)
2	Northbound SR 20 – Swantown to Scenic Heights	300	N	Private property zoned R-4 would only be a peek-a-boo even with new zoning regs for landscaping & setbacks
3	Scenic Heights Trailhead	325	N	View is already across public property so view already preserved
4	SW Freund Street	275	N	Private property and plat already has height restrictions
5	Waterloo Rd & Scenic Heights	175	N	Volume of traffic not enough to merit City intervention to protect view
6	Swantown – Kimball to SR 20	200	N	Private property zoned R-4 would only be a peek-a-boo even with new zoning regs for landscaping & setbacks
7	Swantown & Fireside Lane	125	N	Already developed private property/only a peek-a-boo view
8	Barrington Drive and Fleet Street int	175	N	Private property and plat already has height restrictions
9	Fleet Street	225	N	Steep elevation drop any construction will not obstruct view/Private property and plat already has height restrictions
10	Barrington Drive and Fairhaven int	175	N	Private property and plat already has height restrictions
11	Waterfront Trail – Windjammer Park	400	Y	City property can self regulate
12	Waterfront Trail – Flintstone Park	400	Y	City property can self regulate/think about Walrath properties and how view could be affected in future
13	Bayshore Drive – Dock to Midway	450	Y	City property can self regulate
14	Pioneer Way – Midway to Regatta	450	Y	City property can self regulate
15	Pioneer Way – Ireland to Midway	300	Y	Private property – work with

	<b>Views</b>	<b>Rating Score (First round)</b>	<b>Qualified (Y/N) (Second round)</b>	<b>Reason</b>
				property owner to preserve view through incorporating design elements to preserve view (provide walkway)
16	Pioneer Way – SR 20 to City Beach	200	N	Private property/only a peek-a-boo view
17	Jensen Street	175	N	Volume of traffic not enough to merit City intervention to protect view
18	Midway Blvd – SE 8 <sup>th</sup> to Midway	250	N	Would only be a peek-a-boo and view opens up when you reach Midway Blvd and move on to Bayshore Drive
19	Regatta Drive – SE 8 <sup>th</sup> to Pioneer Way	450	Y	View from public street, city can regulate landscaping to keep the view
20	Skagit Valley College parking lot	150	N	Steep elevation drop any construction will not obstruct view
21	Crosby Ave by Cathlamet Drive	175	N	View of Mt. Baker already high enough it will be protected
22	Crosby Ave by Prow Street	75	N	North side of street is County property and outside of City UGA, south side is City limits and UGA
23	Airline Way	175	N	View is across County property
24	SW 6 <sup>th</sup> and Dyer	175	N	View across school property
25	Southbound SR 20 and NE 16 <sup>th</sup> Ave	350	Y	View from public street, city can regulate landscaping to keep the view
26	Dock Street – Barrington to Bayshore	375	Y	Preserve connectivity to water
27	Ft Nugent Avenue – Quince St to Neinhuis St	350	N	Setbacks and street tree height can be regulated to preserve view

**PLANNING COMMISSION  
REGULAR MEETING  
CITY HALL – COUNCIL CHAMBERS  
April 23, 2013**

**ROLL CALL: Present:** Keith Fakkema, Greg Wasinger, David Fikse, Bruce Freeman, Ana Schlecht and Sandi Peterson  
**Absent:** Kristi Jensen  
**Staff Present:** Development Services Director, Steve Powers, Senior Planners, Ethan Spoo and Cac Kamak.

Chairman Fakkema called the meeting to order at 7:30 p.m.

**MINUTES: MR. FIKSE MOVED, MR. WASINGER SECONDED, MOTION CARRIED TO APPROVE THE MARCH 26, 2013 MINUTES AS PRESENTED.**

**PUBLIC COMMENT:**

None

Chairman Fakkema reported that the Planning Commission had agreed to reorder the agenda to place the Bed and Breakfast Code agenda item after the Digital Signs Code Update agenda item.

**DIGITAL SIGNS CODE UPDATE – Public Meeting**

Mr. Spoo displayed a Power Point presentation (Attachment 1) providing an overview of the draft code. Mr. Spoo also reported that the legal review of the code was in process so the language may change.

**Planning Commission Discussion**

Mr. Freeman expressed concern about digital signs being in close proximity to one another. Mr. Spoo noted that the draft code says that one digital sign is allowed per shopping complex. Mr. Powers expressed concern about one property owner having a privilege that a similarly situated property owner does not have if distance restrictions between signs were put in the code. Mr. Powers indicated that staff could ask the City's legal counsel whether or not a spacing requirement could be employed along the highway and it may make more sense to set limits by zoning districts and only allowing monument signs or building mounted signs in certain zoning districts.

Mr. Fikse noted that there are already limitations on existing signs that limit size and placement of signs. The limitations are adequate without taking away business opportunities. Bigger cities are moving in the direction of digital signs and smaller cities are falling behind and are at a disadvantage.

Mr. Fikse also commented that he was pleased with the video motion language that says "speed cannot be quicker than what occurs in real life". This eliminates the concerns about the look of digital signs.

Ms. Schlecht commented that her initial concern was that digital signs would look like the TV isle at Costco with the TV's all set on different channels. Since then she has driven around in different cities she has come to the conclusion that they actually look nice.

Ms. Peterson commented on 19.36.030(5)(h)(v). It says, "...which are bright and distracting to traffic". Ms. Peterson said the language is subjective and should be taken out. Staff concurred and will delete the language.

Ms. Peterson asked why signs could not be located within 100 feet of open space zoned properties. Mr. Spoo explained that people go there for solitude and for recreation and the function of an open space zoned area is a low impact sensitive area and should be guarded from the effect of the light that digital signs may have on those areas..

Ms. Peterson also noted that there is no exception for a 24-hour business in 19.36.030(5)(h)(x). Staff and Planning Commission agreed that the language should be changed to say "Digital sign displays must be turned off between the hours of 10:00 p.m. and 6:00 a.m. when located within 100 feet of a residentially zoned property."

Mr. Fikse pointed out that 19.36.020(52) should be completely eliminated because RGB technology in electronic signs is required for any form of color including white so the problem is a video board with any color including white, it doesn't meet code. Staff concurred and will delete this section.

Mr. Fakkema pointed out that 19.36.030(5)(vi) is unclear and should be change to say "when the sign is transitioning it must be within one second and no less than 0.5 seconds." Staff concurred and will change the language.

Mr. Fakkema opened the public hearing at 8:13 p.m.

**Billie Cook** (651 SE Bayshore Drive) questioned turning off the signs between 6:00 a.m. and 10 p.m. She asked if businesses could have their sign on at 6:00 a.m. if they are only open between 9:00 a.m. and 5:00 p.m. Ms. Cook asked that there be some mechanism for a resident to take action if they were negatively affected by a digital signs.

**ACTION: MR. FREEMAN MOVED, MS. PETERSON SECONDED A MOTION TO CONTINUE THE PUBLIC HEARING TO THE PLANNING COMMISSION'S MAY 28, 2013 BUSINESS MEETING, MOTION CARRIED.**

There was further discussion about the digital signs hours of operation. Staff noted that enforcement tied to individual business hours would be impractical for staff to enforce and also noted that the language in 19.36.00(5)(h)(ii) limits the digital portion of a pole or pylon primary sign to 50% and the portion of the sign that is not digital would still be lit. Mr. Fikse noted that the nits drop at night so the signs would not be as bright.

### **BED AND BREAKFAST CODE – INTRODUCTION – Public Meeting**

Mr. Spoo reported that the ad hoc Economic Development Committee suggested loosening up the restrictions on where a bed and breakfast could be located and possibly create opportunities for lodging and tourism for businesses in Oak Harbor. The Committee looked at other jurisdictions to see how they compared to Oak Harbor and found that Oak Harbor is more restrictive. The new draft code provides definitions for three different types of bed and breakfast establishments and allows them outright in more zones. Mr. Spoo asked the Planning Commission to review the draft code and to be prepared to discuss it next month.

Planning Commission asked about a definition for “transient lodging”, parking requirements (tying parking spaces to physical space instead of people) and the possibilities for bed and breakfast uses between Midway Boulevard and the Marina.

**2012 COMPREHENSIVE PLAN AMENDMENT – Scenic Views** – Public Meeting

Mr. Kamak provided a Power Point presentation (Attachment 2) which presented the progress to date and further analysis of the nine views selected. The analysis included line of view, view zones and possible actions for preserving the views.

Planning Commission suggested staggering buildings to protect views and requiring low growing landscape to camouflage parking lots.

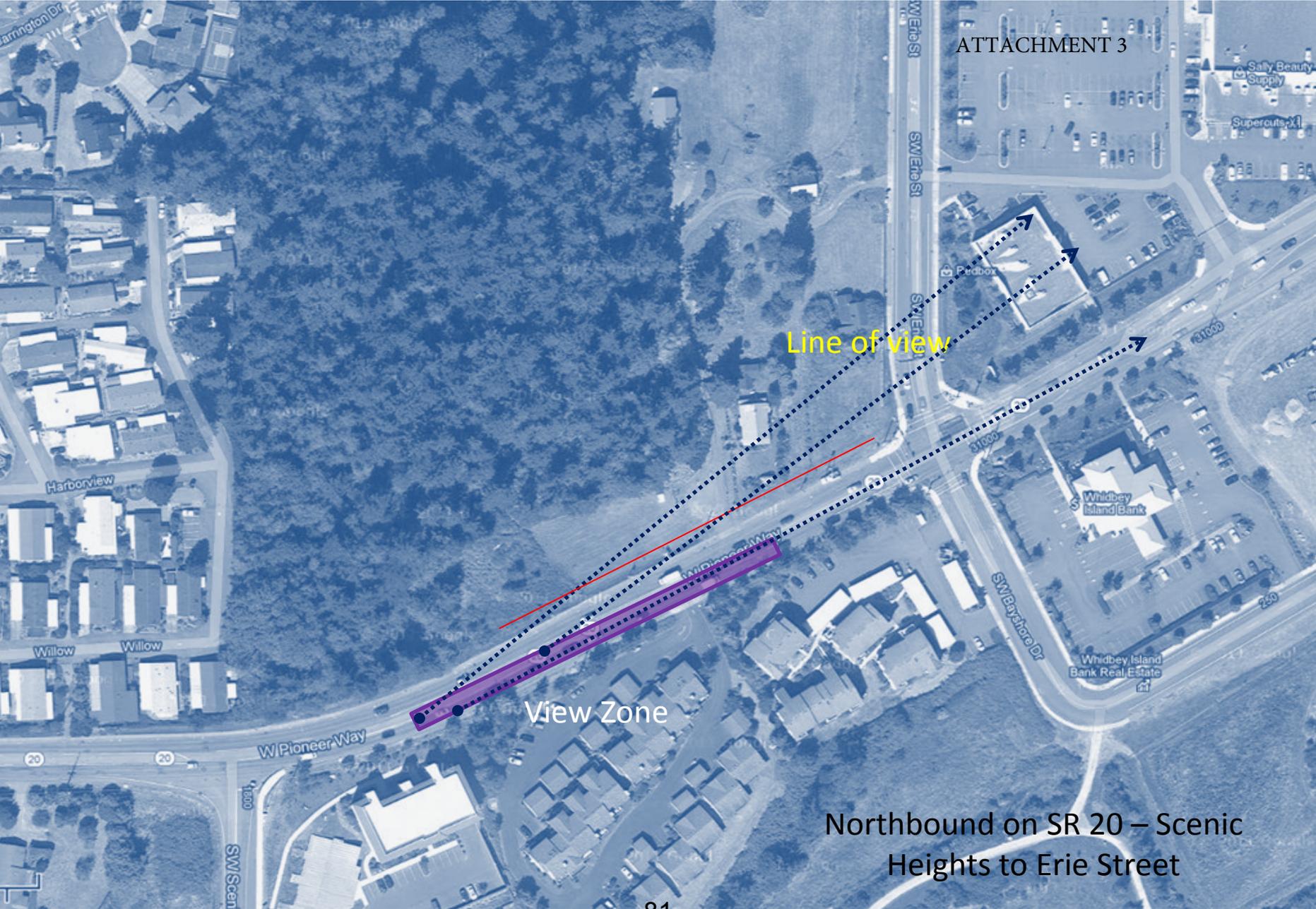
Mr. Powers talked about the competing goals within the Comprehensive Plan such as tree preservation and preserving of views. Mr. Kamak said that once the views are identified as scenic views the regulations will be area specific.

**2016 COMPREHENSIVE PLAN UPDATE – Public Meeting**

Mr. Kamak reported that staff has been working with the County on their plan update and the County has provided information on their schedule. The County has taken a similar approach to their update as the City has by dividing the update into two phases. Phase I will be to determine the scope of the update and Phase II will be addressing the deficiencies identified in Phase I. The County has initiated a discussion on these policies that will eventually determine policies and procedures related to Urban Growth Areas (UGA), population projections, growth allocations etc. Some of these policies and procedures will impact the City’s 2016 update to the Comprehensive Plan.

The Department of Commerce has produced a checklist for jurisdictions to use in evaluating comprehensive plans for consistency with the GMA. City planning staff has begun reviewing Oak Harbor’s Comprehensive Plan against this checklist. Staff will share the review with the Planning Commission over the next few meetings.

**ADJOURN: 9:26 p.m.**



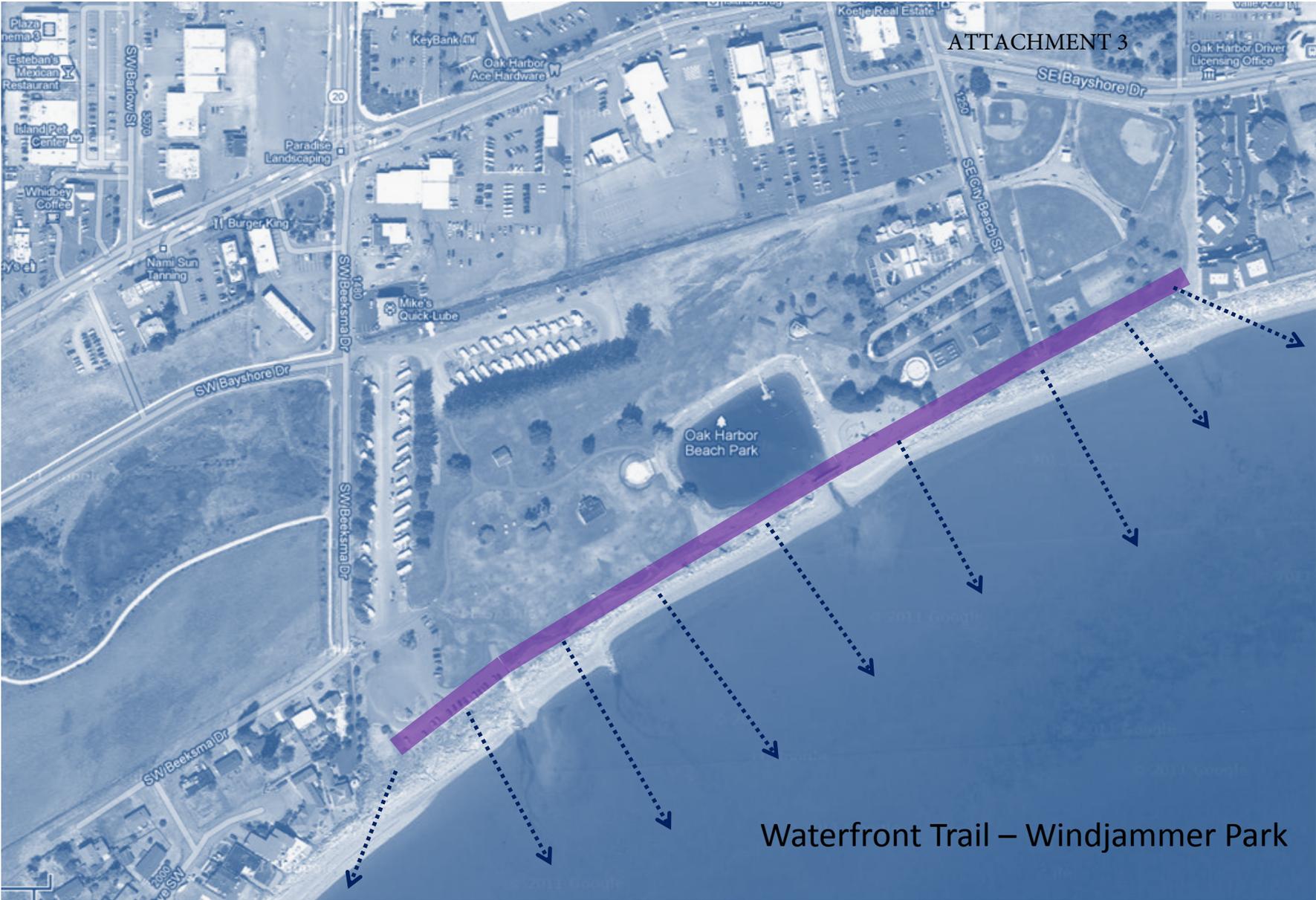
Line of view

View Zone

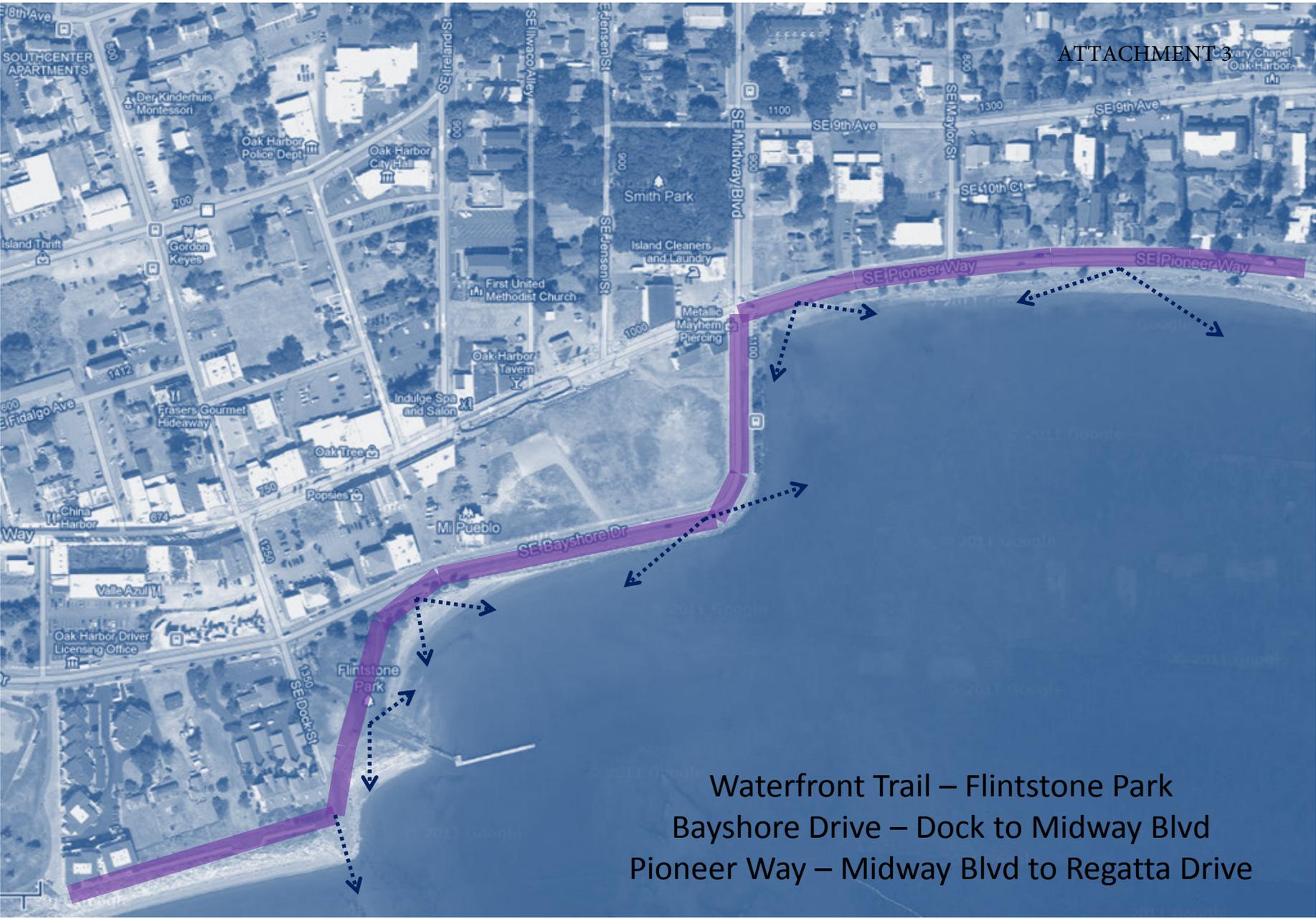
Northbound on SR 20 – Scenic Heights to Erie Street



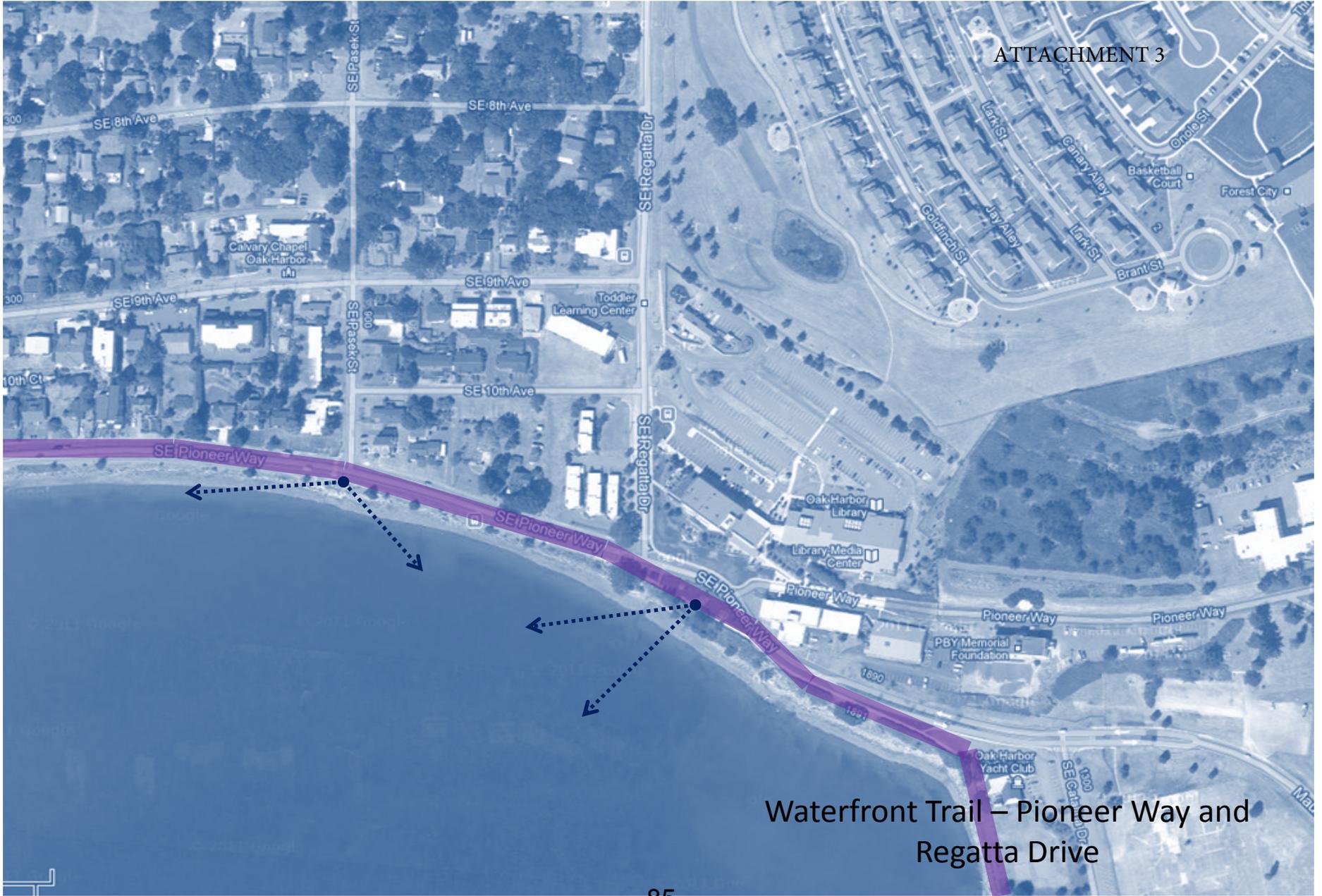
Northbound on SR 20 – Scenic Heights to Erie Street



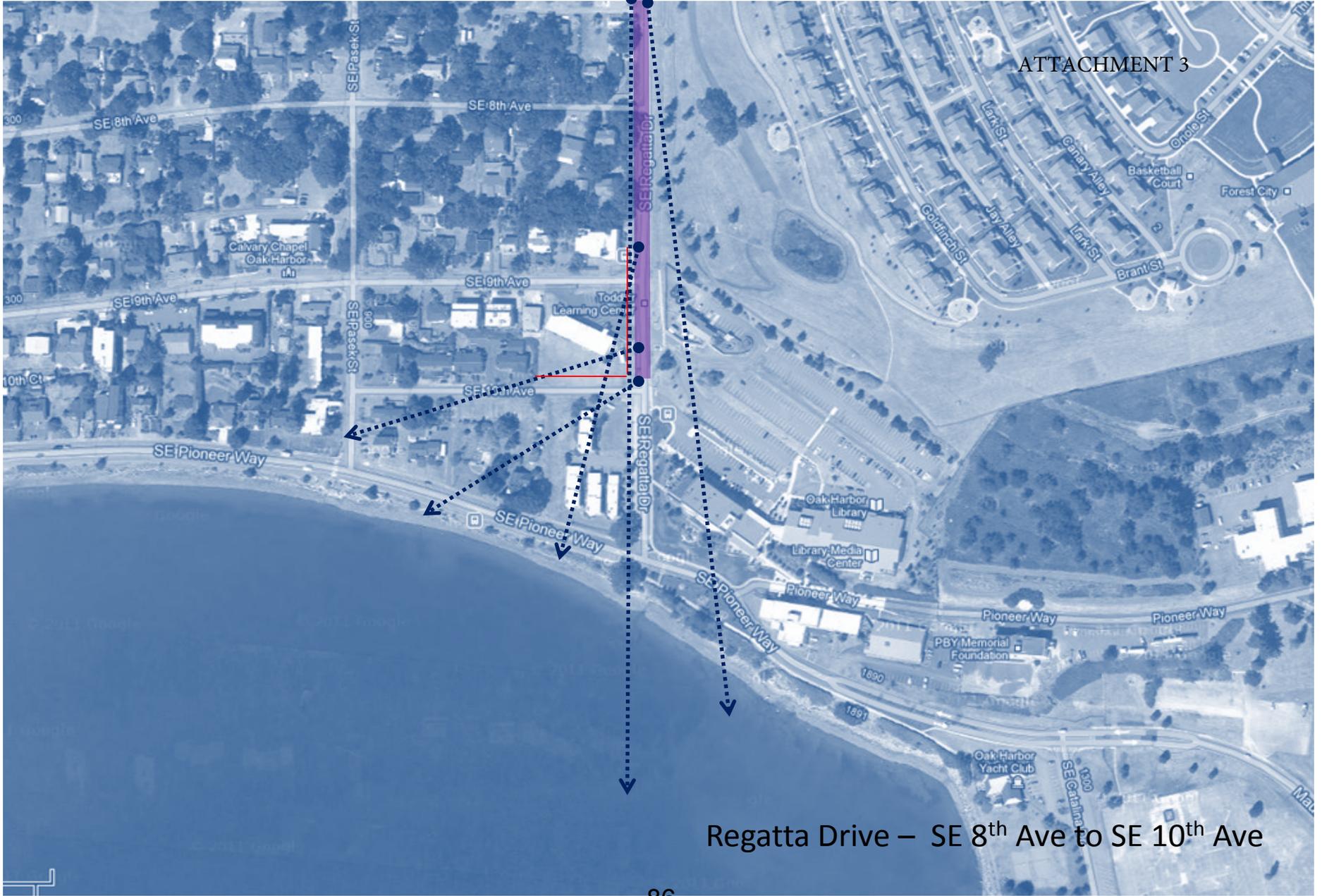
Waterfront Trail – Windjammer Park



Waterfront Trail – Flintstone Park  
Bayshore Drive – Dock to Midway Blvd  
Pioneer Way – Midway Blvd to Regatta Drive



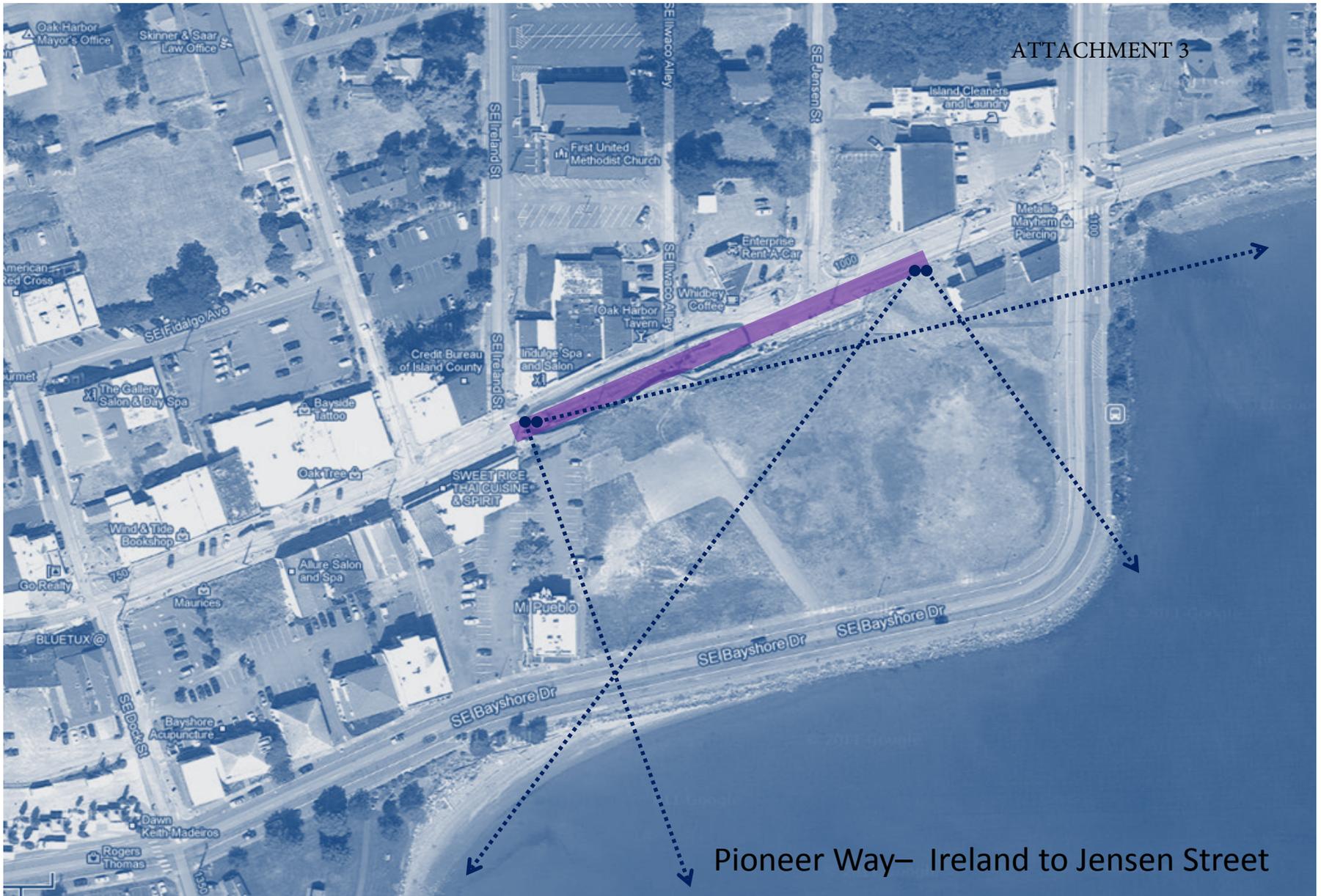
Waterfront Trail – Pioneer Way and Regatta Drive



Regatta Drive – SE 8<sup>th</sup> Ave to SE 10<sup>th</sup> Ave



Dock Street– Barrington Drive to SE 10<sup>th</sup> Ave



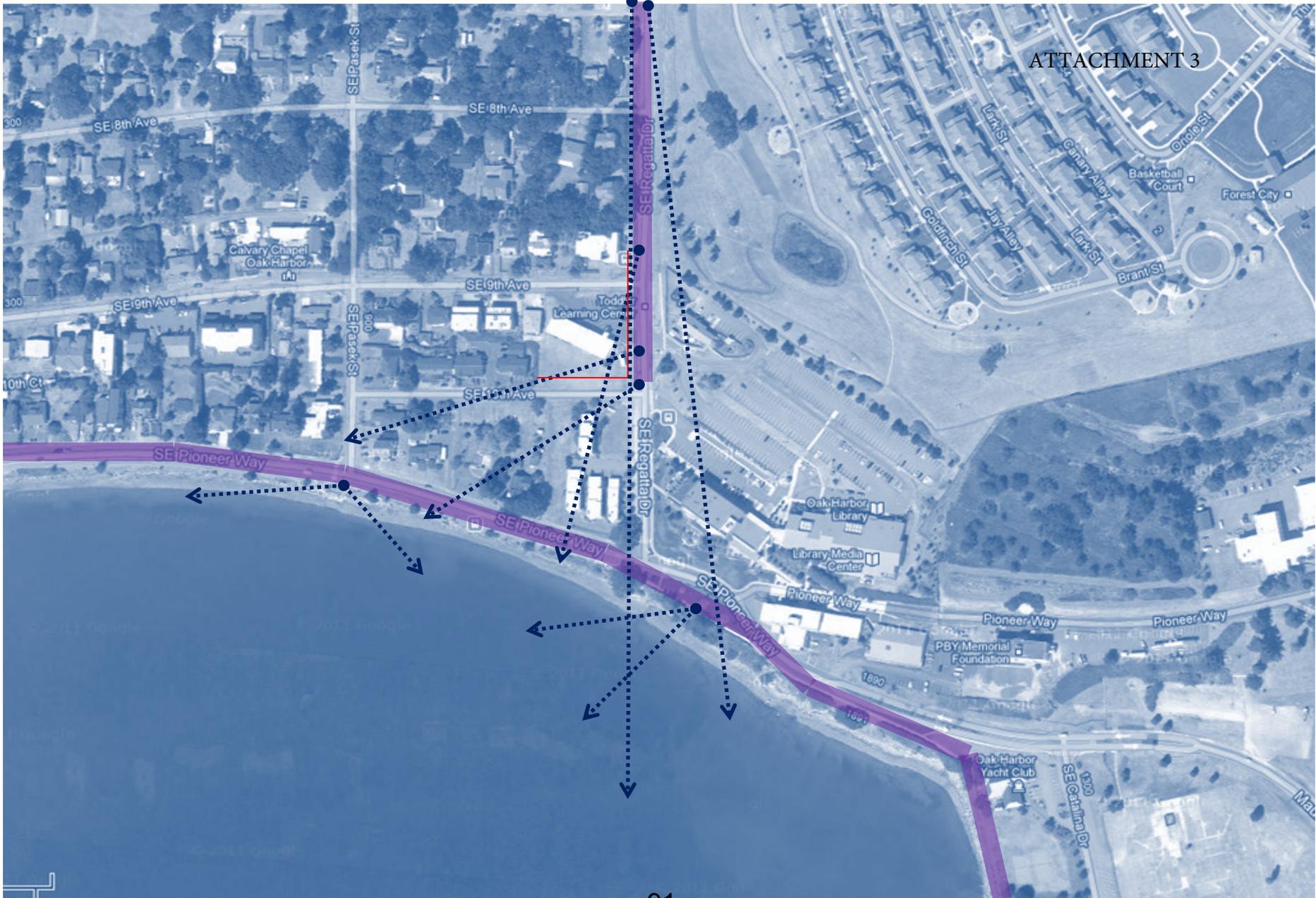
Pioneer Way– Ireland to Jensen Street



Southbound on SR 20 – NE 16<sup>th</sup> Ave to Midway Blvd



Southbound on SR 20 – NE 16<sup>th</sup> Ave to Midway Blvd



# Maritime Land Use Zoning Regulations

## Public Meeting

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**CITY OF OAK HARBOR PLANNING COMMISSION**

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**TO:** PLANNING COMMISSION  
**FROM:** CAC KAMAK, SENIOR PLANNER  
**SUBJECT:** MARITIME ZONING REGULATIONS  
**DATE:** APRIL 22, 2014  
**CC:** STEVE POWERS, DEVELOPMENT SERVICES DIRECTOR

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**PURPOSE:**

The purpose of this memo is to provide a refresher on the Maritime Zoning Regulations which when adopted would implement the intent of the Maritime Land Use designation that was adopted into the Comprehensive Plan in 2012. The new Maritime Land use category was created to foster development on lands adjacent to the Marina. The Planning Commission's last discussion on this project was on February 26, 2013.

**BACKGROUND**

A Marina Redevelopment Program was adopted in 2006 that included plans for redeveloping the marina and also some upland developments to support the marina. The upland improvements envisioned redeveloping the storage sheds and including some other uses such as offices, restaurants and stores. A few years later, there was some private interest in developing property to accommodate a boat builder. Though these development plans did not come to fruition, there were some land use challenges to overcome to accommodate these proposals since the property was designated as Public Facilities. In a proactive move, the City looked into re-designating the property to accommodate a wider range of uses in that area.

The resulting discussion led to the adoption of a new "Maritime" land use category in 2012 as part of the 2012 Comprehensive Plan Amendments. This new Maritime land use category is intended to foster uses envisioned in the Marina Redevelopment Program and also accommodate other potential private interests.

Since zoning regulations are necessary to implement the intent of a land use category, the Planning Commission discussed some zoning regulations early in 2013 that would implement the intent of the Maritime land use designation. However, due to shortage in staff and limited resources, the discussion was temporarily stalled. Staff would like to revive this discussion and complete the project this year.

**DISCUSSION**

The Planning Commission discussed the basic framework for zoning regulations for the Maritime Land Use in detail at the February 26, 2013 meeting. Staff is hoping to pick up the discussion right where it was left and create a set of draft regulations for review in

May. A copy of the February 26<sup>th</sup> 2013 Planning Commission report (Attachment 1) is attached to this memo. The report discusses the basis for some of the proposed regulations and also discusses potential permitted and conditional uses. The minutes from that meeting are also attached to the memo. Staff will review the February 26<sup>th</sup> report at the meeting and provide a opportunity for the Commission to further discuss this topic.

**ACTION**

No action is required. This memo is intended primarily to refresh the Planning Commission on this topic.

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**CITY OF OAK HARBOR**

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**TO:** PLANNING COMMISSION  
**FROM:** CAC KAMAK, SENIOR PLANNER  
**SUBJECT:** 2012 COMPREHENSIVE PLAN AMENDMENTS – LAND USE  
CONSIDERATIONS  
**DATE:** 2/22/2013  
**CC:** STEVE POWERS, DEVELOPMENT SERVICES DIRECTOR

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**Purpose:** The purpose of this memo is to present a few factors to consider in drafting zoning regulations for the Maritime Zoning District. The Maritime Land Use category was created with the 2012 Comprehensive Plan Amendments to accommodate water-dependent and water-related industrial and commercial uses on lands adjacent to the marina.

**Background:** The 2012 Comprehensive Plan Amendments considered adding a new land use category to the Comprehensive Plan to capture the potential of maritime industrial and commercial uses for land that is currently adjacent to the marina (see Attachment 1). The Planning Commission reviewed the intent of the land use category in 2012 and the proposed new Maritime land use category was eventually approved by the City Council in December 2012. The primary intent of the Maritime land use has been incorporated into the Land Use Element of the Comprehensive Plan (Attachment 2).

After incorporation of the new land use category into the Comprehensive Plan, zoning regulations have to be adopted to implement the intent of the new land use category. Zoning regulates the use and development of properties and usually prescribes the type of uses that would be permitted by right, uses that will need a conditional use permit, development regulations (area ratios, density, parking etc.) and other requirements.

**Discussion:** To discuss the details of the regulations that should be included in the Maritime zoning district, it is important to know some of the key elements that the land use designation is intending to achieve. These can be derived from the key words and phrases found within the adopted intent statement for the Maritime designation. They are listed below:

- Accommodate high intensity water- related and water-dependent uses
- Clean industrial uses
- Commercial uses similar to uses permitted in the Central Business District
- Flexible standards for streets and parking

- Sufficient screening between industrial and commercial uses

Water-related and water-dependent uses are defined in the City’s Shoreline Master Program (SMP) that was recently adopted by the City and is awaiting approval by the Department of Ecology. The SMP defines *water-dependent* uses as a use or a portion of a use which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operation (eg. ship cargo terminals, ferry terminals, ship building, marinas, aquaculture, float plane services etc). A *water-related* use is defined as a use or a portion of a use which is not intrinsically dependent on a waterfront location but whose economic vitality is dependent upon a waterfront location because of a functional requirement for a waterfront location or the use provides a necessary service supportive of a water-dependent activity and the proximity of the use to its customers makes its service less expensive or convenient. The SMP also categorizes *water-enjoyment*<sup>1</sup> uses. These can all be permitted in the Maritime district. Please note that these definitions would have to be incorporated into the definition section (OHMC 19.08) of the zoning ordinance.

The inclusion of “clean” industrial uses in the description provides a performance standard for industrial uses that will be permitted in the Maritime zoning district. These can include regulations to prohibit activity that has the potential for generating byproducts or waste that is discharged into the air or water within this district.

The intent of the Maritime zoning district is to also include a mix of commercial uses that will support the maritime industry. The language adopted in the comprehensive plan suggests commercial uses similar to the Central Business District (CBD). The uses

permitted in the CBD district (Attachment 3) extensive and not all uses listed in that district may be appropriate for the Maritime district. One way to sieve through the numerous uses is to consider the potential for traffic challenges in the area that is identified in the intent statement. By recognizing the potential challenge for ingress and egress in to the area, uses that are parking intensive such as

The Maritime Land Use should consider flexible standards for streets and parking as an incentive to foster development in the area. One of the major challenges in creating this land use category is the intersection of Pioneer Way, Catalina Drive and the security gate to the Seaplane Base. Since the proposed land uses in this area has the potential to generate traffic, creative solutions will need to be sought to address this issue. Creating flexible parking standards in this area is also intended to encourage the public to use the access provided by the waterfront trail with alternative modes of transportation.

grocery stores, furniture stores, schools etc can either be prohibited or required to obtain a conditional use permit. Many specialty retail uses such as antique shops, bakery, pharmacy etc, can also be either prohibited or conditioned.

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<sup>1</sup> A recreational use or other use that facilitates public access to the shoreline as a primary characteristic of the use; or a use that provides for the recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through location, design, and operation ensures the public’s ability to enjoy the physical and aesthetic qualities of the shoreline.

Similar to the traffic challenges in the area, the intent statement also indicates flexible parking standards and encourages the use of other modes of transportation. This can translate to various implementation strategies such as requirements for bicycle parking, eliminating parking requirements and maximum limits on parking when provided. A stronger link can also be made to the existing design guidelines that require areas for people space to be incorporated into the development.

The intent statement also indicates the importance of screening between commercial and industrial uses. OHMC 19.46 addresses the landscaping and screening requirements (Attachment 4) and should be sufficient to mitigate the impacts of these uses on each other. However, if the Commission feels that they need to be different or more specific, they can be addressed under the conditions that govern permitted uses in the Maritime District.

Since the intent statement makes a strong connection to the CBD district and the SMP, development regulations for the Maritime District can be adapted for this district from these documents. The SMP document will provide regulations for the setback and height requirements (Attachment 5) along the shoreline and the CBD district can provide the lots sizes, floor area ratios and setbacks between uses. This can result in a higher density district with minimum to no setbacks between commercial structures and no parking requirements. Since the district is primarily geared towards industrial development, it would be wise to prohibit residential uses in this district. Permitting residential in this district can set it up for impacts that will be hard to regulate against.

Conceptual draft proposal: Based on the above, uses that would be appropriate for this district are suggested below. The uses are proposed to be broadly categorized since all potential uses cannot be predetermined and specified. The Development Services Director has the authority to make interpretations on uses that are not specifically listed and relies on the intent statement and the definitions to make a decision.

The *permitted* uses can be generally categorized into the following:

Water-dependent uses such as:

- (1) Marinas
- (2) Yacht Clubs
- (3) Boat Launch ramps
- (4) Boat Repairs
- (5) Boat Storage
- (6) Ferry and Passenger Terminals
- (7) Float Plan facilities
- (8) Aquaculture
- (9) Sewer and storm outfalls
- (10) Boat building and related industry

Water-related uses such as:

- (1) Warehousing of goods transported by water

- (2) Professional services serving water dependent activities
- (3) Marine hardware and retail store
- (4) Outdoor recreation outfitters

Water-oriented uses such as:

- (1) Mini-storage facilities related to the Marina
- (2) Offices that serve water dependent uses
- (3) Laundry facilities

Water-enjoyment uses such as:

- (1) Restaurants, cafes and food vendors
- (2) Bars, taverns and brew pubs
- (3) Gifts, hobbies, ice cream and convenience store
- (4) Tours, visitor information centers
- (5) Governmental buildings and associated facilities
- (6) Transit terminals
- (7) Parks and open space

Conditional uses are uses that need to follow a process of review by the Hearing Examiner and includes public input through a hearing process. These uses are considered appropriate for a particular zoning district if they are able to mitigate or address some of the potential impact the use can have on the district and other uses. The impacts can range from traffic generation and parking to noise and light pollution.

Some of the uses to consider under the Conditional Use category are:

Conditional uses	Impacts
(1) Grocery stores	High traffic generator and parking intensive
(2) Conference Center	Parking intensive
(3) Hotel and Motel	Parking intensive and potential to be impacted by industrial uses
(4) Schools – fine arts, fitness etc	Potential to be impacted by industrial uses
(5) Non water-oriented offices	Long hours of parking – low turnover
(6) Specialty retail such as antique shops, bakery, clothing store	Not the primary intent of the district and can be considered accessory to other appropriate uses
(7) Stand alone parking lots	Long hours of parking – low turnover
(8) Personal services	low turnover in parking

The zoning regulations can also consider conditions that all uses must adhere to in this district. Some suggestions are provided below:

- (1) The use of property must not result in the creation of offensive odors or offensive or harmful quantities of dust, smoke, exhaust fumes, noise or vibration.

- (2) Landscaping and buffers between commercial and industrial uses shall be constructed and maintained in accordance with the provisions of Chapter 19.46 OHMC.
- (3) Parking is not required for permitted uses. If provided, it shall meet the requirements of OHMC 19.44.110 (space size and access requirements) and shall not exceed the minimum requirements of OHMC 19.44.100 (Minimum parking space standards). The Planning Commission can consider a stricter requirement of the minimum to reduce parking in the district such as 50% or 75% of the minimum requirements.

**Planning Commission Feedback:** Staff would like feedback on the proposals presented above. Some of the key questions that will help provide direction to staff are:

- (1) Is the categorization of permitted uses in this district easy to understand and does it cover the extent of uses that this district should accommodate? Are there changes or additional uses to consider?
- (2) Are the *conditional uses* appropriately categorized? Are there *permitted uses* that should be *conditional uses* and vice versa. Any additional uses to consider?
- (3) Are the conditions that govern all uses in this district appropriate? Does the commission have other suggestions to consider?

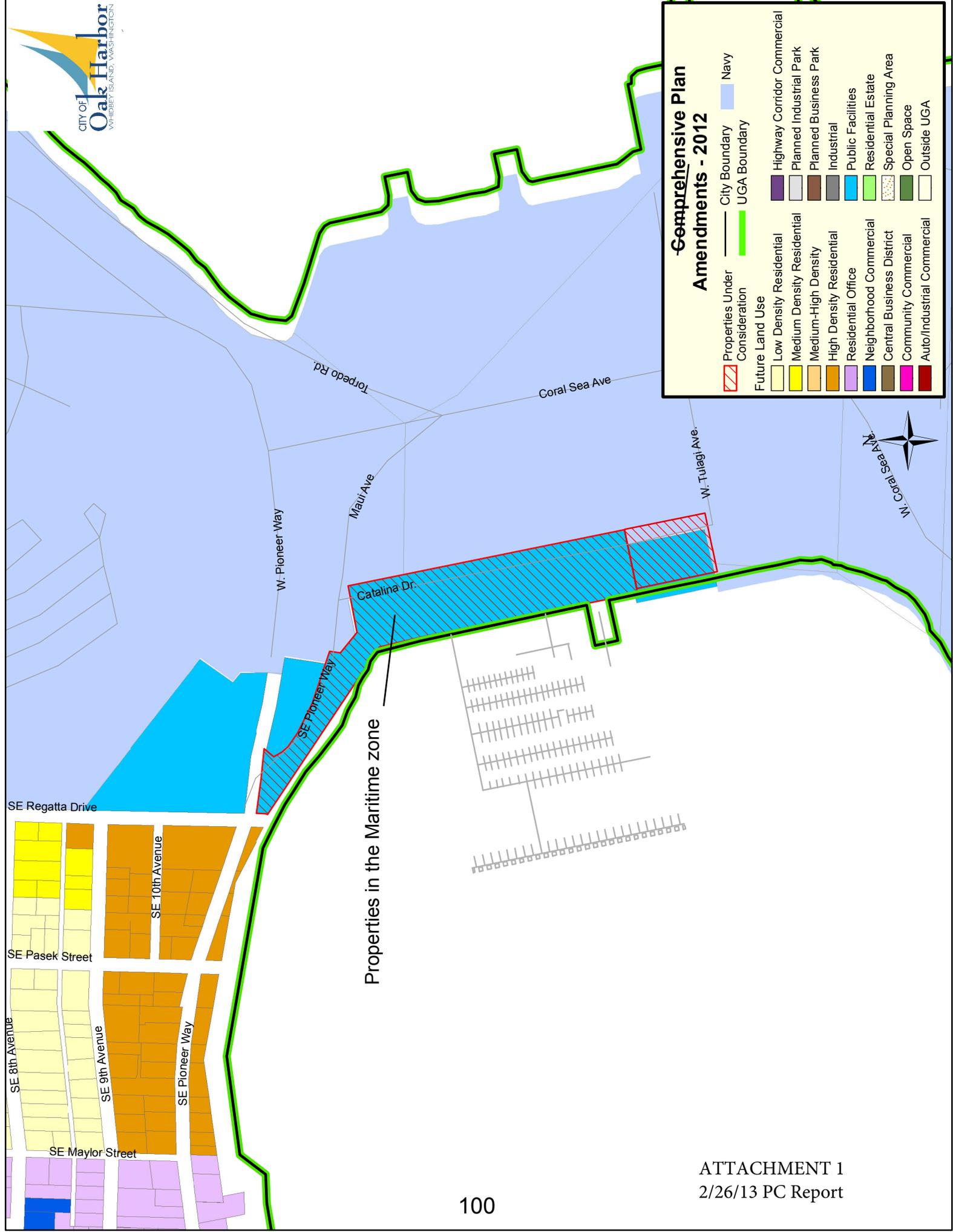
After the Planning Commission's feedback on these options, City staff will contact the property owners in the area to provide a draft of the regulations and provide opportunity for feedback. Based on comments and feedback received, staff will generate a draft that will be ready for the public hearing and adoption process.

Attachments:

1. Maritime Zoning Location Map
2. Land Use Element of the Comprehensive Plan
3. CBD Regulations
4. OHMC 19.46 Landscaping and Screening
5. SMP Development Standards

### Comprehensive Plan Amendments - 2012

	Properties Under Consideration		City Boundary		Navy
	UGA Boundary				
<b>Future Land Use</b>					
	Low Density Residential		Highway Corridor Commercial		
	Medium Density Residential		Planned Industrial Park		
	Medium-High Density Residential		Planned Business Park		
	High Density Residential		Industrial		
	Residential Office		Public Facilities		
	Neighborhood Commercial		Residential Estate		
	Central Business District		Special Planning Area		
	Community Commercial		Open Space		
	Auto/Industrial Commercial		Outside UGA		



Properties in the Maritime zone

# **GROWTH MANAGEMENT ELEMENTS GOALS AND POLICIES**

## **LAND USE**

### **Introduction**

The Land Use element of the comprehensive plan will guide decision-makers in defining how the land in Oak Harbor and its urban growth area (UGA) will be used to accommodate the projected population and employment growth over the next twenty years. The Future Land Use map describes the range of land uses that will occur (*i.e.*, residential, commercial, industrial), and where those land uses will occur. This element presents a broad vision of the future allocation and distribution of land uses. The policies in this element define the density, intensity and character of these proposed land uses, and will provide guidance in the drafting of development regulations to implement this plan.

Historic land use patterns have determined the character of the city -- the development of the downtown area; the location of homes and industries; the patterns of transportation corridors; the evolving relationship between the city and the Naval Air Station: all of these elements have helped to shape Oak Harbor's urban fabric. Land use decisions have determined where people reside, shop and work. They have also shaped the traffic patterns that determine the mobility of citizens, and the size, amount and type of parks and recreation areas that impact residents' quality of life. Land use decisions must consider and be sensitive to the natural environment and physical constraints within the community, and they must also reflect the visions and values of the citizens of the community. Land use decisions will continue to play a significant role in determining the quality of life in the city of Oak Harbor.

### **Relationship to Other Elements**

The Land Use element is the central component of the entire comprehensive plan. In conjunction with the Environmental element, it is the element upon which all other elements of the plan are based. Coordination between the Land Use element and the other plan elements is not only required by GMA, but it is essential in ensuring that the city can meet its land use, housing and economic development goals. The goals and policies expressed in this element, and shown on the Future Land Use map, are important in planning for the allocation, distribution and intensity of land uses. This information is also important in planning for the extension of streets and utilities, and for the siting of facilities such as schools, police or fire facilities. Thus, this element will be the cornerstone of the Capital Facilities, Utilities, Housing, Economic Development, Open Space, and Transportation elements of this plan.

### **Distribution, Location and Extent of Land Uses**

The city's existing land use pattern generally responds to the opportunities and constraints presented by natural features of the land, the economic opportunities presented by transportation corridors, and the unique opportunities and constraints resulting from the location and operation of NAS Whidbey Island.

The natural features of the land are described in the Environmental element. A key feature of Oak Harbor's natural environment is its visual and physical access to the waters of Puget Sound. City land use policies must recognize the importance of this link by emphasizing strategies that will maximize opportunities for water views and water access.

As in most communities, housing development has followed economic opportunity. In the past, housing growth paralleled the growth of naval facilities. As the local economy becomes more diversified, both residential and commercial growth will be less dependent on military activity.

## EXISTING CONDITIONS

### Land Use Mix

Due to the location of the naval base and its supporting facilities, the amount of land traditionally developed within the community for both residential and non-residential uses has been affected by similar facilities built by the Navy to accommodate their personnel and their dependents. For example, NAS Whidbey Island has built 1552 units of housing for use by base personnel and their families. In addition, the base Exchange and Commissary are primary sources of goods purchased by Navy personnel and DOD retirees. As a result, the development of housing and commercial areas within the city has been slower than development in cities of comparable size. The city's mix of land uses also reflects its status as a regional provider of goods and services for the North Whidbey Island area.

In order to evaluate the adequacy of Oak Harbor's mix of land uses, a comparative survey of similarly-situated communities was performed. Cities selected for this survey were similar in population to Oak Harbor (Marysville, Port Angeles, Mukilteo), or they were a regional service provider dominated by one major employer (Bremerton, Port Townsend). In one case, the community met both criteria (Pullman). The survey examined data found in the comprehensive plans of each community (including data from the Oak Harbor 2001 Comprehensive Plan), identifying the percentage of land within each city devoted to residential, commercial, and industrial use.

This survey indicates that Oak Harbor's mix of residential, commercial, and industrial uses is fairly consistent with similar communities surveyed. One exception to this observation is in the area of industrial land, where Oak Harbor's total was significantly lower than other cities. None of the data includes land outside city limits but within Urban Growth boundaries. It is therefore likely that, as industrial land to the north of Oak Harbor is annexed over time, the percentage of industrial land will be more in line with that of other communities.

In 2011, the City recognized that there was no land use category to accommodate water-related and water-dependent commercial and industrial uses adjacent to the shoreline. This was apparent when there was a potential for a boat builder to locate within Oak Harbor. To accommodate such uses in the future, the City created a new land use category called "Maritime" that is intended to allow commercial activity and clean industrial uses along Catalina Drive.

**Figure 1**  
**Comparison of Land Uses by Community**

	<b>% Residential</b>	<b>% Commercial</b>	<b>% Industrial</b>
<b>Bremerton</b>	37.3	9.1	0.1
<b>Pullman</b>	37.2	6.4	5.8
<b>Port Angeles</b>	48.0	7.0	17.0
<b>Mukilteo</b>	52.0	8.0	15.0
<b>Marysville</b>	58.3	6.5	22.4
<b>Port Townsend</b>	68.0	1.0	5.0
<b>Average</b>	<b>50.1</b>	<b>6.3</b>	<b>10.9</b>
<b>Oak Harbor</b>	<b>51.0</b>	<b>7.0</b>	<b>1.0</b>

NOTE: Because these numbers do not include all land use types, the totals do not reach 100%

### **Residential Uses**

The predominant land use within the city is residential. The density of residential areas varies from 3 – 6 dwelling units per acre (du/ac), to as much as 22 du/ac. The higher densities are located primarily near the center of the city. These areas feature a mix of single-family and multi-family dwellings. Lower density areas, consisting mostly of single-family homes, are located to the east, west, and south of the city’s central core. Residential development has been limited in the northern portion of the city, due largely to noise impacts from aircraft operations at Ault Field. A total of 4202 parcels of land within the city are devoted to residential uses. These parcels represent approximately 51% of the city’s total land area.

Different residential areas of the city were developed over a span of time, resulting in identifiable neighborhoods with distinguishing characteristics. Six distinctive neighborhood areas have been previously defined for planning purposes: Northeast (#1) north from Whidbey Ave. to the Sea Plane Base, Southeast (#2) south from Whidbey Ave. to the waterfront, Northwest (#3) north Whidbey Ave. W to the city limits, Southwest (#4) east of Heller Road to Highway 20, south of Whidbey Ave W to Swantown Road and Highway 20, Far West (#5) all incorporated areas west of Heller Road, and South (#6) all incorporated areas south of Highway 20 and west of Oak Harbor Street. These neighborhoods are mapped on **Figure 2**.

The Northeast Neighborhood is primarily made up of ranch-style single-family houses dating from the 1950s and 1960s. Newer and larger homes are located near the eastern boundary, while multi-family units lie closer to commercial strips along Midway Boulevard and SR 20. Lot sizes range from approximately 8,000 square feet to one-half acre.

The Southeast Neighborhood includes the residences downtown, where most of the oldest homes in the city are located. This area includes some craftsman style homes from the 1920s and 1930s, and a few Victorian style homes from earlier dates. The majority of the housing in this area consists of tract homes from the 1950s and 1960s. There is also a large stock of multi-family units centered around the Central Business District. Lot sizes range from approximately 5,000 square feet to one-half acre.

The Northwest Neighborhood contains a wide variety of housing units, including mobile home parks, tract housing, ten and fifteen year old single-family homes, and new apartments and condominiums. The neighborhood contains a small number of single-family homes lacking improved streets and a sewer service that were given a "poor" rating in the most recent housing survey.

The Southwest Neighborhood consists of single-family subdivisions and planned unit developments. The area includes ranch-style homes, with apartments and condominiums located closer to SR 20. This area also provides view lots of Oak Harbor and the bay. Bordering the Whidbey Golf and Country Club are planned unit developments containing both attached and detached condominiums and single-family homes plus a gated community containing estate homes.

The Far West Neighborhood consists of single-family homes, with two large parcels of undeveloped single-family zoned land totaling 70 acres. Much of the anticipated residential growth is expected to occur in this neighborhood.

The South Neighborhood contains a mixture of new condominiums, older rural subdivisions, new planned unit developments, and approximately 50 acres of wetland and cultivated land. Recent development has been along Scenic Heights Road, which provides some of the best "view" land available.

***INSERT NEIGHBORHOOD MAP HERE***  
***(Figure 2)***

## **Neighborhood Map**

### **Commercial Uses**

Commercial uses include the Central Business District (CBD), smaller neighborhood businesses, and auto-oriented businesses and large retail facilities located along highway corridors. The CBD features older buildings that are home to a mix of office and retail uses, as well as restaurants. The area also includes several undeveloped and underdeveloped parcels that present unique opportunities for downtown development. Many of the properties in this area have water views that will make them attractive for redevelopment. However, construction on these sites may also impact existing views from other properties. City development regulations should consider the value of these views during the permitting process for new construction within the CBD. The commercial area along SR20 has developed in a manner that accommodates the auto-oriented public. In addition to automotive services, the area includes businesses that feature large-scale buildings and parking lots.

### **Industrial Uses**

Land developed or designated for industry is located primarily in the northern part of the city. This area is within the Air Installation Compatible Uses Zones (AICUZ) footprint designated by the Navy and based on noise impacts and Accident Potential Zones (APZs) associated with aircraft activity at Ault Field. Due to noise impacts and limited areas also within designated APZs, this area is better suited to industrial uses, and is not suitable for residential development.

From 1993 to 1995, the city participated in the development of the North Whidbey Community Diversification Action Plan. In recognition of the area's reliance on NAS Whidbey Island as its economic engine, the plan set forth a strategy to diversify the local economy.

In 1990, a total of 10,446 people were directly dependent on employment at NAS Whidbey Island: military personnel, civilian employees, and contractors. In 2002, that population is 10,058.<sup>1</sup> During the intervening time, there were periods of uncertainty regarding the future of the facility, based on a decision in early 1991 to include the NAS on the federal base closure list. Although the base was removed from the list shortly thereafter, the potential for closure resulted in economic uncertainty and a realization that the level of reliance on the naval base was unhealthy for the long-term benefit of the local area.

### **Public/Institutional Uses**

This category of uses includes public and private schools, churches, municipal buildings and facilities, park and recreation facilities, and open space (whether public or private).

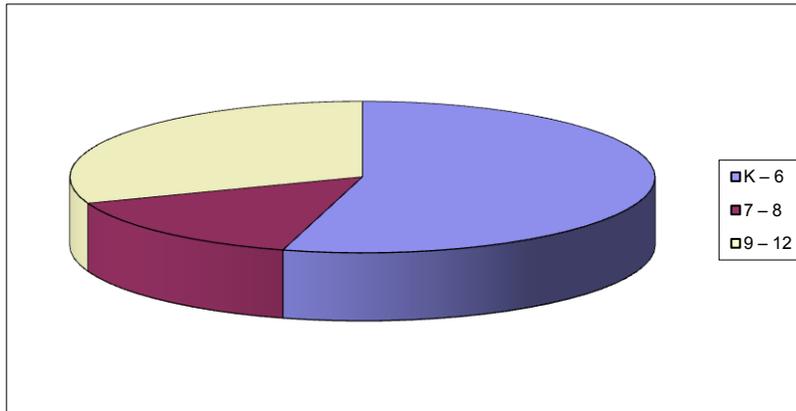
The greater Oak Harbor area is served by School District #201. The District operates one high school, two middle schools and six elementary schools, serving a total 2002 population of approximately 6,228 students in grades K – 12. Nearly one-third of this number (1,910) is high school age, with the remainder in earlier grades. Projected enrollments in coming years through 2007 suggest that the school population will decline slowly to a total of 5,886, a decline of approximately 5.5%.<sup>2</sup> Figures 3 and 4 illustrate the apportionment of students by age, and projected total enrollments.

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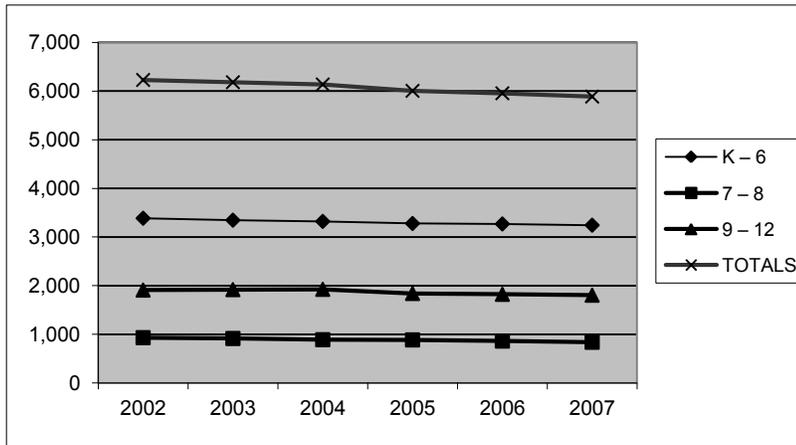
<sup>1</sup> SOURCE: NAS Whidbey Island

<sup>2</sup> SOURCE: State of Washington Superintendent of Public Instruction.

**Figure 3**  
**School Enrollment by Grade, 2002**



**Figure 4**  
**School District Enrollment Projections, 2002 – 2007**



In addition to public schools, several private schools provide educational services to the community. Among the larger programs are Lighthouse Christian Academy, Oak Harbor Christian School, Montessori Der Kinderhuis, Inc., Oak Harbor Seventh Day Adventist Elementary School, and Oak Harbor Bible Baptist Christian School. Except for Lighthouse Christian Academy (which serves grades K – 12), these private schools generally serve the K – 8 school population.

A branch of Skagit Valley College is located in Oak Harbor on 2.5 acres at the east end of Pioneer Way. The facilities include classrooms and vocational and technical buildings. In addition to their two-year study programs, the school also offers a four-year degree program in Education in association with Western Washington University. Various undergraduate and graduate degrees are also offered to the general public by a branch of Chapman University, which is located on the Navy Seaplane Base. Finally, Embry-Riddle Aeronautical University at NAS Whidbey Resident Center offers both Associate and Baccalaureate degrees in aviation-related fields.

Municipal facilities include City Hall on SE Barrington Drive, a police station located across the street from City Hall, a fire department Headquarters Station located on E. Whidbey Avenue, the library located on the Skagit Valley College campus, and the public works/municipal shops facility.

City parks and recreation facilities include 25 parks on approximately 88 acres of land within the city. In addition, the School District owns approximately 85 acres of playgrounds and athletic fields, and the Navy manages some 207 acres of parks and fields for use by their personnel and dependents. Open space areas within the city are many and varied, as described more fully in the Open Space Element.

### **Military Uses**

Two of the Navy's four facilities on Whidbey Island are located in or adjacent to Oak Harbor.

Ault Field, located immediately to the north of the city, totals approximately 4,250 acres in size. It is the most highly developed of the four NAS properties, featuring the main airfield, administrative and industrial buildings, a hospital, a variety of housing units, and several recreational areas including an 18-hole golf course.

The Seaplane Base encompasses approximately 2,820 acres. About twenty percent ( $\pm 600$  acres) of this land area is developed, primarily with family housing. The remainder of the site is in forest, wetlands, grasslands, and beaches, some of which is used as required open space to buffer military uses. The base includes 10.1 miles of shoreline on Crescent Harbor and Oak Harbor.

Activities at Ault Field can limit the type of development within the northern portion of the city due to the noise created by aircraft takeoffs and landings. The city has historically cooperated with the Navy in implementing land use plans that conform to the Navy's AICUZ program recommendations. These plans limit land uses near Ault Field to non-residential uses.

## **ECONOMIC AND DEMOGRAPHIC PROJECTIONS**

Existing conditions form the basis to predict future patterns of growth. By examining the area's population and employment growth potential, it is possible to anticipate the city's future land use needs.

The following sections analyze growth projections related to employment, population, and housing. As a base, these projections use data found in previous plans and studies. New data is based on the 2000 U.S. Census, and on information provided by NAS Whidbey Island. To maintain consistency, the methodology used to extend projections is identical to that used in previous years.

### **Population and Demographic Projections**

According to the U.S. Census, Oak Harbor's population in 2000 was 19,975. This figure represents an increase of approximately 4.5% over the 1993 population of 18,930. The city's actual rate of growth from 1993 (the most recent date when population projections were made by the state's Office of Financial Management and allocated by Island County) to 2000 was less than one percent per year. In 1993, the city elected to use a high growth estimate of 2.55% per

year for planning purposes. While this rate of growth may be attained over an extended period, short-term growth has been shown to occur at a significantly lower rate.

The rate of growth during the 1990s was tied to uncertainties related to the future of NAS Whidbey Island, which was initially slated for closure during an early round of federal base closures. Since that time, the mission of the base has been stabilized and the economy of the region has begun to diversify. With the stabilization of the employment and population base at NAS Whidbey Island and the development of new economic sectors within the local and regional economy, it is possible that the city's rate of growth will continue at rates predicted earlier.

Overall population figures tell only a small part of the story. Oak Harbor has a relatively young population, with a median age of 28.3 years. Nearly a quarter (23.6%) of the city's population falls into the school-age years of 5 to 19 years. About one in five (19.1%) of residents are between 25 and 34 years old. Only nine percent of the population is 65 years of age or older. *Figure 5* shows the full range of Oak Harbor's population by age.

The relatively young age of the city's population is due to the high percentage of military personnel, who tend to be younger than the general population. In addition, the families of military personnel contribute to the large number of school-age children, raising implications regarding the need for future school facilities.

**Figure 5**  
**Population by Age, 2000**

<b>Age Group</b>	<b>Population</b>	<b>Percent of Total</b>
<5 years	2,062	10.4
5 – 9 years	1,829	9.2
10 – 14 years	1,540	7.8
15 – 19 years	1,311	6.6
20 – 24 years	1,814	9.2
25 – 34 years	3,776	19.1
35 – 44 years	3,026	15.3
45 – 54 years	1,580	8.0
55 – 59 years	588	3.0
60 – 64 years	485	2.5
65 – 74 years	868	4.4
75 – 84 years	682	3.4
>85 years	234	1.2
<b>TOTALS</b>	<b>19,795</b>	<b>100.0</b>

SOURCE: 2000 U.S. Census

### **Existing and Projected Employment**

NAS Whidbey Island continues to exert a significant impact on the city and the region. In addition to the direct employment of more than 10,000 persons, the base generates the need for a wide variety of secondary businesses to serve the needs of the Navy and its employees.

**Figure 6**  
**Employment Forecast NAS and NON-NAS; 1980 to 2022**

	Military	NAS Civilian	Total	NAS- Depend.	NAS- Independ.	Non-NAS Total	Non-NAS Growth	Total Employment
<b>1980</b>	6,381	856	7,237	1,517	2,388	3,905	---	11,142
<b>1991</b>	8,510	786	9,296	2,024	5,666	7,690	3,785	16,986
<b>1993</b>	8,829	2,031	10,860	2,099	5,989	8,088	398	18,948
<b>2002<sup>1</sup></b>	8,521	1,537	10,058	2,026	8069	10,095	2,007	20,153
<b>2013<sup>2</sup></b>								
Low <sup>(a)</sup>	7,505	1,726	9,231	1,517	10,424	11,941	3,853	21,172
Medium <sup>(b)</sup>	8,829	2,031	10,860	2,099	10,424	12,523	4,435	23,383
High <sup>(c)</sup>	9,270	2,133	11,403	2,315	10,424	12,739	4,651	24,142
<b>2022<sup>3</sup></b>								
Low <sup>(d)</sup>	7,243	1,306	8,549	1,722	14,045	15,767		24,316
Medium <sup>(e)</sup>	8,521	1,537	10,058	2,026	14,045	16,071		26,129
High <sup>(f)</sup>	8,947	1,614	10,561	2,128	14,045	16,173		26,734

<sup>1</sup> Source of military data: NAS Whidbey Island.

<sup>2</sup> Source: *Employment Forecast for Greater Oak Harbor 1995-2013*; The Oak Harbor Planning Department (Revised 3/17/93). Based on annual growth rate of 2.81 on Non-NAS Employment and a 0.2378 Military/NAS-Dependent multiplier (using 1993 as base). (a)Assumes a 15% reduction, (b)Assumes no change, and (c)Assumes a 5% increase.

<sup>3</sup> Source: *Employment Forecast for Greater Oak Harbor 1995-2013*; The Oak Harbor Planning Department (Revised 3/17/93). Based on annual growth rate of 2.81 on Non-NAS Employment and a 0.2378 Military/NAS-Dependent multiplier (using 2002 as base). (d)Assumes a 15% reduction, (e)Assumes no change, and (f)Assumes a 5% increase.

### Housing Need Projections

A full study of housing needs was conducted by Island County in 1993.<sup>3</sup> That study formed the basis for much of the county's housing policy during the 1990s, and is discussed more fully in the Housing Element. This study was updated in 2004 with a new housing capacity analysis (see the Housing Element for details)

Throughout the 1990s, the trend toward smaller average household sizes continued in Oak Harbor and throughout Washington. The city's average household size in 2000 was 2.70

<sup>3</sup> *Housing Needs Assessment; Island County, Coupeville, Langley, Oak Harbor*. Judith Stoloff Associates, November, 1993.

persons, down from the 2.88 persons reported in the 1990 census. A smaller household size means that a larger number of housing units will be needed to accommodate the city’s projected population. This trend also has implications for housing types, as smaller households do not require the larger single-family homes that were predominant in Oak Harbor in the 1950s through 1970s. *Figure 7* ties population projections to future household needs.

**Figure 7**  
**Population and Housing Growth**

Year	Population	# of Households	Avg. Household Size
1980	12,271	4,107	2.99
1990	17,176	5,971	2.88
2000	19,795	7,333	2.70
2010	24,249	9,185	2.64
2020	29,704	11,603	2.56

SOURCE: U.S. Census Bureau. 2010 and 2020 population projections assume the “medium” growth projection (2.05% annual growth rate) originally developed as a local planning estimate.

## FUTURE LAND USE NEEDS

A land use inventory was prepared for the city in 1994.<sup>4</sup> That study confirmed the city’s role as a regional center for goods and services.

*Figure 8* details the extent of specific land uses within the city. This table does not include military uses at the Seaplane Base, even though this area is a part of the city. In addition to the aggregate numbers shown in this table, an understanding of the quality and character of land uses is also important. A discussion of land use quality and character must consider the density and intensity of development, as well as those elements that will ensure that new development is compatible with existing development in the city.

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<sup>4</sup> *Oak Harbor Urban Growth Area Report*, Makers Architecture and Urban Design, 1994.

**Figure 8**

**Land Use Inventory**

<b>Land Use</b>	<b>Acres</b>	<b>% of Total</b>	<b>% Developed</b>
Single Family	1358	50	73
Multiple Family	212	8	48
Commercial	204	8	36
Office	116	4	1
Industrial	51	2	1
Semi-Public	59	2	4
Public*	174	6	11
Parks	70	3	5
<u>Vacant</u>	<u>446</u>	<u>17</u>	<u>-</u>
<b>Total</b>	<b>2,690</b>	<b>100</b>	<b>100</b>

\* Includes local streets but not arterial streets.

Source: City of Oak Harbor Development Services Department 2002

The following table identifies the zoning districts, which implement the land use designations from the Comprehensive Plan.

<u>COMPREHENSIVE PLAN</u>		<u>ZONING DISTRICT</u>	
PRE	Planned Residential Estate	PRE	Planned Residential Estate
R-LD	Low Density Residential	R-1	Single-Family Residential
R-MD	Medium Density Residential	R-2	Limited Multiple Family Residential
R-MHD	Medium-High Density Residential	R-3	Multiple Family Residential
R-HD	High Density Residential	R-4	Multiple Family Residential
RO	Residential Office	R-O	Residential Office
NC	Neighborhood Commercial	C-1	Neighborhood Commercial
CC	Community Commercial	C-3	Community Commercial
CBD	Central Business District	CBD	Central Business District
AIC	Auto/Industrial Commercial	C-4	Highway Service Commercial
HCC	Highway Corridor Commercial	C-5	Highway Corridor Commercial
PBP	Planned Business Park	PBP	Planned Business Park
PIP	Planned Industrial Park	PIP	Planned Industrial Park
I	Industrial	I	Industrial
PF	Public Facilities	PF	Public Facilities
ORA	Open Space Recreation & Agriculture	OS	Open Space, Recreation & Agriculture

**Residential Uses**

The city contains a variety of residential uses and housing types, and varying densities. This plan is intended to ensure that sufficient land is available for future housing needs, while protecting the integrity of existing neighborhoods. For example, multi-family housing is an

important part of the city's housing mix, but its development would typically be discouraged in areas that are predominantly single-family in nature. The following types of residential development are contemplated:

**R-1 Single-Family.** R-1 Single-Family Residential areas are intended for low density, urban, single-family residential uses, while providing sufficient density to allow the City to effectively provide needed urban services. Densities would range between a minimum of three (3) units per gross acre and a maximum of six (6) units per gross acre.

**R-2 Limited Multi-Family.** R-2 Limited Multiple Family Residential areas are intended for medium density residential housing. Densities would range between a minimum density of three (3) units per gross acre and a maximum density of (12) twelve units per gross acre. The R-2 areas are intended only for those areas having safe and convenient access to improved collector or arterial streets and adequate public services.

**R-3 Multi-Family.** The R-3 Multiple Family Residential designation is intended to provide for and protect areas for medium to high density multiple family residential development. The densities for this district range between a minimum density of six (6) units per gross acre and a maximum density of sixteen (16) units per gross acre. The R-3 areas are intended only for those areas adjacent to arterials or collector streets, where adequate public services are available.

**R-4 Multi-Family.** This Multiple Family Residential designation is intended to provide for and protect areas for high density multiple family residential development for persons who desire to live in an apartment environment. Densities would range between a minimum of twelve (12) units per gross acre and a maximum density of twenty-two (22) units per gross acre. The R-4 district shall be considered only for those areas adjacent to arterials or collector streets. Safe and convenient streets must be available or developed to the district without generation of additional traffic upon existing residential streets.

**Residential/Office.** It is the purpose of the RO Residential Office district to provide for areas appropriate for professional and administrative offices. It is intended that such districts would provide a buffer for residential districts, and that the development standards would be such that office uses would be compatible with residential districts. This designation would recognize areas where existing single-family homes may be functionally obsolete due to their size, and promote the conversion of such dwellings to office uses in a manner that retains the character of the larger single-family structure.

### **Commercial Uses**

A community needs a variety of retail and office areas to maintain economic health. For that reason, provision must be made to accommodate businesses serving small neighborhoods, as well as much larger businesses with a regional clientele. The following commercial uses are contemplated:

**C-1 Neighborhood Commercial.** This commercial designation is intended to provide for limited commercial and mixed residential/commercial uses to serve the residents of a surrounding residential district. The scale of development, the architectural and site design and the operational character of allowed uses would be an important consideration for this type of development.

**Central Business District.** The Central Business District (CBD) is intended to preserve and enhance the unique harbor location of the City's heritage with the character of a traditional center of social, cultural and retail activity. Mixed-use developments, combining retail and visitor oriented activities on the ground floor with office, retail and residential uses above, would be required. Within the district, pedestrian-oriented activity would be encouraged. Standards and design guidelines adopted to enhance and maintain a pedestrian friendly environment would be implemented. Incentives would also be provided to encourage the development of mixed-use projects. Subdistricts within the CBD would provide for flexibility of residential development within specific areas. Large surface parking lots would not be encouraged. Shared clustered parking areas in the middle of blocks would be encouraged, away from street frontages. Access driveways would be kept at a minimum, to promote the safety and convenience of pedestrians. As with the Neighborhood Commercial areas, the scale of development within the CBD would be an important consideration.

**C-3 Community Commercial.** The Community Commercial designation would provide for those types of retail, wholesale, transportation, and service uses which, because of traffic and other requirements, depend upon particular locations or site characteristics to serve the needs of the community and its trading area. Generally, the permitted uses would contemplate large sites with access from either major or minor arterials.

**C-4 Auto/Industrial Commercial.** The Auto/Industrial Commercial district would permit the establishment of facilities oriented toward uses dependent upon a highway location, for purposes of either access or visibility. The district would primarily be intended to allow for the concentration of automobile and other motor vehicle sales centers. Other commercial and limited industrial activities would also be permitted. The uses permitted by this district must also be compatible with the NAS Whidbey AICUZ recommendations. Access to the highway would be controlled, so as to minimize turning movement conflicts and maximize traffic efficiencies.

**C-5 Highway Corridor Commercial.** The Highway Corridor Commercial would provide for those types of uses which, because of traffic and other requirements, are regional in impact and should be located in the highway corridor. This designation is intended to provide a means of allowing these uses along the highway corridor, but with limited access to SR 20.

**Maritime Uses**

The City created this land use in 2012 to accommodate high intensity water related and water dependent commercial and industrial uses. This land use category and the Maritime designation in the Shoreline Master Program have similar intent. This land use would accommodate uses such as boat building, sail making, water dependent transportation ware housing and other clean industrial uses. This land use also accommodates commercial uses similar to the uses that are allowed in the Central Business District. The commercial uses are intended to draw residents and visitors to the area and enjoy the recreational facilities provided by the marina, Catalina Park and the Maylor Point trail. Commercial and industrial uses in this area will need to be sufficiently screened from each other. The Maritime Land Use should consider flexible standards for streets and parking as an incentive to foster development in the area. One of the major challenges in creating this land use category is the intersection of Pioneer Way, Catalina Drive and the security gate to the Seaplane Base. Since the proposed land uses in this area has the potential to generate traffic, creative solutions will need to be sought to address this issue. Creating flexible parking standards in this area is also intended to encourage the public to use the access provided by the waterfront trail with alternative modes of transportation.

### **Industrial Uses**

The city currently has a limited amount of developed industrial land. The designation of industrial areas within the city would also provide a basis of agreement with Island County regarding industrial development within the city's UGA located to the north of the city. This area, which is impacted by the noise and accident potential generated by aircraft operations at Ault Field, is well-suited to industrial development while accommodating the Navy's need for compatible uses near the airfield. Several types of industrial use may be contemplated, including uses that may also permit commercial development.

***PBP or PIP Planned Business or Industrial Parks.*** Planned business or industrial parks are intended to promote the development of larger-scaled master planned developments related to office complexes or complex manufacturing facilities. They would preserve or create environmental amenities superior to those generally found in conventional developments. The degree of planning required for such developments would promote a flexibility of development intended to result in a campus or park-like environment.

***Industrial.*** The Industrial district would accommodate certain industrial structures and uses having physical and operational characteristics that could have an adverse impact on adjoining residential or commercial uses. Regulations would be designed to permit those industrial uses that can be operated in a relatively clean, quiet and safe manner compatible with adjoining land uses.

### **Other Land Uses**

***Military.*** Although the Seaplane Base is located entirely within the Oak Harbor city limits, all land use and development within that area is governed directly by the Navy. Historically, the city and the Navy have worked cooperatively to ensure that development meets the needs and expectations of all the parties involved.

**Public Facilities.** The Public Facilities district accommodates public facilities and institutional land uses such as public parks, schools, churches, governmental offices, public works yards, utility structures, hospitals, and other similar public and quasi-public uses. This designation aids the City and the public in planning and budgeting for public facilities, while minimizing potential conflicts between incompatible land uses.

**Open Space.** Some outlying areas of the UGA continue to be used for agricultural purposes. This designation would allow the retention of natural areas, rural character, and open space areas within the City. It would also allow for annexation of lands to the City without forcing immediate development. Further, this designation would help promote development of special community resources such as golf courses, wetlands, forest land and farming areas that may have scenic and other environmental value. Except for special circumstances, it is anticipated that this district will be used only for land brought into the City by annexation or for which special tax considerations are already provided by Island County.

**Special Planning Area.** This 105-acre area encompasses the easternmost portion of the historic Fakkema Farm property. It was designated in 2005 as a “Special Planning Area” with the following land use goals:

1. Maintain the historic farm building cluster intact within a protected seven acre reserve area with specific design guidelines;
2. Designate areas for future residential growth to a maximum of 352 housing units, allowing for mixed densities where desirable;
3. Identify an area of ten acres for passive public open space or active recreational facilities within the Special Planning Area;
4. Dedicate a public trail easement through the drainage buffer from Fairway Lane to Swantown Lake;
5. Encourage transfer of development rights from the remaining agricultural land to upland areas on the southern edges of the Fakkema property.

## Central Business District

### 19.20.300 Purpose and intent.

The central business district (CBD) is intended to preserve and enhance the unique harbor location of the city's heritage with the character of the traditional center of social, cultural and retail activity. Mixed use developments, combining retail and visitor-oriented activities on the ground floor with office, retail and residential uses above, are required. Within the district, pedestrian-oriented activity is encouraged. Standards and design guidelines are adopted to enhance and maintain a pedestrian-friendly environment. Incentives are also provided to encourage the development of mixed use projects. Subdistricts CBD-1 and CBD-2 are created in order to provide for flexibility of residential development within specific areas of the central business district. Large surface parking lots are not encouraged. Shared clustered parking areas in the middle of blocks are allowed away from street frontages. Access driveways are to be kept at a minimum to promote safety and convenience of pedestrians. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

### 19.20.305 Principal permitted uses.

In a central business district (CBD, CBD-1 or CBD-2), the following are principal permitted uses (for the purposes of this district only, uses considered to be "retail" are denoted with an (R)):

- (1) Antique shop (R);
- (2) Artist's studios and supplies (R);
- (3) Bakery, retail only (R);
- (4) Bank;
- (5) Barber and beauty shops;
- (6) Bars (R);
- (7) Bicycle shop (R);
- (8) Billiards and pool hall (R);
- (9) Blueprinting;
- (10) Bookstore (R);
- (11) Brew pub (R);
- (12) Camera and supply shop (R);
- (13) Clothes and apparel shop (R);
- (14) Cocktail lounge (R);
- (15) Coffee house (R);
- (16) Confectionery store (R);
- (17) Conference center;
- (18) Data processing facility;
- (19) Delicatessen (R);
- (20) Department store (R);
- (21) Dry cleaners;
- (22) Furniture shop (R);
- (23) Florist shop (R);
- (24) Gift shop (R);

(25) Grocery store, neighborhood, provided gross floor area shall not exceed 12,000 square feet (R);

(26) Hardware store (R);

(27) Hobby shop (R);

(28) Hotel and motel;

(29) Ice cream shop (R);

(30) Interior decorator studio (R);

(31) Jewelry store (R);

(32) Leather goods store (R);

(33) Music store (R);

(34) Offices;

(35) Office supply and equipment store (R);

(36) Pet shop (R);

(37) Pharmacy and drug store (R);

(38) Photographic film processing and associated retail sales (R);

(39) Photographic studio and supplies;

(40) Photocopying;

(41) Post office;

(42) Printing shop;

(43) Residential uses, provided:

(a) In the CBD district: mixed use sites with multiple street frontages may locate dwelling units on the ground level on any street frontages other than Pioneer Way;

(b) In subdistricts CBD-1 or CBD-2: dwelling units may be the primary use of the site;

(44) Restaurant, including sidewalk cafe (R);

(45) Schools for the fine arts;

(46) Shoe repair shop (R);

(47) Shoe store (R);

(48) Sporting goods shop (R);

(49) Tailor shop (R);

(50) Tavern (R);

(51) Taxi service;

(52) Theater;

(53) Tobacco shop (R);

(54) Toy store (R);

(55) Travel agencies;

(56) Trophy shop (R);

(57) Upholstery shop;

(58) Variety store (R);

(59) Visitor information center;

(60) Other uses similar to those identified above and having equal or less impact on the purposes of this section. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

#### **19.20.310 Accessory permitted uses.**

In a central business district (CBD, CBD-1, or CBD-2), the following are accessory permitted uses:

- (1) A use customarily incidental and subordinate to a principal use permitted outright;
- (2) On-site hazardous waste treatment and storage facilities as an accessory use to any activity generating hazardous waste and lawfully allowed in this zone; provided, that such facilities meet the state siting criteria adopted pursuant to the requirements of RCW 70.105.210;
- (3) Television satellite dish reflectors, roof-mounted and within building setback lines not to exceed the height limitations and other standards as set out in OHMC 19.20.320; provided said height limitation may be increased when such height is permitted per OHMC 19.28.040 and 19.28.050. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

**19.20.315 Conditional uses permitted.**

The following principal uses and their accessory uses may be permitted in a central business district (CBD, CBD-1, or CBD-2) when authorized by the hearing examiner:

- (1) Coffee kiosk;
- (2) Dancehall;
- (3) Governmental buildings for administrative or protective services;
- (4) Health club;
- (5) Land reclamation with water-dependent marine development;
- (6) Parking lots or garages not in conjunction with permitted uses;
- (7) Places of entertainment and amusement, if conducted within a wholly enclosed building;
- (8) Private nursery school, kindergarten, or child day care center not qualifying as a home occupation on a legal lot; provided, there is established in connection therewith an outdoor play area having a minimum area of 1,000 square feet plus an additional 50 square feet for each child in excess of eight;
- (9) Public utility and communications facility;
- (10) Transit terminals;
- (11) Swimming pools or beaches, public or private;
- (12) Other uses similar to uses permitted or conditionally permitted and normally located in the central business district; provided, that there shall be no manufacturing, compounding, processing or treatment of products other than that which is essential to the retail store or business where all such products are sold on the premises. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

**19.20.320 Density provisions.**

In CBD, CBD-1 and CBD-2, the following density provisions apply:

- (1) Allowable density:

District	Minimum	Maximum
CBD	None	None
CBD-1	9 du/ac	None
CBD-2	13 du/ac	None

- (2) Minimum lot area, no limitation;
- (3) Minimum lot width, no limitation;
- (4) Minimum lot depth, no limitation;

(5) Minimum front yard, no limitation, except when opposite a residentially zoned property, then a 10-foot front yard is required. Front yard setback may also be increased to 10 feet if needed for traffic safety; front yard setback shall be provided so as to maintain a 12-foot sidewalk measured from the existing curb or future curb line;

(6) Minimum side yard, no limitation except when abutting a residentially zoned property, then 10 feet each. For corner lots, side yard may also be increased to 10 feet if needed for traffic safety;

(7) Minimum rear yard, no limitation except when opposite a residentially zoned property, then 10-foot rear yard is required or except when abutting a public street where the setback may be increased to 10 feet if needed for traffic safety;

(8) Maximum building height; 35 feet; except:

(a) In CBD: building height may be increased to 45 feet if ground floor retail space (as defined in OHMC 19.20.300) is developed in conjunction with a residential use;

(b) In CBD-2: building height may be increased to 45 feet for residential development (without a retail component);

(c) In CBD: building height may be increased to 45 feet for nonresidential uses or mixed use projects upon approval of the design review board and by providing additional urban amenities as defined in the Oak Harbor commercial and industrial design guidelines;

(d) In CBD: building height may be increased to 55 feet for nonresidential uses or mixed use projects upon approval of the design review board and by providing additional urban amenities as defined in the Oak Harbor commercial and industrial design guidelines. The design review board shall specifically review the proposed project and building height for its impacts on waterfront and mountain views and require reasonable mitigation as necessary;

(9) Maximum lot coverage, no limitation;

(10) Parking.

(a) Nonresidential Uses. There shall be no required parking for nonresidential uses; except, however, if parking is provided, it shall meet the parking space size and access requirements of OHMC 19.44.110;

(b) Residential uses shall provide parking per Chapter 19.44 OHMC, except that guest parking need not be provided. If guest parking is provided it shall meet the parking space size and access requirements of OHMC 19.44.110;

(c) Any parking provided beneath a permitted residential use shall be enclosed;

(d) No more than 50 percent of the gross floor area along pedestrian-oriented streets may be used for residential parking;

(11) Design Standards.

(a) Development shall be in accordance with the provisions of the Oak Harbor commercial and industrial design guidelines;

(b) Residential development shall have ground level access independent of nonresidential uses from an inside lobby, elevators and/or corridors, from an enclosed interior court, or from other separate access provisions;

(c) Nonresidential development along Pioneer Way, between SE City Beach Street and SE Midway Boulevard, shall meet the following standards:

(i) Ground-floor, nonretail development shall not comprise more than 50 percent of the lineal street frontage of the lot;

(ii) Window areas for nonresidential portions of a building's facades shall not be less than 40 percent or greater than 60 percent of the total facade area;

(iii) Conformance with the above standards shall be determined by using the design guideline applicability standards established under OHMC 19.48.040;

(d) Residential development in subdistrict CBD-1 or CBD-2 shall be under a planned residential development per Chapter 19.31 OHMC;

(e) Nonresidential development with building heights greater than 45 feet, as approved by the design review board, shall provide a minimum of 450 square feet of pedestrian-oriented space (as defined in the Oak Harbor commercial and industrial design guidelines) plus an additional 25 square feet for each vertical foot of building height above 45 feet;

(f) All buildings in the CBD greater than three stories must set back upper stories by at least 10 feet. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

**19.20.325 Conditions governing permitted uses.**

All principal uses permitted outright in a CBD, CBD-1, or CBD-2 district shall meet the following conditions:

(1) All business, service, repair, storage, or merchandise display shall be conducted within a wholly enclosed building, except for the following:

(a) Off-street parking and loading;

(b) Food and drink service in connection with cafes, restaurants or other eating establishments.

(2) The use of property must not result in the creation of offensive odors or offensive or harmful quantities of dust, smoke, exhaust fumes, noise or vibration.

(3) Landscaping and buffers shall be constructed and maintained in accordance with the provisions of Chapter 19.46 OHMC. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

**19.20.330 Site plan and design review required.**

Site plan and design review shall be required as per Chapter 19.48 OHMC. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

**Article IX. C-3 – Community Commercial**

## Chapter 19.46 LANDSCAPING AND SCREENING

### Sections:

- 19.46.010 Purpose.
- 19.46.020 Applicability.
- 19.46.030 Requirements for setbacks, perimeters, buffers, fences, screening, and parking lots.
- 19.46.035 North Whidbey Enterprise Area landscape requirements.
- 19.46.040 General landscaping standards.
- 19.46.050 Fences and hedges.
- 19.46.070 Conflicts.
- 19.46.080 Maintenance of required landscape areas.
- 19.46.100 Landscaping and irrigation plans required.
- 19.46.110 Review of landscape plans.
- 19.46.120 Phased projects.
- 19.46.130 Landscape performance bonding.
- 19.46.140 Native vegetation standards.
- 19.46.150 Tree species.
- 19.46.155 Tree removal outside of native vegetation areas.
- 19.46.160 Administrative relief and alternative compliance.
- 19.46.170 Enforcement of chapter.

### **19.46.010 Purpose.**

The purpose of this chapter is to provide uniform standards for the development and maintenance of the landscaping of private property and public rights-of-way. The purpose of landscaping is to improve the livability of residential neighborhoods, enhance the customer attraction of commercial areas, increase property values, improve the compatibility of adjacent uses, provide visual separation and physical buffers between incompatible adjacent land uses, provide visual relief from the expanse of parking lots, screen undesirable views, contribute to the image and appeal of the overall community, and mitigate air and noise pollution.

These requirements are also intended to facilitate low impact development techniques through the retention of existing vegetation including trees to the extent feasible and to require replanting if existing trees are removed; to reduce erosion and storm water runoff; to preserve and promote urban wildlife habitats; to enhance the streetscapes along the city's public rights-of-way with an emphasis on trees; to define and separate vehicular and pedestrian traffic areas; to screen the appearance of parking areas from public rights-of-way and adjacent properties; and to make the city a more aesthetically pleasing place to live, shop and work. (Ord. 1615 § 1, 2011; Ord. 1555 § 20, 2009).

### **19.46.020 Applicability.**

The provisions of this chapter shall apply to any of the following:

- (1) All new public and private developments, multifamily housing larger than a duplex, and long plats;

(2) Any additions to existing structures that exceed 30 percent of the gross floor area, or are in excess of 1,000 square feet;

(3) Any expansion of a mobile home park in which the number of new mobile home lots exceeds 10 percent of the number of existing mobile home lots;

(4) Provisions required by Chapter 19.48 OHMC;

(5) Situations where this chapter imposes a requirement for buffering or screening between two uses, one of which is existing and the other new. The responsibility for satisfying this requirement rests entirely on the new use;

(6) Single-family dwellings and duplexes;

(7) Any preexisting vehicular surface area which expands in excess of 25 percent shall provide the landscaping required in OHMC 19.46.030. No expenditure made for removing existing asphalt, constructing planting areas, installing irrigation systems, and adding dirt and plant materials which is required in order to comply with these requirements shall be required to exceed four percent of the total assessed real property value of the subject property on which the improvements are being made. (Ord. 1615 § 1, 2011; Ord. 1555 § 20, 2009).

#### **19.46.030 Requirements for setbacks, perimeters, buffers, fences, screening, and parking lots.**

(1) Required minimum landscape setbacks apply to all zoning districts, except those projects specifically excluded in OHMC 19.46.020.

(a) Minimum width of landscape setback, as identified with the city's street classification plan:

(i) Large shopping centers in excess of five acres adjacent to principal arterial streets: 20 feet;

(ii) Any multifamily and nonresidential use constructed on a designated scenic transportation route: 20 feet;

(iii) All other uses adjacent to a principal arterial: 12 feet;

(iv) Adjacent to a minor arterial or collector arterial: 10 feet;

(v) Adjacent to all other streets: eight feet;

(vi) Where roadway right-of-way expansion is proposed, the setback will begin at the anticipated new edge of the road.

(b) Minimum Number of Trees in Landscaped Setbacks. There shall be four trees for every 100 linear feet of frontage of property adjacent to all street classifications. Guidelines for the specific types and locations of trees and other landscape materials in landscape setbacks are contained within the landscape policy manual.

(c) Design Standards.

(i) Some of the required landscape setback trees may be clustered in the setback. Parking lot screening may be included in the landscape setback width. The required landscaped setback trees may be permitted to be partially or totally located in the adjacent public right-of-way area, if:

(A) All of the required trees cannot be placed in the landscaped setback;

(B) There are no conflicts with utility easements;

(C) In the case of the state highway, the city engineer and State Highway Engineer approve;

(D) It shall be the responsibility of the adjacent property owner to care for landscaped rights-of-way;

(E) Where undeveloped adjacent right-of-way occurs, it shall be landscaped.

The required landscaped setback trees may be located in the adjacent public right-of-way area if these trees cannot be placed in the landscaped setback area due to the existing development of the site. However, such trees are required only to the extent that: (1) the city engineer and State Highway Engineer approve the trees in the case of a state highway; and (2) no conflicts exist within utility easements.

(ii) Opaque walls and fences which obstruct view shall be located outside (building side) of the setback to maintain a landscaped appearance along the street.

(iii) Administrative relief of the requirements of this section may be requested in accordance with OHMC 19.46.160.

(2) Required Minimum Landscape Perimeters. Planting areas within side and rear yards that are not occupied by structures shall be as follows:

(a) Minimum Width of Perimeter. Five feet for the length of the property line, unless otherwise specified under screening requirements of this chapter;

(b) Exemptions. Perimeter of industrial site or commercial yard that is not substantially visible from the right-of-way or located where screening is not required, shall be exempt;

(c) Planting Requirements.

(i) A minimum of four trees shall be planted for every 100 linear feet, or fraction thereof, of perimeter planting area;

(ii) Shrubs and ground cover plantings shall be in quantities and spacing that will provide for 80 percent ground coverage within three years;

(iii) When abutting properties with different land use classifications occur, the screening requirements under OHMC 19.46.030(3) and (4) shall supersede the requirements of this subsection;

(d) Connecting Driveways. When connecting joint driveways or shared parking lots are provided between sites, the minimum area requirements may be reduced by the area occupied by the driveway that would otherwise be landscaped under the requirements of this subsection.

(3) Required Minimum Landscape Buffers.

(a) Buffers between (1) adjacent nonresidential and residential uses; and (2) adjacent nonresidential uses and single-family residential zones:

(i) Design Standards. The buffer shall be a minimum of 12 feet wide and shall be located on the property line adjacent to any single-family residential community. Said buffer shall generally consist of a mix of predominantly evergreen plantings including trees, shrubs, and ground covers. Evergreen trees shall be a minimum height of four feet at time of planting. Planting shall be chosen and spaced so as to grow together within four years of their planting in a manner that is sufficient to obscure sight through the barrier. The entire planting strip shall be landscaped; however, those plantings used to achieve the sight-obscuring screen shall cover at least six feet of the width of the strip.

(b) Buffers between adjacent multifamily residential and single-family residential zones:

(i) Design Standards. The buffer shall be a minimum of 10 feet wide and shall be located on the property line adjacent to the single-family residential community.

(c) Buffers between nonresidential and residential uses separated by a nonarterial street, public alley or private street:

(i) Design Standards. The buffer shall be a minimum of 12 feet in depth. The minimum number of trees in the buffer shall be two trees for every 20 linear feet of buffer. The trees will consist of a mix of evergreen and deciduous. Depending upon the nonresidential use, evergreens may be increased to help obscure sight between the two uses. An opaque structure with a maximum height of six feet may be optional along the common property line. If a fence is constructed, planting shall still occur as stated above. The buffer may be reduced to 10 feet if an opaque structure is erected.

(d) Buffers between an industrial classified district and a residential classified district:

(i) Design Standards. All sites in an industrial district having a common boundary with a residential district shall be planted and maintained along such common boundary with a view-obscuring coniferous greenbelt of shrubs, trees and native vegetation not less than six feet in height nor less than 10 feet in width, for screening purposes and controlling access.

(4) Fences and Screening. When applicable, the requirements of this section shall supersede the requirements of other sections of this chapter.

(a) Purpose. The requirements of this subsection are intended to reduce visual impacts and incompatible characteristics of:

- (i) Abutting properties with different land use classifications;
- (ii) Service areas and facilities, including loading and storage areas;
- (iii) Parking areas located in front of buildings;
- (iv) Any other use or area as required under this section, or determined to be necessary by the planning director (or designee).

The fence or landscaping screen shall be sight-obscuring, obstructing storage areas from view on the sides of the property abutting, adjoining, or facing a residential district. The fence shall be of such material and design as will not detract from adjacent residences and shall be built according to plans submitted by the owner or his/her authorized agent and approved by the planning director (or designee).

(b) Landscaping. Screen planting shall consist of evergreen trees planted a maximum of 15 feet on center, or hedges with dense evergreen foliage, in combination with deciduous trees and hedges for seasonal color and texture. Ground cover shall be planted at a density to form an effective barrier to cover 85 percent of the ground surface within two years.

(i) On a corner lot there may be placed and maintained:

(A) A fence or screen not more than three feet in height; provided, that it is not sight-obstructing (50 percent of the area of the fence or screen is open) along a public or private street;

(B) A six-foot-high open wire fence along the property line facing the side street; provided, that it does not come closer to the street right-of-way on the front of the lot than the required building setback;

(C) A four-foot-high solid fence or hedge parallel to the property line facing the side street; provided, it is 10 feet back from the side street; and provided, that it does not come closer to the street on the front of the lot than the rear of the building.

(ii) In commercial zones, no fence or hedge may be placed on the front yard setback except where required to screen the property from the adjacent lot; then the screen shall extend to the street right-of-way.

(c) Minimum Width.

(i) Landscape Screening. If screening is to be achieved through the use of plant materials only, the screening area shall be a minimum of 10 feet in width. If other materials, such as fencing, walls or berms, are used in conjunction with the landscaping, the width may be reduced, as described in subsections (4)(c)(ii) through (iv) of this section.

(ii) Earth Berm Alternative. If an earth berm is incorporated into the screening plan, medium sized shrubs and/or evergreen trees shall be spaced a maximum of four and one-half feet on center and the width of the screening area may be reduced to eight feet.

(iii) Fence Alternative. If a fence option is selected, maximum spacing of medium sized shrubs shall be six feet on center, and the width of the screening area may be reduced to seven feet. The fence shall be constructed of exterior weather-resistant wood, or applicable alternative. One alternative may be a cyclone fence; however, such a fence shall include slats, and if the fence is next to a right-of-way, landscaping shall be planted between the fence and the right-of-way. Plantings must obscure 75 percent of a cyclone fence within four years.

(iv) Wall Alternative. If a wall at least five feet high is to be used for screening, the planting requirements shall be as specified under subsection (1) of this section, and the screening width may be reduced to five feet. Screen walls shall be constructed with masonry, block, rockery or textured concrete, subject to design approval by the planning director.

(d) Uses Requiring Screening. The planning director may require screening to protect adjacent properties from negative impacts of any permitted or conditional use in a zoning district.

Except as otherwise required by the planning director, screening shall be required in the following instances:

(i) Developments located in districts listed on the left side of the chart below shall provide screening when they adjoin districts specified on the right side of the chart.

District to Be Developed	District to Be Screened
Multifamily residential	Single-family residential
Semi-public	All residential
Commercial/business	All residential
Industrial	All residential/commercial

(ii) Churches, community centers, and other similar conditional uses shall provide perimeter screening when adjoining a residential district.

(e) Fence and screen height limits in the various zones are as follows:

<b>Residential Zones:</b>	Front yard	3 feet maximum
	Side yard	6 feet maximum
	Rear yard	6 feet maximum
<b>Commercial Zones:</b>	Front yard	0 feet maximum
	Side yard	6 feet maximum
	Rear yard	6 feet maximum
<b>Industrial Zones:</b>	Front yard	8 feet maximum
	Side yard	8 feet maximum
	Rear yard	8 feet maximum

(5) Minimum Parking Lot Requirements.

(a) Required Trees.

(i) One tree of a type suitable for parking lots shall be provided for every 10 open (not in a garage) vehicular parking spaces in parking lots with 10 or more spaces;

(ii) The tree types and minimum planter sizes shall be consistent with the landscape policy manual. Trees chosen shall be appropriate to a parking lot location;

(iii) The required trees may be clustered but shall be located to divide and break up expanses of paving and long rows of parking spaces and to create a canopy effect in the parking lot. In order to be considered within the parking lot, the trees must be located in planters that are bounded on at least three sides of parking lot paving. This means only trees in landscaped “islands” or “fingers” can count toward the parking lot tree requirement;

(iv) Planters shall be of sufficient size and design to accommodate the growth of the trees and to prevent damage to the trees by vehicles;

(v) The number of species required shall vary according to the overall number of trees required to be planted. The species shall be planted in proportion to the required mix. The species mix shall not apply to areas of vegetation required to be preserved by law nor those located in areas designated as natural. The number of species to be planted are indicated below.

Required # of trees	Maximum # of species
6 – 10	2
11 – 15	3
16 +	4

(b) Required Landscape Area. At least 15 percent of every parking lot shall be landscaped, unless otherwise required by this title. In all cases, with the exception of vehicular display lots, landscaping shall be distributed throughout the parking area. Landscaping located in required setbacks or buffers may not be used to meet this requirement. If LID rain gardens or bioretention facilities are proposed, they are to be incorporated into the required parking lot landscaping unless site and soil conditions make such facilities infeasible. LID stormwater management facilities shall be designed and constructed in accordance with the Low Impact Development Technical Guidance

Manual for Puget Sound (current edition). The landscaping shall consist of deciduous and/or coniferous material and may include turf, shrubs, and flowers.

(c) Required Screening.

(i) Open parking spaces (except those in single-family residential projects in any zone district) shall be screened from the view of adjacent properties and streets to mature minimum height of 30 inches by the use of berms and/or plantings;

(ii) A minimum of two-thirds of the affected street frontage or property boundary, not counting intersecting driveways, must have the required screen;

(iii) The required screening may be a component of the required landscape setback;

(iv) Structures such as decorative walls or fences may be approved through an administrative relief request if the planning director (or other designee) finds that:

(A) The structures avoid a blank and monotonous appearance by such measures as architectural articulation and the planting of vines, shrubs or trees; or

(B) The total use of the berms and/or plantings is not physically feasible; or

(C) The structures attractively complement the use of berms and/or plantings;

(v) The maximum spacing of plants to achieve an acceptable screen and the maximum acceptable grades for screening areas, such as sodded berms and planting beds, shall be consistent with the landscaping policy manual;

(vi) Guidelines for the specific types and location of trees, shrubs and other landscape materials in parking lots are contained within the landscape policy manual as approved by the city council or thereafter amended.

(6) In addition to the requirements and standards of this chapter, the landscape guidelines in the design guidelines shall apply. (Ord. 1615 § 1, 2011; Ord. 1555 § 20, 2009).

**19.46.035 North Whidbey Enterprise Area landscape requirements.**

(1) The standards contained in this section apply to the North Whidbey Enterprise Area as identified in Exhibit C of the Urban Growth Area Interlocal Agreement between Island County and the city of Oak Harbor, a copy of which is on file with the city clerk and available for public inspection.

(2) Significant Tree Retention. Significant tree retention in the I, PIP, C-4 and nonresidential development, short subdivision and subdivision in the PRE zones shall meet the following standards:

(a) Applicants should retain 15 percent of the significant trees found on the property except for those trees found in the building footprints, access roads, parking areas and utility line trenches. Applicants should give attention to the following:

(i) Preservation of significant trees along the perimeter of the property; and

(ii) Preservation of significant trees near or adjacent to critical areas; and

(iii) Preservation of significant trees which create a distinctive skyline feature;

and

(iv) Preservation of Garry Oak trees; and

(v) Trees that may constitute a safety hazard should be removed; and

(vi) Special attention shall be given to preservation of significant trees on properties identified in the 2001 Oak Harbor Comprehensive Plan, Environmental Element, Woodland Map.

(b) An inventory of significant trees shall be submitted with all applications for subdivision, short subdivision or site plan review.

(3) Landscaping, screening and buffering in the I and PIP zones shall meet the following standards:

(a) Open storage, trash or recycling areas shall be screened by fencing and/or landscaping;

(b) Landscaping including street trees spaced no further than 20 feet on center shall be required in all front yards and the abutting public road; and

(c) Buffers between industrial zones and adjacent residential properties shall be planted along the common boundary. The planting should include coniferous shrubs, trees and native vegetation. Fencing may be incorporated to help ensure an effective visual buffer.

(4) Landscape for I, PIP and C-4 lands abutting Goldie Road and Oak Harbor Road shall meet the following standards:

(a) A 20-foot landscape setback shall be established; and

(b) The area between the property line and drainage swale shall be planted with low profile foliage; and

(c) The landscape area shall be planted with a mixture of native evergreen trees containing a variety of species, colors and textures for a year-round green, attractive appearance; and

(d) If the landscape buffer setback does not have existing significant vegetation, the buffer will be planted with native evergreen trees. If deciduous trees are desired they may be planted at a rate of two evergreen to one deciduous tree; and

(e) Maximum spacing of the trees shall be 10 feet on center or equivalent grouping as determined by site and existing conditions; and

(f) Roadway and intersection requirements shall prevail if a conflict arises with the landscape standards listed herein. (Ord. 1615 § 1, 2011; Ord. 1555 § 20, 2009).

#### **19.46.040 General landscaping standards.**

(1) Landscape Materials.

(a) Landscape materials shall be defined as evergreen or deciduous trees, shrubs, and ground cover plants, perennial or annual flowers, and lawn. River rock, fountains, ponds, rockeries, ornamental or decorative walkways (provided both sides abut landscaping) may be included, where, in the opinion of the director, additional ornamental features may be considered as part of the landscape materials, subject to the administrative relief process.

(b) Suggested tree species suited to the unique soils, geology, and weather patterns of Oak Harbor are contained in OHMC 19.46.150.

(c) Planting shall occur based on species' tolerance to the environment in which it will be placed.

(d) No artificial lawn or plants will be permitted in landscaped areas.

(2) Drainage Detention/Retention Ponds. If a proposed detention pond has a slope ratio of 3:1 or greater, where fencing around the pond will be required, a fencing and

landscaping plan shall be submitted to the planning department. Submittal of the proposed fencing and landscaping plan shall occur in conjunction with short plat, preliminary plat, or site plan review applications, depending on the project type.

(3) Land Clearing Plan. Clearing of landscaping is required to be in accordance with the provisions of Chapter 19.47 OHMC.

(4) Pollution Control. It shall be the responsibility of the property owner to ensure that storm runoff from landscaped areas does not contain excessive amounts of fertilizer, insecticides, and herbicides that may be harmful to aquatic life, and to take measures to prevent runoff water impacts as required by the Department of Ecology and Wildlife and as specified in the Puget Sound Water Quality Manual. One measure to reduce the use of chemicals is the use of native plants in landscape areas.

(5) Safety Features/Utilities. Installation of landscape materials shall not obstruct access to fire connections, post indicator valves (PIVs) and hydrants, standpipes, sprinkler connections, utility vaults, pedestals, and other public and private utility facilities. Landscaping shall not obstruct fire apparatus access roads.

(6) Visibility Triangle. Along street frontages, within 30 feet of an alley or unsignalized street intersection, or within 25 feet of a driveway, no shrub shall be higher than 30 inches from street gutter grade and no tree shall have branches or foliage below eight feet above street level. At signalized intersections the conditions of this section shall not be necessary, but it shall be required that only deciduous trees be located at signalized intersections. Under no circumstances shall landscaping interfere with sight distance visibility. In lieu of meeting this standard, visibility triangles shall be provided as per AASHTO standards or in accordance with OHMC 11.17.110(5).

(7) Where practical, landscaping shall be designed to not block solar gain or solar access by surrounding properties.

(8) Special Landscaping Districts. The area of the CBD central business district, for the purpose of this chapter, will be considered a special landscaping district. This area is substantially developed on zero setbacks from the right-of-way, making it impractical to meet the full extent of the requirements of this chapter. Businesses located in this district shall meet parking lot landscaping standards as shown in OHMC 19.46.030(5) and shall participate in a street tree planting program in the street right-of-way adjacent to the parcel frontage.

(9) Xeriscape Process. Xeriscape is a process by which sound horticultural, landscaping, and efficient water-using principles come together. The style of the xeriscapes can be quite variable. Drought-resistant landscaping, such as a contemporary design or a Spanish garden, could qualify as xeriscape when constructed to meet the following six principles:

(a) Good Design. Based on careful selection of low-water-use plants or drought-tolerant plants;

(b) Soil Improvement. Improvements including the addition of manure, compost, or other organic materials which can be amended into the soil;

(c) Use of Mulch. Beauty bark or other organic substance to help maintain moisture in the soil;

(c) Limited Lawn Areas. Minimizing grass areas results in minimal lawn maintenance;

(d) Efficient Water Use. Water between 12:00 midnight and 6:00 a.m. to help prevent fungus growth, and lower the evaporation rate of water;

(e) Good Maintenance. Maintain the landscape to reflect a weed and trash free environment.

(10) Landscaping for Freestanding Signs. All primary freestanding signs shall include, as part of their design, landscaping about their base to prevent automobiles from hitting the sign-supporting structure and to improve the overall appearance of the installation. If the required landscaping is not completed within 60 days after completion of sign installation, the sign is in violation of this chapter.

(11) Groundcover. Groundcover shall be planted and maintained within all required landscaping areas. Groundcover refers to low-growing dense growth of plants, such as pachysandra, planted for ornamental purposes or to prevent soil erosion in areas where turf is difficult to grow, as in deep shade or on a steep slope. Groundcover shall consist of plantings that will achieve complete coverage within two years. Groundcover is not required within the dripline of any shrub or evergreen tree or within a two-foot radius of a deciduous tree trunk.

(12) Undeveloped Areas. Undeveloped areas of a lot which are not required to be landscaped by other requirements of this chapter shall be planted with groundcover. Groundcover may consist of planted or existing vegetation maintained so as not to exceed one foot in height. For the purposes of this section, grass can be considered to be groundcover.

(13) Bark, Mulch and Gravel. Bark, mulch, gravel or other similar nonvegetative material shall only be used to assist vegetative growth and maintenance within landscaping areas. Nonvegetative material shall not be a substitute for, or interfere with, required vegetative groundcover.

(14) Tree Topping and Thinning. Topping and thinning of trees shall be allowed as long as it does not negatively affect the health of the tree.

(15) Calculations/Measurements. All calculations and measurements within this chapter shall be rounded to the nearest whole number with greater than or equal to 0.50 being rounded up. (Ord. 1615 § 1, 2011; Ord. 1555 § 20, 2009).

#### **19.46.050 Fences and hedges.**

(1) Fences and hedges a maximum of six feet in height may be placed and maintained on the side and rear lot line, and across the front of the property line even with the front of the building on the lot but not closer to the street right-of-way than the required setback. On corner lots the setback shall apply to both streets.

Within the setback area a fence not more than three feet in height may be constructed; provided, that it is not sight-obscuring (50 percent of the area of the fence is open).

Within the setback area a solid hedge may be planted not to exceed a height of more than three feet.

On a corner lot there may be placed and maintained:

(a) A fence or hedge not more than three feet in height; provided, that it is not sight-obstructing (50 percent of the area of the fence or hedge is open);

(b) A six-foot-high open wire fence along the property line facing the side street; provided, that it does not come closer to the street right-of-way on the front of the lot than the required building setback;

(c) A four-foot-high solid fence or hedge parallel to the property line facing the side street; provided, it is 10 feet back from the side street; and provided, that it does not come closer to the street on the front of the lot than the rear of the house.

(2) In commercial zones, no fence or hedge may be placed on the front yard setback except where required to screen the property from the adjacent lot; then the screen shall extend to the street right-of-way.

(3) Fence and hedge limits in the various zones are as follows:

<b>Residential Zones:</b>	Front yard	3 feet maximum
	Side yard	6 feet maximum
	Rear yard	6 feet maximum
<b>Commercial Zones:</b>	Front yard	0 feet maximum
	Side yard	6 feet maximum
	Rear yard	6 feet maximum
<b>Industrial Zones:</b>	Front yard	8 feet maximum
	Side yard	8 feet maximum
	Rear yard	8 feet maximum

(Ord. 1615 § 1, 2011; Ord. 1555 § 20, 2009).

#### **19.46.070 Conflicts.**

(1) If the provisions of this chapter conflict with other ordinances or regulations, the more stringent limitation or requirement shall govern or prevail to the extent of the conflict.

(2) In the event that, because of lot configuration, adjacent land uses, or special circumstances, more landscaping is required to meet all requirements of this title, the higher amount of landscaping shall be required. (Ord. 1615 § 1, 2011; Ord. 1555 § 20, 2009).

#### **19.46.080 Maintenance of required landscape areas.**

(1) Maintenance of Cultivated Areas.

(a) General. The owner of land subject to this chapter shall be responsible for the maintenance of said land in good condition so as to present a healthy, neat, and orderly landscape area.

(b) Maintenance of Plants. All landscaping and screening areas shall be maintained in a healthy, growing condition. Broken, dead, or dying trees, shrubs, or other plants shall be replaced. All landscaping and screening shall be kept free of trash and weeds.

(c) Tree Removal. It shall be the responsibility of each private property owner to remove any dead, diseased, or dangerous trees or shrubs, or part thereof, located on private property which overhang or interfere with traffic control devices, public sidewalks, rights-of-way, or property owned by the city. The city shall have the authority to order the removal and possible replacement of any such trees or shrubs.

(d) Pruning.

(i) All pruning should be accomplished according to good horticultural standards. Trees shall be pruned only as necessary to promote healthy growth;

(ii) Unless special approval is provided, trees shall be allowed to attain their normal size and shall not be severely pruned or “hat raked” in order to permanently maintain growth at a reduced height;

(iii) Trees may be periodically pruned or thinned in order to reduce the leaf mass and stimulate further branching.

(e) Mowing. Grass shall be mown as required in order to encourage deep root growth and therefore the preservation of irrigation water.

(f) Edging. All roadways, curbs, and sidewalks shall be edged when necessary in order to prevent encroachment from the adjacent grass areas.

Power trimmers shall not be used to trim grasses around trees since they will quickly remove bark causing deterioration and eventual death of the tree.

(g) Watering. All watering of planted areas shall be managed so as to:

- (i) Maintain healthy flora;
- (ii) Make plant material more drought-tolerant;
- (iii) Avoid excessive turf growth;
- (iv) Minimize fungus growth;
- (v) Stimulate deep root growth;
- (vi) Minimize leaching of fertilizers;
- (vii) Minimize cold damage.

Watering of plants and trees should always be in sufficient amounts to thoroughly soak the root ball of the plant and the surrounding area, thereby promoting deep root growth and drought tolerance.

Whenever possible, automatic irrigation systems should be installed and operation should occur between the hours of 12:00 midnight and 6:00 a.m. Irrigation during these hours helps to reduce fungus growth and loss of water due to evaporation.

If an irrigation system is installed it shall be regularly maintained to eliminate waste of water due to loss of heads, broken pipes, or misjudged nozzles. (Ord. 1615 § 1, 2011; Ord. 1555 § 20, 2009).

#### **19.46.100 Landscaping and irrigation plans required.**

Landscaping and irrigation plans shall be submitted for any landscaping activity required by OHMC 19.46.020. The landscaping plan shall be reviewed by the director. All landscaping plans shall include information regarding existing vegetation to be preserved on site and newly proposed plantings.

(1) Nature of Required Plans. Landscape plans for lots larger than one and one-half acres in size shall be prepared by and bear the seal of an architect or landscape architect, or other professional with demonstrated qualifications or experience.

(2) Contents of Landscape Plan. The landscape plan shall be drawn to scale with dimensions and distances shown and include the following:

(a) General Information.

- (i) Show all property lines and easements for ingress/egress and drainage;
- (ii) Show all existing and proposed structures. The square footage and location for each existing and proposed structure shall be identified;
- (iii) Show all pedestrian/bike connections and adjacent landscaping areas, storage, garbage, recycling, employee recreation and aboveground stormwater detention and treatment areas;

(iv) Show all paved, impervious surface areas, not including structures. The location of parking, loading and circulation areas and the total paved, impervious surface square footage shall be identified;

(v) Show all proposed and existing outdoor fixtures and equipment such as utility vaults (structures), fire hydrants, light fixtures, fences, retaining walls, ornamental fountains, pools, benches and garbage containers. The size and location of each item above shall be identified;

(b) Information Regarding Vegetation to Be Preserved.

(i) Locations of perimeters of individual trees and native vegetation areas to be preserved. The tree protection area for trees to be preserved shall be shown on the plan in accordance with OHMC 19.46.140(9).

(ii) Size, species, and health of trees to be preserved.

(iii) General locations of trees proposed for removal.

(iv) Limits of construction on site.

(v) Description of tree protection and tree maintenance measures required for the trees to be preserved.

(vi) Timeline for clearing, grading and installation of tree protection measures.

(vii) If native vegetation retention areas are proposed, the acreage of on-site critical areas, excluding critical area buffers and acreage of on-site public and private roads.

(viii) If native vegetation retention areas are proposed, the calculation of average trees per square foot of protected native vegetation area shall be provided.

(c) Information Regarding Newly Proposed Vegetation.

(i) Location, size, species, spacing and number of trees to be planted.

(ii) Each proposed landscaping area shall have its square footage indicated on the plan.

(iii) Description and detail showing any site preparation, installation, and maintenance measures necessary for the long-term survival and health of the vegetation.

(iv) Timeline for site preparation, installation, and maintenance of vegetation.

(v) Cost estimate for the purchase, installation and three years' maintenance.

(3) Irrigation Plan. The landscape plan shall include an irrigation plan. An irrigation plan is required to ensure that the planting will be watered at a sufficient level for plant survival and healthy growth. For projects meeting the one-and-one-half-acre threshold, the irrigation method shall be by a permanent underground system with an automatic controller. An overriding rain sensor switch shall be provided. Also, administrative relief from the irrigation requirement may be requested for planting areas which contain only drought-tolerant vegetation.

(a) The irrigation plan shall show zones, connecting nozzles, distribution valves, irrigation lines, sprinkler heads, timer location, and backflow prevention device, as well as other information integral to the proposed irrigation system.

(b) In lieu of a permanent irrigation system, drought-tolerant plantings may be considered by the city. If drought-tolerant, native species are selected, a watering plan is required for the establishment phase of new plantings. The plan must provide adequate watering of the newly installed trees for a minimum of three years. (Ord. 1615 § 1, 2011; Ord. 1555 § 20, 2009).

**19.46.110 Review of landscape plans.**

(1) Landscape plans shall be submitted and reviewed concurrently with a development or use permit and shall be processed as part of the integrated permit process under OHMC 18.20.360.

(2) Compliance with the approved landscape plans shall be a condition of approval for all development applications approved pursuant to OHMC Title 19, 20, or 21.

(3) The director may allow or approve minor modifications to an approved landscape plan during the site development construction process to account for unforeseen site conditions and circumstances. The submittal of an amended landscape plan meeting the requirements of this chapter may be required. (Ord. 1615 § 1, 2011).

**19.46.120 Phased projects.**

Phased projects include but are not limited to shopping centers, large site developments, subdivisions, planned residential developments, and business parks. Before construction permits are issued for the first phase of any phased project, conceptual approval of the landscaping plan for the site as a whole is required. Final approval of the landscaping plan for each phase is required before construction permits are issued for a phase. Installation of landscaping for each phase of development shall be required prior to releasing occupancy permits for that phase. Relief may be available per OHMC 19.46.160.

Landscaping along a frontage road or perimeter screening may be required to be installed in the first phase. Criteria to be considered in the decision includes but is not limited to the following:

(1) Timing of phases of a project;

(2) Proximity to residential areas. (Ord. 1615 § 1, 2011; Ord. 1555 § 20, 2009.

Formerly 19.46.060).

**19.46.130 Landscape performance bonding.**

(1) All required landscaping shall be installed prior to a certificate of occupancy being issued.

(2) Deferment. The installation of landscaping may be deferred for up to six months from the date an applicant receives a temporary certificate of occupancy. A performance bond shall be submitted to the city in order to ensure the completion of the landscaping in accordance with the approved plan. It shall be the responsibility of the applicant and the property owner to contact the city upon completion of the landscaping work and request an inspection prior to the city releasing the bond. Failure to complete all of the required landscaping within six months of the issuance of a certificate of occupancy permit shall constitute a violation and the city shall use the bond to complete the required landscaping.

(3) Maintenance Bond Amount and Type. A three-year maintenance bond shall be required to ensure landscaping completion and a minimum plant survival of 80 percent at the end of three years. The type of bond shall be approved by the city and must be submitted on forms supplied by the city of Oak Harbor. The approved bond shall be posted with the development services department prior to the issuance of a building permit. The bond amount shall be 150 percent of a landscaping maintenance bid amount submitted and approved by the city. The bid amount must include labor and materials.

(4) Subsections (1), (2), and (3) of this section shall apply to all landscaping within a development site including street trees required within the public right-of-way and all landscaping within tracts or lots owned by private entities, such as homeowners' associations. (Ord. 1615 § 1, 2011).

**19.46.140 Native vegetation standards.**

Tree and vegetation retention provides substantial environmental benefits including, but not limited to, erosion prevention, reduction in storm-water runoff, preservation of fish and wildlife habitat, improved water and air quality, energy conservation, reductions in the development impacts on the stormwater drainage system and hydrologic resources, and provides a better transition between adjacent land uses.

(1) Applicability. The native vegetation standards set forth in this section apply to all commercial and residential projects that require one or more of the following approvals: a binding site plan, conditional use permit, manufactured home park development plan, site plan review Type II or IV, planned business park master plan, subdivision, or planned residential development. Short subdivisions and site plan review Type I are exempt from these requirements.

(2) Definition of Native Vegetation and Allowed Uses.

(a) Definition. Native vegetation includes native, undisturbed areas or rehabilitation of previously disturbed areas. Native vegetation shall consist of plants and trees that are indigenous to the Pacific Northwest. For the purposes of this chapter, native vegetation is defined by a tree density of no less than one tree per 600 square feet plus native understory vegetation.

(b) Allowed Uses. Native vegetation may integrate pervious, passive recreation facilities, stormwater dispersion facilities, and approved surface water restoration projects. Active open space shall not count towards native vegetation requirements. Activities within native vegetation areas shall be limited to passive recreation (e.g., trails), removal of invasive species, amendment of disturbed soils, and planting of native vegetation.

(3) Native Vegetation Retention and Tree Density Standards.

(a) Minimum Standards. Table 19.46.140-1 provides minimum vegetation retention standards by zone. The native vegetation must be comprised of a minimum tree density of one tree per 600 square feet plus native understory vegetation.

**Table 19.46.140-1: Native Vegetation**

**Standards by Zone**

Zone	Native Vegetation Requirement (% of site area)
PRE, R1	15%
R2	10%
R3, R4, OS	10%
RO	10%
C1, C3, C4, C5, CBD	5%

Zone	Native Vegetation Requirement (% of site area)
I, PBP, PIP	5%
PF	5%

(b) The minimum native vegetation area may be reduced on sites with special circumstances and where replacement and supplemental plantings are proposed. Special circumstances include, but are not limited to:

(i) The retention of native vegetation to the percentages specified in Table 19.46.140-1 precludes development of the property to the minimum density or intensity specified in Chapter 19.20 OHMC.

(ii) Physical limitations such as existing lot size, soils or topography.

(iii) Land dedicated to public infrastructure serving the property for roads, sewer, water, or storm, or other public facilities use substantially more area than is typical of properties in the zone.

The replacement and supplemental plantings should be located in clusters or contiguous tracts and placed to maximize aesthetic, hydrologic, or habitat function and values.

(4) General Provisions. Native vegetation areas shall meet the following additional standards:

(a) Trees shall be retained in stands or clusters. A professional forester, arborist, or landscape architect shall prepare the landscape plan to ensure that retained vegetation is not susceptible to windthrow. See OHMC 19.46.100 for landscape plan requirements.

(b) Native vegetation may be accommodated within perimeter landscaping or other required landscaped areas.

(c) The minimum native vegetation retention may be decreased to five percent for nonresidential uses (e.g., churches, schools, etc.) that are permitted outright or conditionally in residential zones.

(d) The calculation of the native vegetation retention area for public school sites shall be based upon the total acreage of the school site minus the areas set aside for playfields in the school site plan; provided, that for the purposes of the calculation, such playfield areas shall not exceed 30 percent of the gross site area.

(e) Critical areas and their buffers may be counted towards this standard so long as they contain existing native vegetation (e.g., a steep slope with Douglas fir may be counted while one with Himalayan blackberry may not). Critical areas and their buffers that will be counted towards native vegetation shall not have to comply with the replanting standards within this chapter. Land below an ordinary high water mark shall not be counted towards the required native vegetation.

(f) Any soils disturbed through the site development process that are to be counted toward the native vegetation requirements shall be amended in accordance with the "Guidelines for Implementing Soil Quality and Depth" (BMP T5.13 in DOE Stormwater Management Manual for Western Washington 2005).

(5) Selection Standards. The following selection standards should be used with the applicant's design concept in order to meet the standards outlined in Table 19.46.140-1.

(a) Fifteen percent of trees on the project site which are 12 inches or greater in diameter and which have a live crown ratio (total tree height in relation to branched portion of the tree) of 50 percent or more shall be preserved.

(b) Utilize site inventory and analysis techniques to determine which portions of the site are best suited to leave native vegetation. Typically these are the most environmentally sensitive areas such as wetlands, steep slopes, floodplains, critical fish and wildlife habitat areas. In residential developments up to 25 percent of the required native vegetation specified in Table 19.46.140-1 may be incorporated into the individual lot design where covenants or other protection measures are put in place. Where individual lots are utilized, they should be connected either physically or hydrologically to other native vegetation or conservation areas.

(c) Minimize changes to natural topography in an effort to maintain predevelopment flow path lengths in natural drainage patterns.

(d) Maintain surface roughness to reduce flow velocities and encourage sheet flow on the lot by preserving native vegetation, forest litter and surface topography.

(6) Flexible Standards to Allow for Native Vegetation Areas.

(a) Administrative relief under OHMC 19.46.160 may be granted to allow intrusion of a building into a setback yard by up to five feet to allow for the provision of native vegetation areas elsewhere on the property.

(b) Setback averaging may be utilized to allow for native vegetation areas elsewhere on the property. A reduced setback shall be compensated by increased setback elsewhere.

(c) Administrative relief under OHMC 19.46.160 may be granted to allow a 10 percent reduction in parking spaces to allow for the provision of native vegetation areas elsewhere on the property.

(7) Replanting Requirements.

(a) If the site or lot has been previously cleared or the proposed native vegetation area does not contain suitable vegetation, then the minimum percentage of native vegetation on the site as required by Table 19.46.140-1 shall be replanted to meet the requirements of subsection (7)(b) of this section. For the purposes of this section, trees subject to blow-down do not constitute suitable vegetation.

(b) New trees that will be planted in native vegetation areas shall meet the revegetation standards in this section and shall be native species. For a list of native species see OHMC 19.46.150.

(i) Replacement deciduous and broad-leaf evergreen trees shall have a minimum two-inch d.b.h. at planting. Replacement coniferous evergreen trees shall have a minimum height of six feet at planting;

(ii) Reforested areas shall be replanted with a minimum of 25 percent deciduous species and 25 percent coniferous species;

(iii) Trees within designated critical areas shall be replanted at a 2:1 ratio.

(8) Permanent Protections. A permanent protective mechanism shall be established to ensure that the proposed native vegetation area is preserved and protected in perpetuity. The protective mechanism shall be in a form that is acceptable to the city and filed with the county auditor's office. Restrictions on the future use of the native vegetation area shall also be recorded on the face of the plat for subdivision applications. A

permanent native vegetation area shall be established using one of the following mechanisms:

(a) Placement in a separate nonbuilding tract owned in common by all lots within the subdivision;

(b) Covered by a protective easement or public or private land trust dedication;

(c) Preserved through an appropriate permanent protective mechanism that provides the same level of permanent protection as subsections (8)(a) and (b) of this section as determined by the approval authority.

(9) Protection of Native Vegetation Areas During and After Development.

(a) All trees and tree stands proposed for retention or to be placed in a native vegetation area shall be protected before and during site development and construction through adherence to the following requirements:

(i) A native vegetation area shall be designed to protect each tree or tree stand during site development and construction. The native vegetation area shall conform to the approved landscape plan.

(ii) Native vegetation areas may vary widely in shape, but must extend a minimum of three feet beyond the existing tree canopy area along the outer edge of the tree stand, unless otherwise approved by the director.

(iii) Native vegetation areas shall be shown and clearly labeled on all applicable site development, plat, and construction drawings submitted to the director.

(iv) No clearing, grading, filling, or other development activities shall occur within the native vegetation area, except where approved in advance by the director and noted on the landscape plan.

(v) No vehicles, construction materials, fuel, or other materials shall be placed in native vegetation area. Movement of any vehicles within the native vegetation area shall be prohibited.

(vi) No nails, rope, cable, signs, or fencing shall be attached to any tree proposed for retention.

(vii) The grade level around the tree may not be lowered within the greater of: (A) the area defined by the drip line of the tree at time of development; or (B) an area around the tree equal to one foot in diameter for each one inch of tree diameter as measured one foot above preexisting grade at time of development, unless a registered landscape architect, certified arborist or certified nursery professional determines that the long-term health of the tree will not be significantly harmed.

(viii) Trenching and other activities within or adjacent to native vegetation areas that may cut or damage the roots of trees proposed for retention shall be prohibited unless recommended by a professional forester, certified arborist or licensed landscape architect and approved by the city of Oak Harbor.

(ix) The city of Oak Harbor may approve the use of alternate tree protection techniques if the trees will be protected to an equal or greater degree than provided by this section. A description of alternate techniques shall be submitted to and reviewed by the director along with the site plan, short subdivision, subdivision, planned residential development or other development application.

(10) Tree Topping.

(a) Topping or pollarding of trees within the native vegetation area is prohibited.

(b) Topping or pollarding may occur when there is an identifiable safety hazard, to remove dead, diseased or unhealthy materials, or to avoid overhead utilities.

(11) Maintenance of Native Vegetation Areas.

(a) Removal of trees within native vegetation areas is not allowed, unless the tree is dead or in a state of irreversible decline. In determining tree removal or replacement, the director may require a professional evaluation or tree protection plan by a certified arborist at the applicant's expense, where the director determines that such evaluation is necessary to comply with the standards of this section. The evaluation may include providing a hazardous tree assessment, evaluation of the anticipated effects of a proposed project on the viability of trees on the site, developing a plan for tree protection or replacement and evaluation after construction. Trees that become diseased, severely damaged, or which die shall be replaced. Replacement trees shall be a minimum two-inch caliper for deciduous trees and broadleaf evergreen or a minimum of six feet in height from existing grade for conifers.

(b) Minor trimming of trees within native vegetation areas is permitted as long as trimming activities do not negatively affect the long-term health and survivability of the tree. Trimming of select branches is allowed for safety reasons, e.g. cracked branches which may fall and become a hazard.

(c) General. All native vegetation areas shall be annually cleared of nonnative vegetation and lawn grasses, and cleared of all trash and other debris.

(d) Developer responsibility for maintenance of trees, including removal or replacement of diseased, dead, or dying trees, shall be as follows:

(i) Within residential subdivisions the developer shall be responsible for maintaining trees on individual lots until such time as the individual lots are sold, at which point the individual lot owner shall assume responsibility. Developer responsibility for maintaining trees within common tracts shall remain in effect until such time as the common tract is transferred to the control of a homeowner's association or, where no homeowner's association exists, until such time as all individual lots within the subdivision are sold, at which point the individual lot owners shall assume responsibility.

(ii) Within all other developments, developer responsibility for maintaining trees shall remain in effect until such time as the property sale occurs. Upon the property sale, the new owner shall assume the responsibility for maintenance.

(iii) Compliance with the landscape plan shall be a condition of approval and shall be identified on the face of the binding site plan, conditional use permit, manufactured home park development plan, site plan review, planned business park master plan, subdivision, or planned residential development.

(e) Failure to maintain trees as required in this section shall constitute a violation of this chapter and any associated land use or subdivision approvals. (Ord. 1615 § 1, 2011).

**19.46.150 Tree species.**

The following table provides information on selected species of native and non-native trees suitable for replanting. All species listed are suited to the climate conditions found in the Pacific Northwest. The list is for guidance only and is not intended to be all-inclusive. Other tree species may be utilized where appropriate when recommended by a professional forester, certified arborist, licensed landscape architect, or as approved by the director. Species availability and quantity may be limited in some cases. It is best to

coordinate in advance with nurseries specializing in native plants. For bioretention areas, a complete list of appropriate plants can be found in Appendix 3 of the LID Technical Guidance Manual for Puget Sound (2005).

### Characteristics and Use of Select Tree Species

Species Scientific Name	Native Tree?	Canopy Size Category	Street Tree?	Characteristics
Grand fir <i>Abies grandis</i>	Yes	Large	No	Coniferous tree achieving heights of up to 150 feet. Tolerant of a variety of soil conditions, similar needs as Douglas fir.
Vine maple <i>Acer circinatum</i>	Yes	Small	No	Deciduous tree typically reaching heights of 5 to 35 feet. Tree-like in open sun, crooked sprawling and vine-like in shade. Good fall color. Tolerant of a wide variety of soil conditions. Prefers moist soils, but can tolerate drier conditions once established.
Big leaf maple <i>Acer macrophyllum</i>	Yes	Large	No	Deciduous tree. Form varies widely based upon competition and soil conditions. Typically 20 to 30 feet high when growing in open conditions but can reach heights of 80 feet or more in the forest. Good fall color. Tolerant of a wide variety of soil conditions. Similar environmental needs as Douglas fir.
Red alder, Oregon alder, western alder <i>Alnus rubra</i>	Yes	Medium	No	Deciduous tree to 50 feet. Best in restoration settings. Mature trees can be very attractive, especially in naturalized settings. Beautiful, mottled grey bark.
Serviceberry <i>Amelanchier alnifolia</i>	Yes	Small	No	Deciduous tree seldom larger than 20 feet in height. Tolerant of a wide variety of soil conditions. Fruit very valuable to wildlife.
Madrone <i>Arbutus menziessii</i>	Yes	Medium	No	Attractive tree, but very difficult to establish. Expect high losses. Review plant establishment notes at <a href="http://www.soundnativeplants.com">www.soundnativeplants.com</a> before considering. Do not provide supplemental water once established.
Weeping Nootka cypress <i>Chamaecyparis nootkatensis</i> "Pendula"	Yes	Medium	No	Narrow (5-foot), pyramidal evergreen conifer. Main trunk grows straight up with branchlets that weep straight down from drooping branches.
Hybrid western dogwood "Eddie's White Wonder" <i>Cornus nutallii</i> x <i>florida</i>	Yes	Small	Yes	Hybrid of <i>Cornus florida</i> and the native western dogwood species. More successful than the native species for transplanting. Deciduous tree up to 30 feet in height. Prefers well drained sites and partial shade. Could work well as a

Species Scientific Name	Native Tree?	Canopy Size Category	Street Tree?	Characteristics
				supplemental planting under a canopy of larger trees.
Black hawthorn <i>Crataegus douglasii</i>	Yes	Small	No	Deciduous tree up to 30 feet in height. Scarlet fruit. Prefers highly fertile soil and grows best in moist, open areas.
Oregon ash <i>Fraxinus latifolia</i>	Yes	Medium	No	Deciduous tree up to 80 feet in height. Prefers moist or wet sites with rich soils. Works well for streamside and wetland plantings. Best in natural or restoration plantings and generally not appropriate for ornamental landscaping applications.
Mountain ash	Yes	Medium	Yes	Deciduous perennial tree. Light gray, smooth bark. Flowers in May or June after leaves are full grown.
Incense cedar <i>Libocedrus decurrens</i>	No	Large	Yes	Coniferous tree achieving height of 150 feet. Drought- and wind-resistant. Slow growth. Native to California, Nevada, Oregon.
Sitka spruce <i>Picea sitchensis</i>	Yes	Large	No	Coniferous tree achieving 80 to 160 feet. Best in moist areas.
Shore pine <i>Pinus contorta</i>	Yes	Medium	No	Coniferous tree to 35 feet tall. Can be trained if a more manicured look is desired.
Western white pine <i>Pinus monticola</i>	Yes	Medium	No	Coniferous tree to 60 feet tall.
Black cottonwood <i>Populus balsamifera</i> spp. <i>trichocarpa</i>	Yes	Large	No	Heavy-limbed deciduous tree, brittle wood. Best in moist, native plantings where space is plentiful.
Choke cherry <i>Prunus virginiana</i>	No	Medium	No	Needs well drained soil. Usually upright branching with an oval crown. Fragrant white flowers.
Douglas fir <i>Pseudotsuga menziesii</i>	Yes	Large	No	Fast growing, long lived coniferous tree growing to height of 150 feet or more. Prefers drier sites, but tolerates a wide variety of soil conditions.
Western crabapple <i>Pyrus (Malus) fusca</i>	Yes	Small	No	Best in native or restoration plantings and generally not appropriate for ornamental landscape use.
Cascara <i>Rhamnus purshiana</i>	Yes	Medium	No	Deciduous tree that produces black berries.

Species Scientific Name	Native Tree?	Canopy Size Category	Street Tree?	Characteristics
Western red cedar <i>Thuja plicata</i>	Yes	Large	No	Coniferous tree growing to height of 150 feet or more. Best under moist, shaded conditions, but tolerates a wide variety of soil conditions once established.
Western hemlock <i>Tsuga heterophylla</i>	Yes	Large	No	Fairly fast grower. Picturesque and also makes a good background, screen, or hedge.
Japanese maple <i>Acer palmatum</i>	No	Small	Yes	Common deciduous landscape tree. Slow growing; typically grow to no larger than 20 feet in height. Well suited for small lot use. Popular varieties "Atropurpureum" and "Bloodgood."
Norway maple (varieties) <i>Acer platanoides</i>	No	Large	Yes	Common deciduous landscape tree. Typically achieves heights of 50 to 60 feet. Care must be taken near sidewalks and drives as roots can become a problem.
Red maple <i>Acer rubrum</i>	No	Small	Yes	Common deciduous landscape tree. Varieties "Armstrong" and "Red Sunset" are recommended for street tree use. Fast growing, typically to 40 feet with brilliant fall color. May be appropriate in a native setting.
Whitebarked Himalayan birch <i>Betula utilis</i> var. <i>jacquemontii</i>	No	Medium	No	Prefers rich, moist, well drained soil. Narrow tree with oval crown. Brilliant white bark. Yellow fall color.
Incense cedar <i>Calocedrus decurrens</i>	No	Large	No	Coniferous tree achieving height of 150 feet. Drought- and wind-resistant. Slow growth. Native to California, Nevada, Oregon. Appropriate for native restoration areas.
European hornbeam <i>Carpinus betulus</i>	No	Medium	Yes	Deciduous tree growing to 40 feet. Variety "Fastigiata" recommended for street tree use.
Eastern redbud <i>Cercis canadensis</i>	No	Medium	Yes	Tolerates any soil but wet. Short trunk with spreading branches. Flowers appear before leaves. Heart-shaped leaves emerge reddish and turn dark green. Yellow fall color.
Katsura tree <i>Cercidiphyllum japonicum</i>	No	Medium	Yes	Deciduous tree, slow growing to 40 feet. Good fall color. Well suited for small lot use.
Washington hawthorn <i>Crataegus phaenopyrum</i>	No	Small	Yes	Small deciduous tree, typically no larger than 25 feet. Well suited for small lot use with good fall color.

Species Scientific Name	Native Tree?	Canopy Size Category	Street Tree?	Characteristics
White ash (varieties) Fraxinus americana	No	Medium	Yes	Prefers deep, moist, well drained soil. Green leaflets turn to purple shades. Fall color may include yellow, orange, red, and dark purple.
Green ash Fraxinus pennsylvanica	No	Medium	Yes	Fast growing deciduous tree with height of 40 feet. For street tree use, seedless varieties such as "Marshall" are preferred.
Honey locust Gleditsia triacanthos	No	Medium	Yes	Fast growing deciduous tree with height of 40 feet. Varieties "Shademaster," "Skyline," and "Moraine" are preferred varieties.
American sweet gum Liquidambar styraciflua	No	Medium	Yes	Common landscape tree very tolerant of urban conditions. Achieves heights of 60 feet with good fall color. Not good in windy settings – the branches are brittle and break easily.
Tulip tree Liriodendron tulipifera	No	Large	No	Large deciduous tree achieving height of up to 60 feet. Very tolerant of urban conditions.
Crabapple Malus sp.	No	Large	Yes	Large deciduous tree achieving height of up to 60 feet. Very tolerant of urban conditions.
Dawn redwood Metasequoia glyptostroboides	No	Large	No	A deciduous conifer. Fast growing. Bright green fern-like needles. Fall color ranges from bronze to apricot.
Sourwood Oxydendron arboreum	No	Medium	Yes	Medium deciduous tree with good fall color. Achieves height of 18 feet.
Yoshino flowering cherry	No	Medium	Yes	Medium sized deciduous tree achieving height of 40 feet. Fast growing.
Flowering callery pear Pyrus calleryana	No	Medium	Yes	Widely used in commercial landscaping. Deciduous tree 25 to 40 feet. Well suited to urban conditions. Varieties for street tree use include "Aristocrat," "Bradford," "Capital," "Chanticlear," "Redspire" and "Whitehouse."
Pin oak Quercus palustris	No	Large	No	Deciduous tree achieving heights of 50 to 80 feet. Better suited to park or large lot use due to size.
Scarlet oak Quercus coccinea	No	Large	No	Oval to round canopy shape with high, open branching pattern. Bright green leaves turn scarlet in fall. Deep roots allow for lawn or perennial plant growth beneath canopy.
English oak Quercus robur	No	Large	No	Prefers well drained sites. Open form. Deep green leaves with yellow-brown fall color. Needs ample space.

Species Scientific Name	Native Tree?	Canopy Size Category	Street Tree?	Characteristics
Giant sequoia Sequoiadendron	No	Large	No	A good choice in a landscape with adequate space.
Japanese snowbell	No	Medium	Yes	Needs well drained soil and ample water. Medium green foliage with yellow fall color. Blooms in June with fragrant white bell-shaped flowers.
Little leaf linden Tilia cordata	No	Small	Yes	Small deciduous tree reaching height of 30 feet. Tolerant of urban conditions.
Sawleaf zelkova Zelkova serrata	No	Large	No	Water well initially to establish deep roots. Once established, very drought- and wind-tolerant. Fall foliage varies from yellow to dark red. Smooth gray bark.

Notes: Canopy size categories: (a) Large – mature canopy area greater than 1,250 square feet; (b) Medium – mature canopy area 450 to 1,250 square feet; (c) Small – mature canopy area 450 square feet or less.

(Ord. 1615 § 1, 2011).

**19.46.155 Tree removal outside of native vegetation areas.**

The director may approve the removal of trees that are not part of a native vegetation area that were required to be retained as part of a previous plan approval, if it is determined that the tree is diseased, physically deteriorated, potentially hazardous, damaged or subject to windthrow. Trees that are removed as approved by the director shall be replaced at a one-to-one ratio. Replacement trees shall be a minimum two-and-one-half-inch caliper for deciduous trees or a minimum of six feet in height from existing grade for conifers. (Ord. 1615 § 1, 2011).

**19.46.160 Administrative relief and alternative compliance.**

The standards contained in this chapter are intended to encourage development which is economically viable and environmentally satisfying. The standards are not intended to be arbitrary or to inhibit creative solutions. Projects may justify approval of alternative methods for compliance with the standards. Conditions may arise where normal compliance is impractical or impossible, or where maximum achievement of the community's objectives can only be obtained through alternative compliance.

(1) Requests for alternative compliance and administrative relief may be accepted for any application to which the requirements of this chapter apply, when one or more of the following conditions exist:

(a) Topography, soil, vegetation or other site conditions make it impossible or impractical; or improved environmental quality would result from alternative compliance;

(b) Space limitations, unusually shaped lots, and prevailing practices in the surrounding neighborhood may justify alternative compliance for infill sites, and for improvements and redevelopment in older communities;

(c) Parking lots with five parking spaces or less may apply for administrative relief in order to reconfigure landscaping to be less than 15 percent of the parking lot. For example, a portion of the requirement can be met by landscaping around the perimeter of the parking lot;

(d) Change of use of an existing site increases the buffer required more than it is feasible to provide;

(e) Safety considerations make alternative compliance necessary;

(f) When an alternative proposal is equal to or better than normal compliance in its ability to fulfill all landscaping requirements in this chapter;

(g) Alternative types of irrigation for preexisting conditions.

Alternative compliance shall be limited to the specific project under consideration and shall not establish precedents for acceptance in other cases.

(2) Submittal Requirements.

(a) Requests for alternative compliance shall be accompanied by sufficient explanation and justification, written and/or graphic, to allow appropriate evaluation and decision;

(b) A request for alternative compliance shall be submitted to the planning director (or designee) at the time the landscape plan is submitted. In the case of those plans for which no public hearing is required, the decision of the planning director (or designee) will be final, unless the applicant appeals the decision to the hearing examiner.

(c) The planning director may request modification of proposed standards in the administrative relief proposal. (Ord. 1615 § 1, 2011; Ord. 1555 § 20, 2009. Formerly 19.46.110).

**19.46.170 Enforcement of chapter.**

A violation of any of the provisions of this chapter shall be a civil offense and any person failing to comply therewith shall be punished by a fine not to exceed \$250.00 or value of materials and labor to bring the property into compliance with this chapter, whichever is greater. It shall be a separate offense for each and every day or portion thereof during which any violation of any part of the provisions of this chapter is committed, continued or permitted. (Ord. 1615 § 1, 2011; Ord. 1555 § 20, 2009. Formerly 19.46.120).

**C. Shoreline Development Standards**

**TABLE 2 – Summary of Shoreline Development Standards**

<b>DEVELOPMENT STANDARD</b>	<b>Maritime</b>	<b>Urban Mixed Use</b>	<b>Shoreline Residential</b>	<b>Shoreline Residential Bluff Conservancy</b>	<b>Urban Public Facility</b>	<b>Conservancy</b>	<b>Aquatic</b>
<b>Maximum Height<sup>1</sup></b>	35 feet, 55 feet for water-dependent structures	35 feet (CBD-1 and CBD-2), 55 feet (CBD)	35 feet	35 feet	35 feet	25 feet	N/A
<b>Shoreline Setback<sup>2, 9, 11</sup></b>	50 feet <sup>3</sup>	50 feet <sup>4</sup>	50 feet <sup>5</sup>	50 feet <sup>6</sup>	75 feet	100 feet	N/A
<b>Maximum Total Impervious Surface Coverage (Standard Applies to Entire Lot or Portion Thereof in Shoreline Jurisdiction)</b>	80%	80%	40%	30%	40%/80% <sup>7</sup>	10%	N/A
<b>Maximum Impervious Surface Coverage - Setback Zone 1 (VMZ)<sup>8</sup></b>	20% <sup>3</sup>	0%	0%	0%	0%	0%	N/A
<b>Maximum Impervious Surface Coverage - Setback Zone 2<sup>8</sup></b>	40% <sup>3</sup>	20%	20%	0% <sup>9</sup>	20%	0% <sup>9</sup>	N/A
<b>Minimum Lot Frontage and Width</b>	N/A	N/A	60 feet	60 feet	N/A	N/A <sup>10</sup>	N/A
<b>Minimum Lot Size</b>	N/A	N/A	7,200 SF	7,200 SF	N/A	N/A <sup>10</sup>	N/A

1. Height limits apply to all structures, except as noted. Development shall also be subject to the height limits established by the underlying zoning; in the event of a conflict between the standards contained in this SMP and in the underlying zone, the more restrictive shall apply. The height limit shall not apply to television antennas, chimneys, flagpoles, public utilities, and similar appurtenances. A height of more than thirty-five feet (35) can only be achieved in those environments where specifically permitted and if the applicant prepares a view corridor study consistent with the requirements of Chapter 3, Section B.6 c, Regulations 20-24. The view study must demonstrate that the proposal will minimize and mitigate impacts to views to the maximum extent feasible.

2. Water-dependent structures associated with a ecological restoration or interpretation, water-dependent uses and public access (i.e. ramps, piers, shoreline stabilization, bridges, viewing platforms, stairs, loading facilities and similar structures) are not required to meet the minimum setback. However, where such development

can be approved within the minimum setback, the placement of structures shall be limited to the minimum necessary for the successful operation of the use. In no case shall occupied structures not associated with a water-dependent activity be allowed within the minimum setback. Additionally, for development along marine shorelines designated as fish and wildlife habitat conservation areas under OHMC 20.25, the Shoreline Administrator may require a special study to evaluate potential impacts. If supported by such a study, the Shoreline Administrator may increase the Shoreline Setback to protect sensitive environmental resources, though the total setback shall not exceed 100 feet.

3. In the Maritime environment, water-dependent transportation, industrial, commercial and recreational development and uses may be allowed within the defined setback area. However, where such development can be approved within the minimum setback, the placement of structures and hard surfaces shall be limited to the minimum necessary for the successful operation of the use. In no case shall parking, primary buildings or general storage be allowed within the minimum setback.

4. New residential structures in the Urban Mixed Use environment shall adhere to this setback requirement unless existing development within 100 feet of both side property lines has a lesser average setback. In such cases, the minimum setback required shall be the average established by drawing a line between the closest point of the existing structures to the OHWM on either side of the subject property. However, in no case shall the minimum setback be reduced to less than 40 feet. At least 12 feet of the setback shall be dedicated to public access and recreational use (i.e. the Waterfront Trail).

5. New structures in the Shoreline Residential environment shall adhere to this setback requirement unless existing development within 100 feet of both side property lines has a lesser average setback. In such cases, the minimum setback required shall be the average established by drawing a line between the closest point of the existing structures to the Ordinary High Water Mark on either side of the subject property. However, in no case shall the minimum setback be reduced to less than 35 feet. This is intended to allow the minimum 30 foot Vegetation Management Zone and a 5 foot area for maintaining the structure, entrances, etc.

6. All new or expanded development in the Shoreline Residential Bluff Conservancy environment proposed within 100 feet of a designated steep slope or bluff shall be required to submit a critical areas report as part of development permit application, pursuant to Ordinance 1440 § 5, 2005, including a geotechnical analysis by a qualified professional. New development on steep slopes or bluffs shall be set back sufficiently to ensure that shoreline stabilization is unlikely to be necessary during the life of the structure, as demonstrated by the geotechnical analysis. Please see additional geotechnical report requirements in Chapter 5, Section C.1.c and critical area report requirements in OHMC 20.28. In no case shall primary structures be located closer than 25 feet from the top of steep slope areas and bluffs. If application of the 50-foot standard shoreline setback would allow the construction of a structure within 25 feet of a steep slope area or top of bluff or within the setback recommended by geotechnical analysis, the more restrictive standard shall apply.

7. The 40% impervious surface coverage standard shall apply to Windjammer Park. The 80% impervious surface coverage standard shall apply to Flintstone Park.

8. Where impervious surfaces that exceed the limits noted are deemed necessary by the Shoreline Administrator to accommodate public access, a water-dependent use, a public utility or public transportation facility, such development shall be allowed in the setback (Zone 1 and Zone 2) provided it is the minimum necessary to accommodate the proposed use. Wherever practicable, pervious pavements and other low impact development techniques shall be used and mitigation consistent with Section 3.B.5.c shall be required. Vegetation clearing, planting and revegetation shall be governed by the provisions of Section 3.B.8 – Shoreline Vegetation Conservation. Specifically, landscaping and allowed development within setback areas shall conform to the standards in Section 3.B.8.c.4 and 5.

9. Setback areas within all shoreline environment designations are subject to the vegetation conservation requirements of Section 3.B.8.c, specifically regulations 6 and 7, which establish standards for Setback Zone 1 (Vegetation Management Zone) and Setback Zone 2. Within the Conservancy and Shoreline Residential Bluff Conservancy environments, both Setback Zones 1 and 2 are regulated as part of the VMZ.

10. No further subdivision is allowed in the Urban Conservancy environment.

11. Setbacks shall be measured from the ordinary high water mark (OHWM).

**PLANNING COMMISSION  
REGULAR MEETING  
CITY HALL – COUNCIL CHAMBERS  
February 26, 2013**

**ROLL CALL: Present:** Keith Fakkema, Greg Wasinger, Jeff Wallin, Kristi Jensen, David Fikse and Bruce Freeman  
**Absent:** Ana Schlecht  
**Staff Present:** Development Services Director, Steve Powers

Chairman Fakkema called the meeting to order at 7:35 p.m. and reported that the Planning Commission had agreed to reorder the items on the agenda to place the Digital Signs Code Update before the Draft Zoning Regulations for Maritime Zone.

**MINUTES: MS. JENSEN MOVED, MR. WALLIN SECONDED, MOTION CARRIED TO APPROVE THE JANUARY 22, 2013 MINUTES AS PRESENTED.**

**PUBLIC COMMENT:**

None present for comment.

**DIGITAL SIGNS CODE UPDATE** – Public Meeting

Mr. Powers noted that this item was mistakenly advertised as a public hearing and is actually a public meeting. Mr. Powers presented a Power Point presentation (Attachment 1) which introduced four scenarios for regulating digital signs as follows:

**Scenario 1 “Least Restrictive”**

The digital signs would be allowed in all commercially and industrially zoned areas of the City with the exception of Pioneer Way. Digital signs would be allowed both as building mounted and on freestanding signs. Digital sign size could not be more than 50% of the total sign area for the site, and could comprise up to 100% of a single sign with 100 square feet being the maximum size of a sign. Electronic motion and video would be allowed on the signs. Signs would have to remain 100 feet away from residentially zoned areas. Autodim technology, within limits of 500 nits nighttime and 5,000 nits daytime, would be required.

**Scenario 2-“Medium Restriction”**

The digital signs would be allowed in all commercial and industrial districts except for C1 and CBD, excluding along Pioneer Way. Movement would be allowed on the signs, but each graphic/text frame would need to remain for a minimum of two seconds. The best practices literature recommends a minimum display time ranging from 1-8 seconds depending on location. Signs would have to remain 100 feet away from residentially zoned areas. Digital signs could not be more than 50% of the sign allocation for the site and 50% of any single sign, as well as no more than 50 square feet in size. Signs could only be building mounted. Autodim technology, within limits of 500 nits nighttime and 5,000 nits daytime, would be required.

**Scenario 3-“Most Restrictive”**

The digital signs would be allowed only in C-3, C-4, and C-5 zones, excluding Pioneer Way and could only be building mounted. No motion would be allowed on the sign and minimum frame time would be 20 seconds. Signs would be limited to 25 square feet in size. The frame duration and size restrictions in this scenario match what the City of Anacortes has adopted. Signs would have to be 200 feet away from a residentially zoned property. Autodim technology, within limits of 500 nits nighttime and 5,000 nits daytime, would be required. The digital signs would only be

allowed to operate from 8:00 a.m. to 8:00 p.m. during Fall and Winter and 8:00 a.m. to 10:00 p.m. during the Spring and Summer.

#### **Scenario 4-“Prohibited”**

This scenario is essentially the “no action alternative.” The consideration of such a scenario is common practice when undertaking a planning study. Under this scenario, the existing code language code remains as is or it could be modified to specifically exclude digital signs. Staff’s understanding is that digital signs can legally be prohibited outright, as long as ample alternative channels of commercial speech are available such as other sign types, internet, and newspaper.

Mr. Powers stressed that the scenarios are not staff recommendations but are provided as a starting point for the Planning Commission.

The tentative schedule for the digital sign code update is to open the public hearing in March. In April staff will draft the code and issue the SEPA Determination. In May the SEPA comment period is closed, the public hearing is closed and Planning Commission makes a recommendation to City Council.

Mr. Powers noted that Planning Commission requested further research at the previous meeting and staff has provided that research in the staff report provided for this meeting.

#### Planning Commission Discussion

Mr. Fikse commented on each of the items as follows:

Display Change: Supports not allowing flashes of light, blinking or chasing lights; but under Scenario 1, portrayal of explosions and fireworks should be allowed on the 4<sup>th</sup> of July.

Motion: Slides can be distracting as well. Smooth motion video should be allowed versus “jerky” motion of slides.

Color: Supports prohibition of white background but not in favor of trying to regulate near white background since there is no standard of how much white. Stark white is awful, off-white is not. White background are not bad in the LCD (upcoming technology) but awful in the LED. We need to be mindful that we don’t put something in the code that will hamper future technology.

In case of sign malfunction: The requirement that the display go dark should depend on the malfunction. “Malfunction” should be defined. If one block goes bad the sign can be set to stay on one solid color. There are other things that can be done other than having the display go dark to mitigate a malfunction depending on what the malfunction is.

Mr. Powers asked Mr. Fikse if it was necessary to address sign malfunction and leave it to the business owners discretion. Mr. Fikse and Ms. Jensen believed that business owners would not want their sign on if it wasn’t working. Mr. Powers suggested looking at the section of the code that applies to the state of repair for all signs, there may be general language that could address the problem if it is not self-correcting. Mr. Fikse agreed.

Brightness: Supports the autodimming requirement but the 500 nits darkness and 5000 nits daylight should be changed because light bulbs are different sizes and wattages. The diameter of the LED and the tightness of the cluster of the LED all affect nits. As the proposed regulation

scenario is written currently, his sign wouldn't meet the requirement. His sign if running at 100% power runs at 14,260 nits, at 90% it runs at 12,384 nits in full sun. At 10% power at night it is running at 1,426 nits. Mr. Fikse provided a handout (Attachment 2) that shows how brightness is affected by the tightness of the cluster of the LEDs. Mr. Fikse suggested using a percentage. 75% should be the starting point with the understanding that if you have a sign that glares at night that would have re-examined because 75% may not work with all of the technology.

Mr. Powers asked if it would be acceptable to set the bottom limit to 10% at night. Mr. Fikse said he had no problem setting the max brightness of 90% but suggested making it 10% at night with the understanding if that percentage is not right for the type of sign, a waiver could be granted on an individual basis. These percentages should be specifically for LED signs.

Mr. Powers said that staff would need to outline the process for a waiver so that it is not subjective.

Mr. Wasinger suggested that having this flexibility would allow business owners to purchase an LED sign that is less expensive and still be able to meet the brightness requirements.

Ms. Jensen commented that she preferred Scenario 1 "Least Restrictive" but she wanted to limit having a mounted LED sign or a freestanding LED sign but not both. She also suggested changing the Zone Area/Restrictions language to say CBD instead of Pioneer Way.

Planning Commission agreed that the hours of operation should be 8 a.m. to 10 p.m. where visible from residential but the term "where visible from residential" should be defined. Mr. Powers suggested using a certain number of feet or using the term "adjacent" to residentially zoned property. The distinction between residentially zoned and residentially used property should be made because there are some houses in that are non-conforming in commercial districts. The idea is that they will transition out over time, but residentially zoned property with stay residential.

Mr. Freeman raised The Element night club which is adjacent to a residential area and suggested the code should be written to address the worst case scenario.

Mr. Powers said that the code needs to be written to address where the sign is, how to deal with residentially used properties that are within a certain distance, how to deal with certain properties that are residentially zoned and how to deal with commercial zoning with residential uses.

Mr. Fakkema was concerned about increasing the signage in Oak Harbor. Mr. Powers pointed that when the code was revised to allow electronic message board signs there wasn't a rush for these types of signs and typically business owners will replace old signs with new signs. This change to the code does not affect the number of signs a business is allowed to have.

There was discussion about the ratio between the LED portion and the non-LED portion of the three types of freestanding signs. Planning Commission talked about addressing the three types of freestanding signs separately. Mr. Fikse commented that the code needs to be consistent for all signs whether it is an LED sign or not. Mr. Powers suggested that if the Planning Commission wanted to propose language to the Council that would limit the amount of sign area that could be LED, the simplest way would be to have a fixed percentage. Mr. Powers said he wouldn't suggest unique standards for each type of freestanding signs.

Mr. Powers said that staff would show the Planning Commission options for the three types of freestanding signs at the next meeting.

Mr. Fikse pointed out Comprehensive Plan policy Economic Development Goal 3 which states: "increase Oak Harbor's market share of retail sales to reduce the economic leakage off island." Mr. Fikse said it is difficult to do business in Oak Harbor and business need every tool to help them be as successful as they can while keeping Oak Harbor looking attractive as possible.

**DRAFT ZONING REGULATIONS FOR MARITIME ZONE** – Public Meeting

Mr. Powers reported that the 2012 Comprehensive Plan amendments considered adding a new land use category to the Comprehensive Plan to capture the potential of maritime industrial and commercial uses for land that is currently adjacent to the marina. After incorporation of the new land use category into the Comprehensive Plan, zoning regulations have to be adopted to implement the intent of the new land use category.

Some of the key elements that the land use designation is intending to achieve can be derived from the key words and phrases found within the adopted intent statement for the Maritime designation. They are listed below:

- Accommodate high intensity water-related and water-dependent uses
- Clean industrial uses
- Commercial uses similar to uses permitted in the Central Business District
- Flexible standards for streets and parking
- Sufficient screening between industrial and commercial uses

Water-related and water-dependent uses are defined in the City's Shoreline Master Program (SMP) that was recently adopted by the City.

Since the intent statement makes a strong connection to the CBD district and the SMP, development regulations for the Maritime District can be adapted for this district from these documents.

The staff report presents some water-dependent uses and some of the uses to consider under the Conditional Use category.

Mr. Powers concluded by asking for Planning Commission feedback.

Planning Commission Discussion

Planning Commission discussed the challenges of the land ownership land the development challenges in the area of the Marina.

Mr. Powers indicated that a good way to start the conversation is to get the right mix of uses.

Mr. Freeman commented that conference center, hotel and motel listed in the conditional use category are parking intensive.

Ms. Jensen stated that she wanted to avoid creating another shopping district in that area because the shopping districts are already established.

Mr. Powers said that if the Planning Commission thought that a uses didn't fit with their vision of what is going to be reality that they can remove those uses knowing that they can put them back in at some point in the future if necessary.

Commissioners agreed on keeping conference center and hotel/motel under the conditional use category recognizing that there are serious space constraints today but there could be some redevelopment activity that may allow for these uses in the future.

**YEARLY REPORT TO CITY COUNCIL** – Public Meeting

Mr. Powers reported that OHMC Section 18.04.070 requires the Planning Commission to make an annual report to the City Council. Staff prepared a draft report but left the section for recommendations to the City Council blank so that staff may collect and compile any recommendations the Commission would like to make and add them to the report. Once the draft is complete, staff will schedule the matter for an upcoming City Council meeting.

Planning Commission discussed Planning Division staffing levels and agreed to forward any recommendations to staff for inclusion in the report and final approval by the Planning Commission at the March business meeting.

Mr. Fakkema noted that it was Mr. Wallin's last meeting and Planning Commissioners thanked Mr. Wallin for his service on the Planning Commission.

**ADJOURN: 9:20 p.m.**

# Medical Marijuana

## Public Meeting

# City of Oak Harbor Planning Commission Report

Date: April 22, 2014  
Subject: Medical Marijuana Related Uses  
– Code Amendment Project

**FROM:** Steve Powers, Development Services Director

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## **PURPOSE**

This report presents background information on the topic of medical marijuana related uses for the Planning Commission’s information.

## **BACKGROUND**

On September 3, 2013 the Oak Harbor City Council adopted Ordinance No. 1666 (Attachment 1) which imposed a six-month moratorium on the establishment of medical marijuana dispensaries, collective gardens and the licensing and permitting thereof. That ordinance also defined “medical marijuana dispensary.” The City Council voted to extend this moratorium with the adoption of Ordinance No. 1686 (Attachment 2) on February 4, 2014.

RCW 36.70A.390 permits cities and counties to extend a moratorium subject to the adoption of a work program. The purpose of the work program is to demonstrate how the city or county intends to utilize the additional time to arrive at the intended permanent regulations. Ordinance No. 1686 included the following work program:

March-May 2014	•Review amendments to State Law •Draft medical marijuana code
May-June 2014	Planning Commission conducts public hearing(s) and forwards recommendations to City Council
June-August 2014	•Provide 60 day notification to Department of Commerce •Complete SEPA process.
July-August 2014	City Council workshop(s) (if held)
August-September 2014	Public hearing(s) before the City Council

The City Council extended the moratorium in large part based on the widely held belief that the Washington State Legislature intended to modify the existing medical marijuana law (RCW 69.51A) during their 2014 session. Legislation pending at that time sought to align the recreational marijuana law with those for medical marijuana. The 2014 Legislative session concluded without any such alignment taking place.

## **DISCUSSION**

The lack of action at the State level has left Oak Harbor and other communities without any clear legislative direction to consider when determining how medical marijuana related uses might interact with recreational marijuana related uses from a regulatory perspective. For those communities with a moratorium in place the problem has an added dimension. The courts have held that communities cannot extend moratoria multiple times without making noticeable progress in adopting permanent regulations. Otherwise, such an “indefinite moratorium” becomes a ban on the activity without providing interested parties an opportunity to weigh in on the action.

One other recent development has complicated this situation. On March 31st, Division I of the State Court of Appeals issued its decision on the legal challenge filed against the City of Kent’s prohibition of collective gardens. The appellate court upheld the city’s prohibition, ruling that collective gardens are not legal under Washington’s current law. This ruling would seem to provide solid ground for other communities to follow suit. However, it is likely that the ruling will be appealed to the State Supreme Court.

City staff is busy reviewing available information on this issue. Staff’s goal is to present additional information to the Planning Commission at your May meeting. Staff welcomes any preliminary thoughts the Commission may wish to offer at this time.

## **RECOMMENDATION**

No action is required. This item is presented for information only.

## **ATTACHMENTS**

1. Ordinance No. 1666
2. Ordinance No. 1686

**CITY OF OAK HARBOR  
OAK HARBOR, WASHINGTON**

**ORDINANCE NO. 1666**

**AN INTERIM ORDINANCE OF THE CITY OF OAK HARBOR, WASHINGTON, ADOPTING A MORATORIUM ON THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES, COLLECTIVE GARDENS AND THE LICENSING AND PERMITTING THEREOF; DEFINING "MEDICAL MARIJUANA DISPENSARY"; PROVIDING FOR A PUBLIC HEARING; REFERRING THE MATTER TO THE PLANNING COMMISSION FOR REVIEW; ESTABLISHING AN EFFECTIVE DATE; AND PROVIDING THAT THE MORATORIUM, UNLESS EXTENDED, WILL SUNSET WITHIN SIX (6) MONTHS OF THE DATE OF ADOPTION.**

**WHEREAS**, Initiative Measure No. 692, approved November 3, 1998, created an affirmative defense for "qualifying patients" to the charge of possession of marijuana; and

**WHEREAS**, the initiative and current Chapter 69.51A RCW are clear that nothing in its provisions are to be "construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of marijuana for non-medical purposes"; and

**WHEREAS**, the Washington State Department of Health opines that it is "not legal to buy or sell" medical marijuana and further opines that "the law [Chapter 69.51.A RCW] does not allow dispensaries", leaving enforcement to local officials; and

**WHEREAS**, the City Council finds that the sale of marijuana, no matter how designated by dispensaries, is prohibited by federal and state law; and

**WHEREAS**, ESSB 5073 – Chapter 181, Laws of 2011 ("the bill") was adopted with a partial veto of the Governor becomes effective July 22, 2011; and

**WHEREAS**, Section 404 of the bill effectively eliminates medical marijuana dispensaries as a legally viable model of operation under State law; and

**WHEREAS**, Section 403 of the bill provides that qualifying patients may create and participate in collective gardens for the purpose of producing, processing, transporting and delivering cannabis for medical use subject to compliance with specific statutory conditions; and

**WHEREAS**, the City acknowledges the right of qualified health care professionals to prescribe the medical use of marijuana as well as the right of patients to designate a "designated

provider” who can “provide” rather than sell marijuana to “only one patient at any one time”; and

**WHEREAS**, the City Council finds that the secondary impacts associated with marijuana dispensaries, and collective gardens include but are not limited to the invasion of the business, burglary and robbery associated with the cash and drugs maintained on the site; and

**WHEREAS**, pursuant to Section 1102 of the bill and under their general zoning and police powers cities are authorized to adopt and enforce zoning requirements, business licensing requirements, health and safety requirements and business taxes on the production, processing or dispensing of cannabis or cannabis products; and

**WHEREAS**, a public hearing will be held on October 1, 2013 at 6:00 p.m. before Oak Harbor City Council;

**NOW, THEREFORE**, the City Council of the City of Oak Harbor, Washington, do ordain as follows:

Section 1. Pursuant to the provisions of RCW 36.70A.390, a zoning moratorium is hereby enacted in the City of Oak Harbor prohibiting licensing, permitting, establishment, maintenance or continuation of any use consisting of or including the sale, provision and/or dispensing of medical marijuana to more than one person, the establishment of a medical marijuana dispensary or creation of or participation in a “collective garden” as referenced and defined in Section 403 of ESSB 5073 – Chapter 181, Laws of 2011.

Section 2. “Medical marijuana dispensary” is hereby defined as any person, business, corporation, partnership, joint venture, organization, association and/or other entity which: 1) sells, provides and/or otherwise dispenses marijuana to more than one “qualifying patient” in any thirty (30) day period or to any person who does not meet the definition of “qualifying patient” under the terms of Chapter 69.51A RCW , and/or 2) maintains and/or possesses more than one sixty-day supply of marijuana for one qualifying patient at any time. The receipt of cash or other legal tender in exchange for, contemporaneously with or immediately following the delivery of marijuana to a qualifying patient shall be presumed to be a sale. Any person, business, corporation, partnership, joint venture, organization, association and/ or entity which sells, provides and/or otherwise dispenses marijuana to more than one qualifying patient in any sixty (60) day period should be presumed to be a “medical marijuana dispensary.”

Section 3. Medical marijuana dispensaries and collective gardens are hereby designated as prohibited uses in the City of Oak Harbor, in accordance with the provisions of RCW 35A.82.020 and OHMC Title 19, OHMC Chapter 18.20, and/or OHMC Chapter 5.03, no business license, permit, zoning or development approval shall be issued to be a medical marijuana dispensary or collective garden.

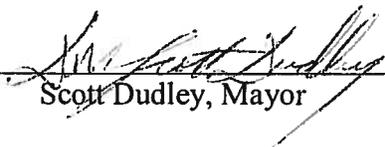
Section 4. This ordinance shall be referred to the Oak Harbor Planning Commission for its review and recommendation for potential inclusion in the zoning and/or business and tax ordinances of the City of Oak Harbor.

Section 5. Ordinance to be Transmitted to Department. Pursuant to RCW 36.70A.106, a copy of this interim ordinance shall be transmitted to the Washington State Department of Commerce.

Section 6. Effective Date. This ordinance shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title, PROVIDED, HOWEVER, that unless extended by the act of the Oak Harbor City Council, this ordinance shall automatically expire six (6) months following its adoption.

PASSED by the City Council and APPROVED by the Mayor this 3<sup>rd</sup> day of September 2013.

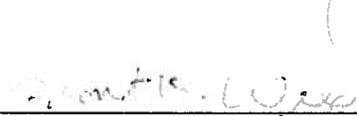
CITY OF OAK HARBOR

By:   
Scott Dudley, Mayor

ATTEST/AUTHENTICATED:

By:   
Valerie J. Loffler, City Clerk

APPROVED AS TO FORM:

By:   
Grant K. Weed, City Attorney

Date of Publication: 09/07/13

Effective Date: 09/12/13

ORDINANCE NO. 1686

AN ORDINANCE EXTENDING FOR A SIX-MONTH PERIOD OF TIME THE MORATORIUM ON THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES AND COLLECTIVE GARDENS AS IMPOSED BY ORDINANCE NO. 1666, ADOPTING FINDINGS OF FACT IN SUPPORT OF THE EXTENSION AND PROVIDING A SCHEDULE FOR COMPLETING WORK ON A FINAL ORDINANCE.

WHEREAS, cities and counties are authorized to adopt a moratorium in accordance RCW.36.70A.390; and

WHEREAS, on September 3, 2013, the City Council of Oak Harbor adopted Ordinance No. 1666, imposing a six month moratorium ; and

WHEREAS, the City Council conducted a public hearing on October 1, 2013 which was within sixty days of the adoption of the moratorium in accordance RCW.36.70A.390; and

WHEREAS, legislation is pending before the 2014 session of the Washington State Legislature that potentially aligns the medical marijuana regulations with those of recreational marijuana; and

WHEREAS, it is not known at this time what the resulting State law will be; and

WHEREAS, the City requires additional time beyond the initial six month moratorium to review and respond to any amendments that may occur at the State level; and

WHEREAS, in accordance RCW.36.70A.390, a moratorium may be effective for up to one year if a work plan is developed for related studies providing for such a longer period; and

WHEREAS, a moratorium may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal.

WHEREAS, City staff has outlined a work plan based on the anticipated Legislative session schedule; and

WHEREAS, the adoption of a final development regulation requires public hearings before the Planning Commission and City Council, requires SEPA review and determination and requires notification to the Department of Commerce; and

Medical Marijuana Moratorium Extension

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WHEREAS, the City has determined that an additional six months time is necessary to complete work on the medical marijuana regulations; and

WHEREAS, the City Council of Oak Harbor adopts the foregoing statements as its findings of fact justifying the adoption of this ordinance.

THE CITY COUNCIL OF THE CITY OF OAK HARBOR do ordain as follows:

**Section One. Extension of Moratorium.** In accordance with RCW.36.70A.390, Ordinance No. 1666, adopted September 3, 2013, which imposed a moratorium on the establishment of medical marijuana dispensaries and collective gardens is hereby extended for an additional six months until September 2, 2014, subject to general compliance with the work plan shown in Section Two below.

**Section Two: Work Plan.** The work plan shown below shall generally be followed in completing work on medical marijuana ordinance.

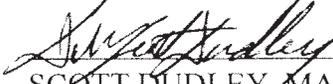
March-May 2014	<ul style="list-style-type: none"> <li>•Review amendments to State Law</li> <li>•Draft medical marijuana code</li> </ul>
May-June 2014	Planning Commission conducts public hearing(s) and forwards recommendations to City Council
June-August 2014	<ul style="list-style-type: none"> <li>•Provide 60 day notification to Department of Commerce</li> <li>•Complete SEPA process.</li> </ul>
July-August 2014	City Council workshop(s) (if held)
August-September 2014	Public hearing(s) before the City Council

**Section Three: Severability.** If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances is not affected.

**Section Four. Effective Date.** This Ordinance shall be in full force and effect five days after publishing.

PASSED by the City Council this 4<sup>th</sup> day of February 2014.

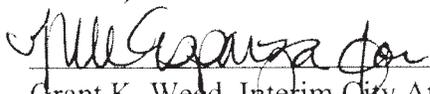
CITY OF OAK HARBOR

  
SCOTT DUDLEY, MAYOR

Attest:

  
Anna Thompson, City Clerk

Approved as to Form:

  
Grant K. Weed, Interim City Attorney

Published: \_\_\_\_\_