



PLANNING COMMISSION

AGENDA

May 22, 2012

CITY OF OAK HARBOR
PLANNING COMMISSION
REGULAR MEETING
CITY HALL – COUNCIL CHAMBERS

AGENDA
May 22, 2012
7:30 P.M.

ROLL CALL: NEIL _____ JENSEN _____ FAKKEMA _____
WASINGER _____ OLIVER _____
WALLIN _____ JOHNSON-PFEIFFER _____

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1. **Approval of Minutes – April 24, 2012**
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.

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3. **SIX-YEAR TRANSPORTATION IMPROVEMENT PROGRAM (TIP) – Public Hearing**
The Planning Commission will conduct a public hearing to consider the updates to the Six-Year Transportation Improvement Program for the years 2013-2018. The Planning Commission is expected to forward a recommendation to the City Council.

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4. **SIGN CODE – Public Hearing**
The Planning Commission will continue its discussion of amendments to OHMC 19.36.080 (“Temporary and Special Signs”). The proposed code amendments address time, manner, and place provisions for temporary political, commercial, and non-commercial signs on public and private property. Planning Commission will also accept comments in a public hearing for this issue.

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5. **SHORELINE MASTER PROGRAM (SMP) UPDATE – Public Meeting**
The City of Oak Harbor is required by the State of Washington to update its Shoreline Master Program (SMP). The Planning Commission will continue its discussion of the draft SMP document focusing on Chapter 1 “Introduction”, Chapter 2 “Environment Designation Provisions” and Chapter 3 “General Provisions.” Topics covered in this discussion will include, shoreline environment designations, critical areas, public access, and vegetation conservation.

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6. **OHMC Chapter 17.24 SIDEWALKS, CURBS AND GUTTERS INSTALLATION – Public Meeting**
The Planning Commission will discuss the building code as it relates to the requirement to provide sidewalks under certain development/redevelopment scenarios.

MINUTES

April 24, 2012

**PLANNING COMMISSION
REGULAR MEETING
CITY HALL – COUNCIL CHAMBERS
April 24, 2012**

ROLL CALL: Present: Keith Fakkema, Jeff Wallin, Gerry Oliver and Jill Johnson-Pfeiffer.
Absent: Bruce Neil, Kristi Jensen and Greg Wasinger.
Staff Present: Senior Planners, Ethan Spoo and Cac Kamak and Associate Planner, Melissa Sartorius.

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

MINUTES: MR. WALLIN MOVED, MR. OLIVER SECONDED, MOTION CARRIED TO APPROVE THE MARCH 27, 2012 MINUTES AS PRESENTED.

PUBLIC COMMENT:

Martha Yount (364 NE Ronhaar St.) had two questions. She asked about the property between the shopping center on Highway 20 and Ely Street where Island Café and a smaller shopping center are. She wanted to know what businesses are slated to go into the open field area once it is developed and she asked about the results of the traffic study for Jehovah's Witnesses church project located at the end of NE Ronhaar Street.

Mr. Kamak said that the development application for the property between SR20 and Ely Street is for two buildings. The larger building will house Island Drug and the smaller building is for a commercial use but we don't know what business will go in yet. Ms. Sartorius added that the second small building is slated to be an office but there isn't an identified tenant at this time.

Ms. Sartorius explained that there was a conditional use hearing before the City's hearings examiner regarding the Jehovah's Witnesses church project and the traffic impacts were addressed in the staff report to the hearings examiner which will be provided to Mrs. Yount.

ADOPTION OF THE OFFICIAL ZONING MAP – Public Hearing

Ms. Sartorius presented a draft ordinance that would adopt the Official Zoning Map for the City of Oak Harbor. Ms. Sartorius explained that the Washington State Growth Management Act requires that counties and cities adopt zoning and other development regulations that are consistent with their adopted Comprehensive Plans. Cities are authorized to adopt appropriate regulations complying with state law for the regulation of property in the city, including adopting zoning codes and official zoning. Adoption of the zoning map with signatures of the Mayor and City Clerk with the City's seal affixed formalizes this action. The City of Oak Harbor updates its Comprehensive Plan and Future Land Use Map by taking action on Comprehensive Plan amendments annually in December with subsequent amendments to zoning and the Official Zoning Map following in the spring.

Ms. Sartorius recommended that Planning Commission hold a public hearing and recommend adoption of the ordinance and the attached official zoning map to City Council.

Commission Discussion

Mrs. Johnson-Pfeiffer asked if the zoning map takes into consideration the same zoning that was in the Shoreline Master Program (SMP). The Shoreline Master program designates the area around the Marina as maritime industrial usage and the zoning map shows the area as Public Facilities zoning. Do these need to match?

Mr. Kamak explained that they do not need to match and that the designations in the SMP are slightly different than the zoning classifications. They can be considered as layers on a map. We have a Comprehensive Plan amendment this year and if those amendments go forward then those properties will be rezoned.

Mr. Fakkema asked what a Scribner's error was. Ms. Sartorius said they were minors such as grammatical errors and typographical errors.

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

ACTION: MR. OLIVER MOVED, MRS. JOHNSON-PFEIFFER SECONDED A MOTION TO RECOMMEND THAT THE CITY COUNCIL ADOPT THE ORDINANCE AND THE ATTACHED ZONING MAP. MOTION CARRIED UNANIMOUSLY.

NIGHTCLUB ORDINANCE – Public Meeting

Mr. Kamak reported that the City Council has received several complaints about the impact of large nightclubs on surrounding uses. Most of them originate from residences around the nightclub Element; however, a few comments have also originated from residences along SE Hathaway Street and SE Ireland Street that are in proximity to nightclubs along Pioneer Way. The most common complaint is noise from parking lots adjacent to these uses, but other impacts such as loitering, trespassing, public urinations and lewd conduct are also significant impacts. Since the request originated from the public, it is appropriate for the Planning Commission to consider this item and take public comment. Comments and discussions at the meeting can help frame the problem and also provide options/amendments to pursue.

Mr. Kamak explained that night clubs are regulated in the business license section of the Oak Harbor Municipal Code (OHMC). "Nightclub" means any "premises" as defined herein on which any music, singing, dancing or other combination of these activities is permitted as entertainment after 10:00 p.m., on one or more days per week. The playing of incidental music on any premises where the receipts for the sale of food constitute 75 percent or more of the gross business income of the establishment shall not be considered a "nightclub" for purposes of this chapter, unless an opportunity for social dancing is provided on the premises.

Mr. Kamak noted that nightclubs are not listed as a use in any of the zoning districts in OHMC Title 19 Zoning. Any use can apply for a nightclub license. The review process for nightclub licenses currently goes through the police department and the City Council will either approve or deny the application. Mr. Kamak reiterated that the review of nightclub licenses is not a land use issue but a license issue. That is why the Planning Commission doesn't review the license and it goes straight to City Council.

Mr. Kamak said the following six businesses currently have nightclub licenses in Oak Harbor:

- Element – CBD (Central Business District)
- Seven West – CBD (Central Business District)
- Off the Hook – CBD (Central Business District)
- Oak Harbor Tavern – CBD (Central Business District)
- Mi Pueblo – CBD (Central Business District)
- El Cazador – C5, Highway Corridor Commercial

These uses are classified as Bars, Taverns and Restaurants – all of which are permitted uses in their respective zoning districts. Some of these uses can continue to exist without a nightclub license.

Mr. Kamak asked the Planning Commission to consider the following:

- Should the size restriction that is being requested apply only to uses that apply for a “Nightclub” license?
- Should a size restriction for “Nightclub” license applicants apply to only certain districts?
- If “size” is the issue, should there be a general size limitation on uses in certain zoning districts?

Mr. Kamak noted that the City of Anacortes doesn’t allow uses larger than 25,000 square feet in their downtown.

Mr. Kamak recommended that the Planning Commission take comments from the public and he provided copies of public comment that he had recently received through the mail and e-mail.

Mr. Fakkema opened the meeting for public comment.

Billie Cook (651 SE Bayshore Drive) indicated that she was one of the initiators of the request before the Planning Commission. Ms. Cook stated that after reading page 9 of the staff report she recognized that her suggestion to the Planning Commission to limit the size of night clubs may not be feasible but Mr. Kamak’s comments on the possibility of restriction nightclubs by area to achieve noise reduction are encouraging.

Ms. Cook asked the Planning Commission to start the process of solving the negative impacts of nightclubs versus the rights of other land users. She noted that there were the same problems 30 years ago with Cathay Palace, the Blue Dolphin and then the Lava Lounge and now Element. She recognized that any action taken now would not be retroactive but asked the Planning Commission to review, discuss and modify the City’s zoning code so as to alleviate the very real problems concerning nightclub impacts.

Ms. Cook stated she didn’t believe that nightclubs should be allowed close to churches, schools, residences or public amenities such as parks. There needs to be a conditional use permit required in any zone where nightclubs reside next to these land uses. The current practice of allowing nightclubs anywhere is unfair to surrounding land users and not in the best interest of the nightclub owners who may be unaware of the objections of nearby land users and they have to deal with them after the fact.

Ms. Cook thought that the base of the problem is that nightclubs are not a recognized land use and piggy-back onto another land use. She believed that nightclubs should be a separate land use so that they have to adhere to the same rules that other land uses have to follow. She stated that licenses are all but impossible to deny, regulate or revoke and the City finds itself in a morass in trying to impose conditions to mitigate but they have to have the cooperation of the licensee.

Ms. Cook offered to serve on a citizens committee to further work on this issue.

Richard Everett (651 SE Bayshore Drive) stated that he believed the problem began when the condominiums were built inside of the Central Business District (CBD). Now there is a conflict

between residences and businesses. He recommended considering the type and size of a business to restrict them from encroaching on areas where we know families or elders live. Mr. Everett noted that there are people with health issues that have been severely impacted and can't even live in their unit anymore. He asked that the Planning Commission consider the elderly that are looking for some semblance of peace in their years as senior citizens.

Yvonne Howard (2300 SW Vista Park Drive) stated that she works at 656 SE Bayshore Drive Suite 2 which is the church next door to Element. She said that they are affected by Element with the people that hang out in the parking lot, the smoking in front of the door and all of the colorful language that they have to endure while holding Bible study. The young kids in the youth group are affected by Element activities as well. She believed that this needed to be addressed.

Kelly Beedle (940 SE Pioneer Way) stated that she was the owner of the Oak Harbor Tavern which has been there since 1859. The tavern is right next to a church and houses and they haven't had any problems. She didn't understand how the City could limit the size because when someone rents a building it is already a certain size. She believed that business is about respect. Respect of the citizens, the City of Oak Harbor and the police. She asked why Element owners weren't present because she knew that business owners were notified of this meeting. She also wondered why there were only six licenses in the City because restaurants should have licenses too since they are playing music after 10:00 p.m.

Ms. Beedle suggested:

- Talking to the Element owners
- Borrowing equipment that monitors noise levels from the Naval Air Station
- Element should lean on their customers and require the customers be respectful and not just feed them alcohol and let them act like animals
- A fine system

Paul Newman (886 SE Bayshore Drive) stated that he could be considered at "ground zero" because he is located right next to Mi Pueblo, opposite the old Lava Lounge or The Hook and the Oak Harbor Tavern. He echoed what Ms. Beedle said about the Oak Harbor Tavern not being a problem and he added that Mi Pueblo is not a problem either. Most of the so called night clubs are not the problem it is just Element. He hoped the Planning Commission would consider "Nuclear options" with regard to the Element.

Mr. Newman noted that the City of Oak Harbor spent tens of thousands of tax dollars on the best study that he has seen Oak Harbor conduct. The study defined the concept and character of Windjammer Park. Element represents an absolute contradiction of the character and the concept of what the City was aiming for and it is just as much land use as it is licensing or anything else. He said that Element in that area is about as appropriate as an adult book store next to an elementary school. Within 100 yards of Element are kids playing T-ball and Little League, families picnicking and a bus depot where teenagers hang out to take advantage of the free busses. Within a couple of hundred yards, the chain link fence is falling down because people climb over it because they don't want to walk on the street to get from Mi Pueblo to Element and back. Some of the neighbors have put in gates and they don't use the gates and still jump over them because they are drunk.

Mr. Newman talked about the noise restrictions in OHMC Section 6.56.030 that describes specific noises that are prohibited. Mr. Newman said that all of the noises listed are noises coming out of Element.

Mr. Newman was concerned that during the summer when it stays light later and kids are still playing that there may be another fight in the parking lot or another shooting in the parking lot and it is another incident or tragedy waiting to happen and Element should never been allowed there in the first place and is violating noise restrictions.

Mr. Newman asked why Element's license is automatically renewed and how couldn't the license be reviewed year after year? Mr. Newman pointed out OHMC Section 5.22.070 Revocation of License and recited Section 5.22.070(1) which says "The license was procured by fraud or false representation of fact: or..." Mr. Newman said that false representation of fact does not have to be intentionally done. It can be false with all the good intent in the world. If the police investigated this and believed there wouldn't be problems with all the best intent in the world but there are problems then there is a false representation of fact that has been made. Mr. Newman didn't think that a revocation of the license would be beyond what can be done in this respect. That is what he meant by "Nuclear options". He thought that the City should encourage Element to relocate and to cooperate in that relocation. Mr. Newman pointed out that there is all of Goldie Road and all of Ault Field Road. There are locations for Element where it would do better and the City would do better than putting it in Windjammer Park where it has no business being in the first place and represents a contradiction of a lot of tax payer money.

Quentin Reeves-Herbert said that he frequents some of the nightclubs that are being discussed and most of the nightclubs have no problems other than Element. He noted that he was involved in the bottle slashing incident at Element. He thought that the size was a problem and if you don't have enough security to watch over a place that big then problems will occur. He said that there were two other incidents that occurred on the same night that the bottle slashing incident occurred and because they didn't have enough staff or manpower to cover the entire building the slashing was allowed to happen and the other person involved was allowed to actually walk straight out the front door, get in a vehicle and leave. Security and a sense of security for the patrons and the neighbors is a point that he wanted the City to address.

Darnell Allen (7-West business owner) said that when Element lets out at night there are a lot of people coming out of the bar all at the same time and it sounds like a stadium in downtown Seattle when a game just let out. Mr. Allen said that the police are there every weekend doing the best they can to help. The magnitude of people that come out at one time is overwhelming and chaotic. He thought maybe cutting down the size might work. Mr. Allen pointed out Mr. Reeves-Herbert as a peacemaker, and since we are a small community we know the people that are bad actors and there is no reason for those people to be allowed in. You have a right to refuse anybody and if you can't identify that and you are taking money over respect to these people I would be upset too. My best suggestion would be to cut down the size.

Mr. Oliver asked what Element's square footage is and of that square footage, how much is taken up by Bayside Casino? Mr. Kamak did not have the square footage information yet but would bring square footage information about the average building sizes downtown as a gauge for comparison of the building stock available downtown. He believed that Element was a little less than 10,000 square feet.

Mr. Oliver said that normally people will go to the central business district to find music and entertainment. His concern was that if there is a restriction of 2,000 square feet, as an example, that would potentially cause more nightclubs to pop up and potentially multiply the problem.

Mr. Oliver asked if it was going to be mandatory for all nightclub licenses to renew every 90 days since that is what Element has to do. Mr. Kamak said that the 90-day license renewal was a special condition placed on Element because of all the complaints and issues surrounding them and he did not think the other like nightclub license holders had the same conditions imposed on them.

Mr. Oliver suggested a sponsor night. Seniors and condo owners should be sponsored by some of the people that frequent the nightclub so they can physically see who Element is affecting as opposed to just paper complaints to police. Mr. Oliver also suggested a meeting between all tavern, bar and nightclub owners and have a workshop to figure it out.

Richard Everett (651 SE Bayshore Drive) said that they have dealt with Chief Wallace and the Mayor extensively and have suggested things like Mr. Oliver has suggested repeatedly. On the surface the suggestion is excellent but the reality is that Mr. Kumberfelt has failed to meet with them on several occasions when we were supposed to get together. We can go forward with a get-together but there has to be some teeth in that to make it happen because Mr. Kumberfelt's only concern is serving his customers inside his bar and he submitted a letter to the City Council saying that that was where his responsibility as a business man is. He has also made the statement that when they walk out the door they are no longer his problem. Until he is made to participate, I think you are spinning your wheels. It is our opinion that the 90-day review is not being done and that it has been over a year since the last review.

Ms. Johnson-Pfeiffer clarified that the Planning Commission is a land use commission and she is listening for comments that are within the scope of the Planning Commission and what they are allowed to refer to the City Council. From a land use perspective looking at the scale and size of businesses allowed in the CBD, she was more comfortable with targeting any type of business by saying that 20,000 feet of any type of business is too big for the CBD, she said she was less comfortable with a conversation that says 20,000 square feet of nightclub use. From a licensing perspective, if the conversation is how you administer a license; that is not within the Planning Commission's scope. Ms. Johnson-Pfeiffer referred to Mr. Newman's comment about Windjammer Park. She noted that all of the downtown development is predicated on the mixed use concept which is in the Comprehensive Plan. We have built this entire downtown concept on this idea that life in urban areas can be consolidated living. She was concerned that land use decisions will be made on a particular problem and that would be in contradiction to this value that is in multiple documents in the City, that we want people to work and live in the same area. The bigger problem for the City is how do you keep integrating these types of uses and if these uses are incompatible and if the community is saying we don't like our businesses where our residential is then there is a bigger picture problem in terms of what our foundation document is which is that we want all of this infill and mixed use living. Reaction to one situation isn't okay in terms of a land use perspective. Ms. Johnson-Pfeiffer said that she had fundamental concerns where anything that is specific about one individual's behavior dictating land use. So if it is an Element problem she was not sure that that conversation should be a land use conversation. She has concerns that even happened and thought that a specific problem with a specific business needs to be dealt with appropriately and not dealt with a broad brush like this. She summarized, if we don't want mixed use as a community that is the conversation, and we need to look at our source documents and the second part is that if we don't want 20,000 square feet of retail or anything else, then deal with the size and not a specific use.

Richard Everett (651 SE Bayshore Drive) said that their comments were made so that the Planning Commission would understand the nature of the problem and to encourage the

Planning Commission to find a solution in the Planning Commission's domain that would support the City Council and the objectives of the City. Mr. Everett said that he hoped the Planning Commission would say to the City Council that you perceive obvious problems with mixed use and he didn't think there would be cut and dry rule for all situations. He suggested that the Planning Commission say to the Council that you need support in achieving your goals by making a 90-day review on establishments that clearly indicate conduct that is inappropriate. There are a lot of good businesses down there and I would support their existence and location.

Paul Newman (886 SE Bayshore Drive) said that Ms. Johnson-Pfeiffer has made some important points. He began thinking that this was a land use decision and that is one of the reasons he was here. He said Element is simply the first example of what can go wrong and dealing with that will prevent things from happening in the future. The second more important thing is the mixed use concept. He wanted Windjammer Park to be what it is suppose to be and the mixed use concept may be a more important thing. If you have retail below and people above and the business district evolves in that fashion I guarantee you Element and any other operation like it is going to become more and more of a thorn in everybody's paw. The more mixed use you have the bigger problem you are going to have and the more people you are going to see here inevitably. Other tavern owners have testified that it is the size and volume of it. Whether the owner is the corporate citizen he ought to be is a point we can debate but it is not the relevant part. The fundamental inherent quality of the size and scope of Element or any place like it is going to be at odds not just with Windjammer Park but with the mixed use development as a whole.

Mr. Oliver asked if the size limitation is adopted, how that would affect businesses that are in that district now. Mr. Kamak said that if we take that approach we would have to decide where the restriction would be, whether it will be in the land use section or will the restrictions be in the business license section. If current license holders will be impacted we may have to amend that section as well, to address the issue of what the consequences are for existing nightclub license holders. Either they will be non-conforming, which means that they can continue to exist in their current capacity but won't be able to expand any further, only minor modifications will be allowed. Any restrictions that we may consider will not directly impact existing uses.

Mr. Wallin commented that it comes down to the annual license review or the 90-day license review and that most of the other businesses conform to a certain standard and Element is not. He thought that the initial problem can be addressed through the license review process. Mr. Wallin asked if the license were revoked would they be forced to close their doors at 10 p.m. and would it alleviate the problem of 100 people coming out the door a two in the morning.

Mr. Kamak said that there was more frequent police reporting on Element and the police chief gives a report to the City Council and City Council gets to choose whether they want to renew the license. Mr. Kamak said he would have more information at the next meeting. Mr. Kamak said that Element could continue to operate as a business and if they don't have singing, dancing or a combination thereof after 10 p.m. they could continue to use the space, they just can't do it after 10 p.m., that is where they need the nightclub license. Mi Pueblo is a restaurant and can continue to operate as a restaurant without the nightclub license. The license is just another layer on top. If music and dancing is integral to the business and the license is removed, whether they will be able to sustain themselves is a question I cannot answer. When Element started they were a restaurant and then they had some recreation and amusement elements and then the space changed over time. That is the other challenge that we have with some of the uses in downtown. During certain hours they are a certain use and like to have tables and chairs and be a restaurant and when that is not sufficient to pay the bills they add on

extra uses of that space where they can move the tables and now they have room for dancing and music. The mixture of uses gives the business a choice on whether they want to apply for the nightclub license or not.

Mr. Oliver asked what size would not be disruptive to the residences.

Kelly Beedle (940 SE Pioneer Way) said that her place was 1,440 square feet which is plenty of room and she asked how the City could control the size of a building that someone buys or rents.

Darnell Allen (7-West business owner) said that his business is 1,400 square feet and hold 117 people maximum.

Mr. Oliver said that it sound like controlling 100 to 150 people is controllable and that anything above that is difficult. Mr. Allen agreed.

Ms. Johnson-Pfeiffer said that she would not be opposed to having nightclubs listed as a specific land use item with a strict definition that would need to be fleshed out.

Mr. Fakkema thanked the citizens for their participation and noted how important their input is.

Mr. Kamak echoed the same and said that at the next meeting we will try and address some of the concerns and provide options to consider.

Mr. Wallin asked for size information on all of the current nightclubs for the next meeting.

Mr. Fakkema closed the public meeting.

SIGN CODE – Public Hearing

Mr. Spoo explained that the item before the Planning Commission tonight is simply a notification to Planning Commission that staff will be requesting that City Council renew the interim sign code for another six-month period. Staff will return to Planning Commission with the draft temporary sign code in May. The draft temporary sign code will include comments voiced at the March Planning Commission meeting.

Mr. Spoo recommended that Planning Commission hold a public hearing to take testimony regarding extending the interim sign code for an additional six-month period. Any public testimony will be included in information forwarded to the City Council. Another public hearing will be conducted before the City Council when extension of the interim sign code is considered.

Mr. Fakkema asked if the Planning Commission needed to recommend that the City Council extend the interim sign code. Mr. Spoo said that it isn't necessary because it the interim code has been in place for almost a year and they will only be extending it for another six months.

Mr. Fakkema opened the public hearing for public comment, seen none he closed the public hearing.

SHORELINE MASTER PROGRAM (SMP) – Public Meeting

Mr. Spoo explained that the SMP project has been an ongoing since 2010. Staff have provided several updates to the Planning Commission in pre-meetings and at the regular meeting since 2010. This introduction marks the formal start of discussions and consideration of the shoreline

master program update by Planning Commission. Mr. Spoo provided copies of the draft SMP to the Commissioners and noted that two members of the Planning Commission have served on the SMP Citizens Advisory Committee (Mr. Fakkema and Ms. Johnson-Pfeiffer).

Mr. Spoo provided background and history on the Shoreline Management Act as follows: In 1971, the State adopted the Shoreline Management Act (SMA) to address the “uncoordinated and piecemeal development” of the state’s shorelines. The legislature realized that most of the shoreline was under private ownership and was a unique and limited resource worth protecting. As such, legislation was needed to address development and activity along the shoreline. The three main objectives of the SMA were to (1) protect the shoreline environment, (2) promote and enhance public access, and (3) Give priority to uses which require a shoreline location. It is important to note that the SMA emphasizes all three of these objectives, not just protecting the shoreline environment. The SMA also required local jurisdictions (cities and counties) to adopt a shoreline master program to address these three objectives.

A shoreline master program (SMP) is a local plan for managing the shoreline which implements the SMA. SMPs contain goals, policies, and regulations for shoreline protection, use, and development. SMPs are unique because they serve as both a comprehensive plan and development regulations in the same document. SMPs are also unique amongst local regulations, because they require state approval. The City’s comprehensive plan and zoning codes are approved locally, but state approval is not required. This is a noteworthy distinction, because the State has the ultimate authority to approve an SMP for a jurisdiction in compliance with the SMA if the local jurisdiction fails to act or adopts an insufficient SMP. Shoreline planning is therefore, a joint City-state responsibility. The City writes, adopts and administers the SMP. Administering the SMP means that the City reviews developments for conformance with the plan and issues permits, or exemptions as necessary. The State, for its part, reviews the SMPs, provides funding in the form of a grant to update the SMP, and provides final approval. The state also has the final approval authority for certain permits such as conditional uses and variances.

The new state Guidelines and “no net loss.”

In the 1990s, there was a push to update the SMPs with science. When the SMPs were originally written in the early 1970s, they included very little science. Environmental interests wanted to see new Guidelines adopted which would prohibit any further impacts to the shoreline environment and its functions (hydrology, vegetation, habitat, etc.). Businesses and property owners took a slightly different view. Rather than prohibit impacts, they pointed out that the SMA was also about providing for economic use of the shoreline in the form of water-oriented and water-dependent uses (piers, ports, view restaurants, etc). If development of the shoreline with water-oriented/water-dependent uses was to be promoted, allowance for some impacts to the shoreline environment would be necessary. After years of negotiation and conflict, the interest groups settled on a compromise known as “no net loss” in 2003.

No net loss means that the existing quality of shoreline functions is maintained over time. It does not mean that there cannot be impacts to these functions, only that impacts should be avoided wherever possible, and mitigated when it is not possible to avoid impacts. There are some common misperceptions about what no net loss means for property owners. No net loss does not mean any of the following:

- No development is allowed in the shoreline,
- The government is going to take away shoreline property,

- The government is going to require that you relocate or discontinue existing uses within the shoreline

In addition, it is important to note that no net loss does not apply retroactively; existing uses can be kept and maintained as is, and even improved or expanded in some cases. Only new development and major redevelopment are subject to the no net loss standard. Having said that, there is no doubt that no net loss does place restrictions on the use of property within the shoreline.

In 2003, the state adopted new Guidelines for SMPs which incorporated the no net loss requirement. These new Guidelines also require that the City of Oak Harbor update its SMP by December 1, 2012. Hence, the City's current effort to update its SMP. The Guidelines are very specific as regards certain topics like shoreline stabilization, offering little leeway for the City to insert its local preference. For other topics, however, the Guidelines are much less specific and the City has options in how it meets the Guidelines. However, even on topics where the City has more flexibility, the City is still required to show that it is meeting no net loss of shoreline ecological functions.

The State has a standard scope of work and contract which guides updates to SMPs according to five distinct project phases described below. Oak Harbor is near the very end of Phase 3 and is beginning work on both Phases 4 and 5. Phases 1 – 5 are explained below:

- **Phase 1: Preliminary Assessment of Shoreline Jurisdiction and Public Participation Plan.** In this phase, the City determined where shoreline jurisdiction would apply and created a public participation plan.
- **Phase 2: Shoreline Inventory and Characterization.** The City's consultant created an "inventory and characterization report" which is an existing conditions document for the City's shoreline. This report documented the existing land uses and environmental characteristics within the City's shoreline and is important because it sets the baseline against which no net loss will be measured in the future. The City must maintain the level of environmental function in its shoreline described in this report.
- **Phase 3: Draft SMP Goals, Policies, Regulations; Preliminary Cumulative Impacts Analysis.** Project staff worked with the ad hoc "Shoreline Advisory Committee" to draft the SMP. There were a total of eight meetings of this committee. The consultant also prepared what is called a "cumulative impacts analysis" which measures whether the no net loss standard is being met by the draft SMP.
- **Phase 4: Restoration Planning; Revisit Phase 3 products.** In this phase, project staff will create a restoration plan which will identify opportunities where the shoreline can be restored. This is a non-binding plan.
- **Phase 5: Local Adoption.** Staff will work with Planning Commission and City Council to review, modify, and adopt the draft SMP.

The public process includes the following:

- Project information via City website
- Visioning workshop – July 20, 2011
- 8 meetings of stakeholder committee (August 2011– April 2012)
- Property owner meeting
 - Notices sent to property owners and put in newspaper/website/channel 10
- Planning Commission and City Council meetings

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- The SMP is organized as follows:
 - Chapter 1 – Introduction
 - Chapter 2 – Environment Designations
 - Chapter 3 – General Provisions
 - Chapter 4 – Shoreline Use Provisions
 - Chapter 5 – Shoreline Modifications
 - Chapter 6 – Administration
 - Chapter 7 – Definitions

Next month the Planning Commission will talk about Chapters 1 – 3.

Mr. Fakkema asked if the Reintjes brothers had any questions.

The Reintjes brothers asked what would costs would there be to property owners, if they were to put in a bulk head would they have to go through the State or County.

Mr. Spoo said a bulkhead would be approved through the City under this draft Shoreline Master Program. Bulkheads are exempt from getting a permit but you still have to demonstrate that you comply with the Shoreline Master Program. There will be new regulations affecting bulkheads. The State is taking the approach of prove to us that you need that bulkhead. So there is a process that you have to go through to prove that you need the bulkhead.

The Reintjes brothers asked if the City just oversees what transpires. Mr. Spoo said that the City implements the State law and there are areas where the City can exercise our local preference in drafting the Shoreline Master Program to make it fit to our particular community.

Mr. Fakkema and Mr. Oliver gave their copies of the draft plan to the Reintjes brothers.

Planning Commission had no further questions or comments.

ADJOURN: 9:25 p.m.

Six-Year Transportation
Improvement Program
(TIP)

Public Hearing

**City of Oak Harbor
Planning Commission**

Date: July 26, 2011
Subject: Six-Year Transportation
Improvement Program

FROM: Cathy Rosen, Public Works Director
Eric Johnston, City Engineer

PURPOSE:

The Planning Commission is requested to hold a public hearing for the 2013-2018 Six-Year Transportation Improvement Program (TIP) and make a recommendation to the City Council for consideration and adoption.

AUTHORITY:

The City is authorized and required to adopt a six-year Transportation Improvement Program and forward the program to the State of Washington in accordance with RCW 35.77.010.

DISCUSSION

The City is required by State law to submit an approved six-year Transportation Improvement Program (TIP). The primary purpose of the TIP is to facilitate use of Federal transportation funds awarded to the City. Projects that have federal funding must appear in the six-year TIP at the local and state level so that the City can obligate and eventually use the federal funds.

The projects listed on the TIP are coordinated with those listed in the Transportation Element of the Comprehensive Plan.

Coordinating projects in the Transportation Comprehensive Plan, the six-year TIP and the Capital Facilities Plan improve our communication and coordination with other agencies and utility companies and help the City remain focused on a manageable list of transportation projects. Coordination of projects enhances communication with the public on planned transportation projects.

The six-year TIP form includes a number of codes and symbols used in the statewide management of the regional TIP documents. A symbol in the status column of "S" means funding is secured while a symbol of "P" indicates the project is not funded. As the Commission is aware, the form of the six-year TIP includes a priority number associated with each project. Please note that the priority numbering in the TIP is not intended to supersede or be superimposed into the citywide effort of overall capital project prioritization.

As was previously noted, the City is required by State law to submit an approved six-year TIP. This submittal process is accomplished in conjunction with the Regional Transportation Planning Organization (RTPO). Once approved by the Council, the City's TIP is submitted to the RTPO. In turn, the RTPO submits a regional TIP to the State by October of each year. The State then

prepares a statewide TIP in January of each year. The incorporation of the City's projects into this statewide TIP is what enables us to spend Federal funds on local transportation projects.

RECOMMENDED ACTION:

1. Conduct a public hearing.
2. Recommend that the City Council adopt the 2013-2018 Six-Year Transportation Improvement Program.

ATTACHMENTS:

- ✓ Six-Year Transportation Improvement Program (TIP)
- ✓ Map of improvement locations

Six Year Transportation Improvement Program
From 2013 to 2018

Agency: Oak Harbor
County No.: 15
City No.: 895

Co. Name: Island
MPO/RTPO RTPO

Hearing Date: _____ Adoption Date: _____
Amend Date: _____ Resolution No.: _____

Functional Class	Priority Number	Project Identification A. PIN/Federal Aid No.: B. Bridge No. C. Project Title D. Street/Road Name or Number E. Beginning MP or Road - Ending MP or Road	Improvement Type(s)	Status	Total Length	Utility Codes	Project Costs in Thousands of Dollars								Expenditure Schedule (Local Agency)				Federally Funded Projects Only	
							Project Phase	Phase Start	Fund Source Information				1st	2nd	3rd	4th Thru 6th	Envir. Type	R/W Required Date (MM/YY)		
									Federal Funding		State Fund Code	State Funds							Local Funds	Total Funds
									Federal Fund Code	Federal Cost by Phase										
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
16	1	SW Heller Street Improvements SW Heller Street from: SW Swantown Ave to: W Whidbey Ave R/W Acq., pave, curb, gutter, sidewalk, utilities, transit	12	P	0.78	CGOPSWT	All	6/1/2014			Other	1000	6630	7630				7630	CE	Yes 1/2014
							Totals					1000	6630	7630				7630		
16	2	Whidbey Avenue Reconstruction Whidbey Avenue from: Heller St. to: Regatta Dr. Sidewalk, curb & gutter, drainage, transit facilities, non-	03	P	1.80	CGOPSWT	All	1/1/2013					8300	8300				8300	CE	No
17	3	NE 7th Ave Reconstruction from: N. Oak Harbor St. to: SR-20 Street reconstruction, pedestrian, ADA, non-motorized and transit facilities, illumination.	04 23 28	S	0.47	CGOPSWT	All	6/1/2012	STP-R	1315			1885	3200				1885	CE	Yes 1/2015
							Totals				1315		1885	3200	38	236	314	1297		
16	4	Midwal Blvd./ NE 7th Ave Intersection from: Intersection to: Intersection Traffic Signal	03	P		CGOPSWT	All	1/1/2013					1000	1000				1000	CE	No
							Totals						1000	1000				1000		
17	5	Eagle Vista Street - West Extension from: SR-20 to: SW Rosario Pl. Street extension	01	P	0.44		All	1/1/2015					2800	2800				2800	CE	No 1/2015
19	6	SE 4th Ave Reconstruction from: SW Midway Blvd to: SW Ely St. Street reconstruction, sidewalk, curb & gutter, storm water facilities, utilities	04	P	0.41	CGOPSWT	All	1/1/2016					2300	2300				2300	CE	No
							Totals						2300	2300				2300		
14	7	SR-20 Improvement from: SE Barrington Dr. to: SW Swantown Ave R/W Acq., intersection improvements & channelization, widening, sidewalk, curb & gutter, retaining walls,	03	P	0.69	CGOPSWT	All	12/31/2016			Other	25000	175	25175				25175	CE	Yes 6/1/2017
							Totals					25000	175	25175				25175		

APPENDIX A

IMPROVEMENT TYPE CODES

- 01 – New Construction Roadway
- 03 – Reconstruction, Added Capacity
- 04 – Reconstruction, No Added Capacity
- 05 – 4R Maintenance Resurfacing
- 06 – 4R Maintenance – Restoration & Rehabilitation
- 07 – 4R Maintenance – Relocation
- 08 – Bridge, New Construction
- 10 – Bridge Replacement, Added Capacity
- 11 – Bridge Replacement, No Added Capacity
- 13 – Bridge Rehabilitation, Added Capacity
- 14 – Bridge Rehabilitation, No Added Capacity
- 15 – Preliminary Engineering
- 16 – Right of Way
- 17 – Construction Engineering
- 18 – Planning
- 19 – Research
- 20 – Environmental Only
- 21 – Safety
- 22 – Rail/Highway Crossing
- 23 – Transit
- 24 – Traffic Management/Engineering – HOV

APPENDIX A (continued)

IMPROVEMENT TYPE CODES

- 25 – Vehicle Weight Enforcement Program
- 26 – Ferry Boats
- 27 – Administration
- 28 – Facilities for Pedestrians and Bicycles
- 29 – Acquisition of Scenic Easements and Scenic or Historic Sites
- 30 – Scenic or Historic Highway Programs
- 31 – Landscaping and Other Scenic Beautification
- 32 – Historic Preservation
- 33 – Rehab & Operation of Historic Transp. Buildings, Structures, Facilities
- 34 – Preservation of Abandoned Railway Corridors
- 35 – Control and Removal of Outdoor Advertising
- 36 – Archaeological Planning & Research
- 37 – Mitigation of Water Pollution due to Highway Runoff
- 38 – Safety and Education for Pedestrians/Bicyclists
- 39 – Establishment of Transportation Museums
- 40 – Special Bridge
- 41 – Youth Conservation Service
- 42 – Training
- 43 – Utilities
- 44 – Other
- 45 – Debt Service
- 47 – Systematic Preventive Maintenance

APPENDIX B

FEDERAL FUNCTIONAL CLASSIFICATIONS

No Functional Classification

< 5,000 Population

Interstate Rural

Principal Arterial Rural

Minor Arterial Rural

Major Collector Rural

Minor Collector Rural

Local Access Rural

> 5,000 Population

Interstate Urban

Freeways & Expressways Urban

Other Principal Arterials Urban

Minor Arterial Urban

Collector Urban

Local Access Urban

APPENDIX C

FEDERAL FUND CODES

5307	FTA Urbanized Area Formula Program
5309(Bus)	FTA Bus and Bus Facilities
5309(FG)	FTA Fixed Guideway Modernization
5309(NS)	FTA New Starts
5310	FTA Elderly Persons and Persons with Disabilities
5311	FTA Rural Area Formula Grants
5316	FTA Job Access & Reverse Commute Program (JARC)
5317	FTA New Freedom Program
FTA Discretionary	Discretionary Programs such as Alternatives Analysis (5339) and TIGGER Program
BIA	Bureau of Indian Affairs
BR	Bridge Replacement/Rehabilitation Program
CBI	Coordinated Border Infrastructure
CDBG	Community Development Block Grant (Dept. of Commerce)
CMAQ	Congestion Mitigation and Air Quality
DEMO	Demonstration Projects (High Priority, Sect. 112, 115, 117, 125 and 129)
Discretionary – FBD	Ferry Boat Discretionary
Discretionary – IMD	Interstate Maintenance Discretionary
Discretionary – ITS	intelligent Transportation Systems
Discretionary – PLH	Public Lands Highways (Federal Lands)
Discretionary – SB	Scenic Byways
Discretionary – STP	Surface Transportation Priorities

APPENDIX C (continued)

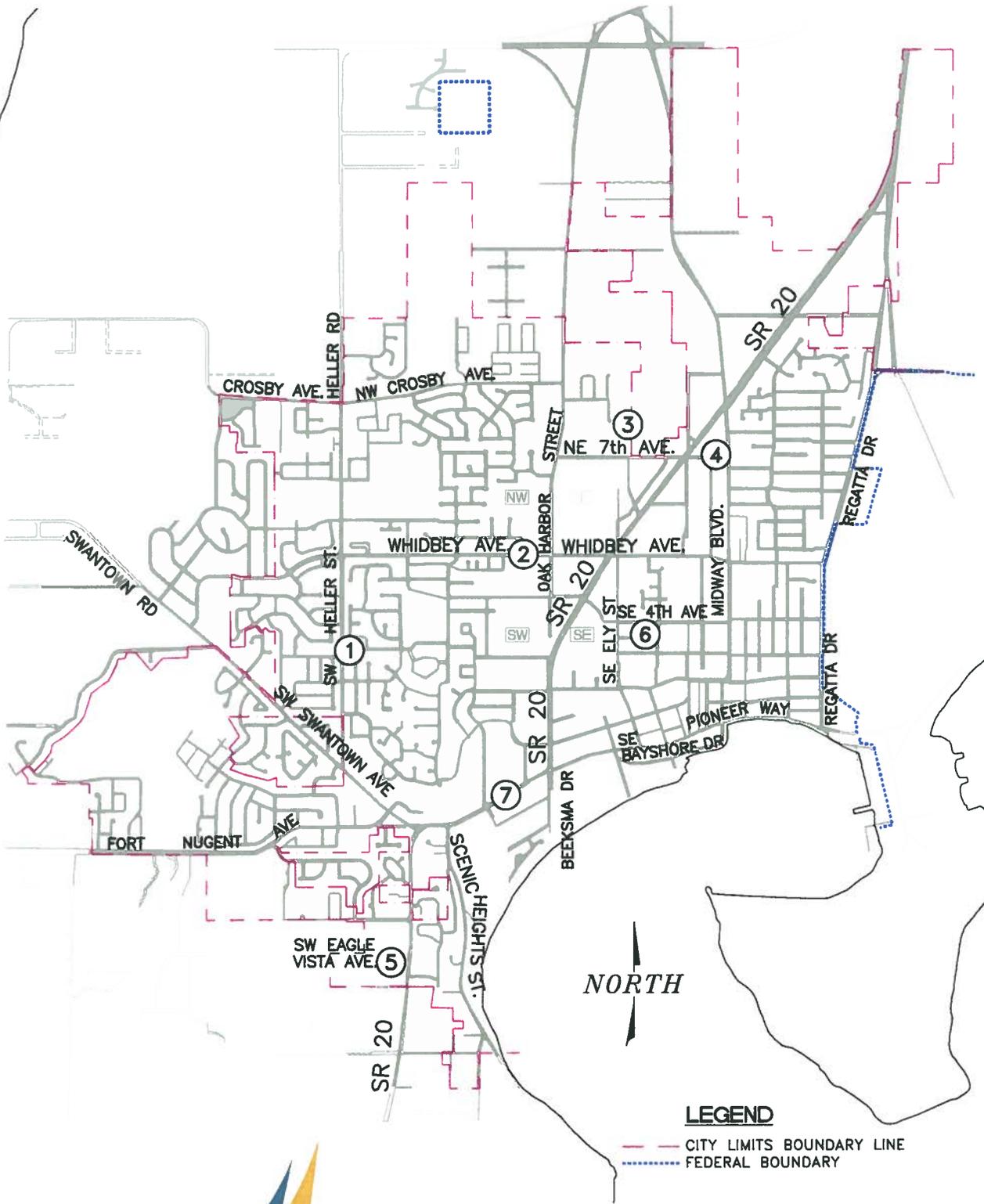
FEDERAL FUND CODES

Discretionary – TCSP	Transportation, Community & System Preservation Program
DOD	Department of Defense
FMSIB	Freight Mobility Strategic Investment Board
IM	Interstate Maintenance
IRR	Indian Reservation Roads
NHS	National Highway System
SRTS	Safe Routes to Schools
STP	Surface Transportation Program (WSDOT Use Only)
STP(E)	Surface Trans. Program - Enhancements
STP(L)	Surface Trans. Program – Legislative Earmarks
STP(S)	Surface Trans. Program – Safety (Includes Highway Safety Improvement Program, Hazard Elimination, Railway/Highway Crossing Program and 2010-15 County Road Safety Program)
STP(R)	Surface Trans. Program – Rural Regionally Selected
STP(U)	Surface Trans. Program – Urban Regionally Selected

APPENDIX C (continued)

STATE FUND CODES

CRAB	County Road Administration Board
FMSIB	Freight Mobility Strategic Investment Board
PWTF	Public Works Trust Fund
SRTS	Safe Routes to Schools
TIB	Transportation Improvement Board
TPP	Transportation Partnerships Program
WSDOT	WSDOT funds
OTHER	Any other state funds not listed a



LEGEND

- - - CITY LIMITS BOUNDARY LINE
- - - FEDERAL BOUNDARY



**SIX YEAR TRANSPORTATION
IMPROVEMENT PLAN 2012 - 2017**

3
60

Sign Code

Public Hearing

Memo

To: Members of the Planning Commission
Cc: Steve Powers, Development Services Director
From: Ethan Spoo, Senior Planner
Date: 5/15/12
Re: Sign Code Update – Draft Code

Introduction

In this memorandum, staff is presenting the draft sign code to Planning Commission for their consideration. This version of the draft code incorporates stakeholder comment we received at Downtown Merchant's Association meetings on April 18 and May 16. It also incorporates comments made by the Planning Commission and the public at the March, 2012 meeting.

Description of the Draft Code

The draft code has changed somewhat since the March Planning Commission meeting in an effort to address comments received from the downtown merchants, additional staff review, public comment and comments from the Planning Commission.

Organizational Changes

The "Temporary Signs on Public Property" subsection was reorganized by the type of public forum. Thus, regulations fall into the following categories:

- **Public rights-of-way.** This category advances general standards which apply to all temporary signs within public rights-of-way, and has specific standards for political signs and commercial signs. As discussed in earlier Planning Commission meetings, public rights-of-way are considered to be "traditional public forums" where speech and debate have historically occurred.
- **City parks.** City parks are also considered to be traditional public forums. However, the courts have supported restrictions on written speech to protect the integrity and purpose of the park facility. This means that speech cannot interfere with the primary purpose of the park as a public recreational facility. Nonetheless, restrictions on speech must be narrowly tailored to achieve a legitimate government purpose.
- **City vehicles.** City vehicles are "non-public" forums, meaning that these are not locations meant for public discourse and discussion. City's can prohibit public speech on City vehicles, while still allowing for government sponsored speech. Examples of government speech are "we support our troops" and "Go Wildcats."

- **City buildings.** City vehicles are also non-public forums where written public speech can be restricted while allowing for government speech.

Key Changes

This section brings key changes to the draft code to the attention of the Planning Commission.

- **Definition of political signs.** The definition has been broadened to include signs for social and political issues not associated with elections at the request of the American Civil Liberties Union (ACLU). See attached Exhibit A.
- **Permit system for temporary signs.** After discussions with the Planning Commission and comments submitted from the ACLU, staff removed the proposed permit system for temporary signs. In March, Planning Commissioners expressed the opinion that, while they saw some of its positive aspects, the permit system might be overly burdensome and preferred an educational approach to compliance for temporary signs. The ACLU commented that “requiring people to get a permit...before engaging in protected expressive activities raises significant constitutional questions.” While permit systems for temporary signs are commonly used in other jurisdictions including Enumclaw, Lacey, and Coupeville, staff are not recommending having a permit system so as to match Oak Harbor’s community values.
- **General time limit for temporary signs.** Staff also removed the six-month time limit for temporary signs. After further review, it was apparent that most specific types of temporary signs already have a shorter timeframe specified in the code as indicated by the following table. Therefore, no general time limit is needed.

Type of Sign	Time limit
Construction signs	Start: after building permit is obtained End: After site construction is complete. Residential construction signs must be removed at date of first occupancy.
General Promotions	30 days maximum, with the exception of banners which have no limit. Staff can request removal if promotion sign is dilapidated.
Light pole banners	No limit, but staff can request removal if banner is dilapidated.
Grand openings and anniversary	30 days maximum, once per year
Real estate	Generally, during time property is for sale or rent
Civic organizations	During event. Removal is required at day's end.
Portable A-frame Commercial Signs	Removal is required at day's end.
Political headquarters/party headquarters	Must be removed 14 days after election
Political signs on private property	Must be removed 14 days after election
Political signs on public property (right-of-way)	Must be removed 14 days after election

Residential “open house” signs on public property	While seller/agent is in attendance
A-frames on sidewalks (CBD only)	Removal is required at day’s end
Flag pole banners (CBD only)	Removal is required at day’s end
Subdivision directional signs (offsite)	At 75% occupancy
Community Events	30 days prior to event, 7 days after event.
Notification/event signs in parks	When sign-up period has closed

- **Appearance of professionalism.** Previously, we had defined unprofessional appearance as “hand-drawn or hand-painted letters or images.” Based upon input from the public and Planning Commission, we are now reverting to the previous wording which says “all artistic embellishments and lettering shall have the appearance of professionalism.” Staff struggled with defining quality standards for temporary signs. Requiring that signs do not have hand-drawn or hand-painted letters or images essentially requires all temporary signs to be prepared by a sign professional. On the other hand, requiring the “appearance of professionalism” is difficult to define, administer and enforce. What is the “appearance of professionalism”? Who decides?

Staff suggests that Planning Commission has two choices in this case: it can keep the “appearance of professionalism” language as is now in the draft or it can remove the reference to professional appearance or quality control for temporary signs. Staff is seeking planning Commission’s input on these two choices.

- **Change to post-election timeframe for political sign removal.** Based on Planning Commission approval, political signs must be removed within 14 days after an election.
- **Community event signs.** In March, Planning Commission requested that staff research the treatment of community event signs in other cities. Staff performed this research for the communities of Coupeville, Lacey, and Anacortes. Planning Commission had questions about the number of signs and length of time that these signs are typically allowed in other cities. Staff research revealed that these signs are typically allowed to be placed 4-6 weeks before the event and are usually required to be removed within one week of the end of the event. Thus, we are recommending similar standards for Oak Harbor.
- **Signs within public rights-of-way.** Signs within rights-of-way are now categorized into political signs and commercial signs with standards for each category. General standards apply to all signs within the public rights-of-way. The only types of commercial signs allowed within the public right-of-way are A-frames, flag pole banners, open house signs, subdivision direction signs, and community events signs. Garage sale signs have been deleted as a type of sign allowed in the public right-of-way, because they represent the vast majority of code enforcement issues for temporary signs and can lead to safety issues. Garage sale signs will need to be placed on private property.
- **Signs within City parks.** Temporary signs are not allowed to be installed in City parks. Protestors, demonstrators, picketers, etc. can carry “transitory” signs a provision meant to preserve free speech rights associated with traditional public forums. Exceptions for temporary signs in parks include signs on the youth sports field fences in Windjammer and Volunteer

Parks for sponsoring agencies/organizations, notification signs for youth sports leagues, and informational banners in Gateway-Beeksma Park.

- **Signs on City vehicles and buildings.** Temporary signs are prohibited on City vehicles and buildings, with the exception of government sponsored messages such as occur on the solid waste vehicle or other notification signs such as “City Hall closed on Christmas Day” signs.

Conclusion and Recommendation

Planning Commission has spent multiple hours in discussion with staff and the public addressing the issue of temporary signs. Staff have researched other communities and legal matters pertaining to temporary signs. After looking at temporary sign codes for other jurisdictions, staff posits that Oak Harbor’s proposed code is more detailed and specific than are the codes of almost all other jurisdictions we researched. The code has been developed in consideration of public input in merchant’s meetings and input given at Planning Commission meetings. Perhaps most importantly, the code has been drafted to address legal and constitutional issues raised by project participants and staff.

At this time, Planning staff are recommending that Planning Commission forward the draft code to the City Council for their approval.

AN ORDINANCE OF THE CITY OF OAK HARBOR AMENDING CHAPTER 19.36 OF THE OAK HARBOR MUNICIPAL CODE ENTITLED "TEMPORARY AND SPECIAL SIGNS".

WHEREAS, and;"

WHEREAS, and;

WHEREAS, and;

WHEREAS, and;

WHEREAS, and;

WHEREAS, and;

WHEREAS, the City of Oak Harbor conducted a public hearing before the Planning Commission on October 25, 2011 and public meetings before the Planning Commission on November 22, 2011 and February 28, 2012 and opened a public hearing on March 27, 2012 which was closed on March 27, 2012, and;

WHEREAS, the Oak Harbor Planning Commission recommended approval of the subject ordinance to the City Council and;

WHEREAS,

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

Section One. Section 19.36.020 of the Oak Harbor Municipal Code last adopted by Ordinance 1553 section 2 in 2009 is hereby amended to read as follows:

19.36.020 Definitions

- (1) "Abandoned sign" means a sign which no longer identifies or advertises a bona fide business, lessor, service, owner, product, or activity, and/or for which no legal owner can be found.
- (2) "Animation" means the use of movement or some element thereof, to depict action or create a special effect or scene.
- (3) "Area or surface area of sign" means the greatest area of a sign on which copy or artwork can be placed and not just the portion of which is covered by letters or symbols, enclosed within not more than three circles, rectangles or squares, or any combination of these forms which produces the smallest area. Sign structure, architectural embellishments, framework and decorative features which contain no written or advertising copy and are not internally lighted shall not be included.

- (4) "Architectural blade" means a projecting sign with no exposed legs or braces, designed to look as though it could have been part of the building structure rather than something suspended from the building.
- (5) "Banner" means a flexible material (i.e., cloth, paper, vinyl, etc.) on which a sign is painted or printed.
- (6) "Billboard" means outdoor advertising signs containing a message, commercial or otherwise, unrelated to any use or activity on the property on which the sign is located, but not including directional signs as defined herein.
- (7) "Building line" means a line established by ordinance defining the limits of buildings in relation to streets. A building line in some instances may coincide with the property line. "Building line" is sometimes referred to as "required setback line."
- (8) "Building-mounted sign" means a single- or multiple-faced sign attached to the face of a building or marquee.
- (9) "Canopy" means a freestanding structure affording protection from the elements to persons or property thereunder.
- (10) "Canopy sign" means any sign erected upon, against or directly above a canopy.
- (11) "Commercial sign" means a sign advertising a business, product, service, or event in exchange for money.
- (12~~4~~) "Construction sign" means an information sign which identifies the architect, engineers, contractors and other individuals or firms involved with the construction of a building, or announcing the character of the building or enterprise, which is erected during the building construction period.
- (13~~2~~) "Electronic message center" means a sign capable of displaying words or symbols that can be electronically or mechanically changed by remote or automatic means. An electronic message center is considered a primary sign and may be either freestanding or building-mounted.
- (14~~3~~) "Flashing" means pattern of changing light illumination where the sign illumination alternates suddenly between fully illuminated and fully non-illuminated for the purpose of drawing attention to the sign. Flashing is not permitted in any zoning district.
- (15~~4~~) "Frame effect" means a visual effect on an electronic message center applied to a single frame to transition from one message to the next. Such usage must comply with the 2-1-2 provision.
- (16~~5~~) "Freestanding sign" means a single- or multiple-faced sign supported from the ground by one or more columns, uprights or braces. Freestanding signs include monument, pylon and pole signs.
- (17~~6~~) "General promotions" means events which occur on a regular basis in retail business for the purpose of boosting sales, attracting new business, selling of certain items (i.e., year-end, seasonal sales, civic events, etc.).

- | (187) "Grade" means the elevation or level of the street closest to the sign to which reference is made, as measured at the street's centerline, or the relative ground level in the immediate vicinity of the sign.
- | (198) "Grand openings and anniversaries" means events that are held on a once-per-year basis for the purpose of advertising grand openings, ownership changes, or anniversaries.
- | (2049) "Height" or "height of sign" means the vertical distance from the grade to the highest point of a sign or any vertical projection thereof, including its supporting columns, or the vertical distance from the relative ground level in the immediate vicinity of the sign.
- | (210) "Incidental sign" means a single- or double-faced sign not exceeding four square feet in surface area of a noncommercial nature, intended primarily for the convenience of the public. Included are signs designating restrooms, address numbers, hours of operation, public telephone, etc. Also included are signs designed to guide pedestrian or vehicular traffic to an area or place on the premises of a business, building or development. Also included are building directories with the letters not to exceed four inches in height. (See OHMC 19.36.100.)
- | (224) "Marquee" means a covering structure projecting horizontally from and attached to a building, affording protection from the elements to persons or property thereunder.
- | (232) "Monument sign" means a primary freestanding sign, generally mounted on a solid base. Monument signs shall not contain or include reader boards.
- | (243) "Multiple-occupancy building" means a single structure housing more than one type of retail business office or commercial venture.
- | (254) "Multiple-occupancy complex" means a group of structures housing more than one type of retail business, office or commercial venture and generally under one ownership and control.
- | (265) "Noncommercial public service sign" means noncommercial signs devoted to religious, charitable, cultural, governmental or educational messages, including, but not limited to, the advertising of events sponsored by a governmental agency, a school, church, civic or fraternal organization or other organizations engaged in activities for profit.
- | (276) "Occupant" means the person, firm or corporation that occupies the land or building.
- | (287) "Office building" means an office building in the commercial and residential-office land use districts as defined by the Oak Harbor zoning ordinance.
- | (298) "Parapet" means that portion of a building wall which extends above the roof of the building.
- | (3029) "Penthouse" means a structure on top of a building roof such as houses an elevator shaft or similar form.
- | (3130) "Pole sign" means a primary freestanding sign where the sign is supported by a pole or other similar structural element that is substantially narrower than the width of the sign.
- | (324) "Political sign" means ~~signs advertising a candidate or candidates for public elective office, or a political party, or signs urging a particular vote on a public issue decided by~~

~~ballot~~—a sign which exclusively and solely advertises a candidate or candidate's public elective office, a political party, or promotes a position on a public, social, or ballot issue.

(332) "Primary sign or signs" means all signs, including freestanding signs, of a user which are not exempt (see OHMC 19.36.100), or which do not come within the category of incidental signs (see OHMC 19.36.030 and subsection (20) of this section) or temporary or special signs (see 19.36.080). The term "primary sign" is intended to include virtually all signs of a commercial nature.

(343) "Property line" means the line denoting the limits of legal ownership of property.

(354) "Pylon sign" means a primary freestanding sign other than a pole sign with the appearance of a solid base. The base of a pylon sign shall be distinctive in appearance from the sign area.

(365) "Reader board" means a sign or part of a sign on which the letters are readily replaceable such that the copy can be changed from time to time at will.

(376) "Roof sign" means any sign erected upon, against or directly above a roof or on top of or above the parapet of a building, including a sign affixed to any structure erected upon a roof, including a structure housing building equipment.

(387) "Sign" means any letters, figures, design, symbol, trademark or device intended to attract attention to any activity, service, place, subject, person, firm, corporation, public performance, article, machine or merchandise whatsoever. Sources of light used primarily to illuminate a sign, or a building, or ground surrounding the building, shall not be considered signs themselves; provided, however, that sources of light used primarily to attract attention to the light itself or as a decorative feature of the display shall be considered as part of the sign. Lighted canopies, with the exception of the signed portion, shall not be considered signs themselves. Excluded from the definition are official traffic signs or signals, sheriff's notices, court notices or official public notices and the flag of a government or noncommercial institution, and signs not visible from the street or sidewalk (see OHMC 19.36.100 for more detailed treatment of exempt signs), and religious symbols.

(398) "Single-occupancy building" means a commercial building or structure with one major enterprise, generally under one ownership. A building is classified as single-occupancy only if:

- (a) It has only one occupant;
- (b) It has no wall in common with another building;
- (c) No part of its roof in common with another building.

(4039) Special Signs. See "Temporary and Special Signs."

(410) "Special projection sign" means a sign no larger than six square feet projecting out from the side of a building.

(424) "Street" means any automobile thoroughfare so designated by city ordinance. "Street" includes portions thereof used for parking.

- | (432) "Subdivision signs" means signs used to identify a land development which is to be or was accomplished at essentially one time.
- | (443) Surface Area. See "Area or surface area of sign."
- | (454) "Surface area of facade" means the area of that front, side or back elevation, including doors and windows, but excluding any roof area and structures or elevators or air conditioning equipment thereon; provided, that in the case of a roof sign, the surface area of facade shall be the area of that front, side or back immediately beneath the roof, including doors and windows, but excluding the roof area and structures for elevators or air conditioning thereon.
- | (465) Temporary and Special Signs. Temporary and special signs are those, which are not defined as "primary signs" or "incidental signs" by this chapter. Different types of temporary and special signs included in this category, but are not limited to construction signs, grand opening displays, real estate signs, open house signs, residential land subdivision signs, and subdivision directional signs, A-frame signs, political signs, and garage sale signs. (see OHMC 19.36.080).
- | (47) Transitory signs. Transitory signs, also known as "human signs" are those carried by or worn by a human being usually for the purposes of a protest, demonstration, rally, or other similar event.
- | (486) "Video" means the use of live action footage shot with a video camera or similar device which is sized to fit and be displayed by an electronic message center or similar device. The use of video is not permitted in any zoning district.
- | (497) "Video board" means an electronically activated sign that creates the effect of motion or animation, except as allowed by this chapter for changing electronic message signs which are in compliance with the 2-1-2 provision, and the prohibition of RGB technology. Video board signs are not permitted in any zoning district.
- | (5048) "Way open to public" means any paved or unpaved area on private property open to the general public for driving or parking.
- | (5149) "Window sign" means all signs located inside and affixed to or within three feet of windows of a building, whether temporary or permanent, except lighted signs of a commercial advertisement nature which may be viewed from the exterior of the building. The term does not include merchandise located within three feet of a window. Lighted window signs shall be included in determining the number of primary signs and in determining the permissible sign area for each facade. Does not include incidental signs. (See OHMC 19.36.030.)

Section Two. Section 19.36.060 of the Oak Harbor Municipal Code last adopted by Ordinance 1553 section 5 in 2009 is hereby readopted and to read as follows:

19.36.060 Multifamily residential district and public facilities district signs – Zones R-2, R-3, R-4 and PF.

Requirements for signs in multifamily residential districts and public facilities districts shall be identical to those for the R-O residential office district and the C-1 neighborhood commercial district zones as set forth in OHMC 19.36.040.

- (1) Exceptions. In the public facilities zoning district, a single freestanding or building-mounted changing general electronic reader board is allowed with the following restrictions:
 - (a) Freestanding signs are limited to 35 square feet in sign area, no more than 15 feet in height and must be set back five feet from the property line;
 - (b) Wall-mounted signs are limited to 35 square feet in sign area and no more than 20 feet in height;
 - (c) Lettering shall not be more than 12 inches in height;
 - (d) The electronic message shall be limited to those allowed on noncommercial signs as defined in OHMC 19.36.020(25) and shall not change more frequently than every four seconds;
 - (e) The sign's lights shall be limited to a warm-toned, off-white color or other similar color as approved by the development services director;
 - (f) An electronic reader board counts as one of the allowed primary signs; and
 - (g) For locations adjacent to a residential use or district, electronic displays shall be turned off between the hours of 10:00 p.m. and 6:00 a.m.

Section Three. Section 19.36.070 of the Oak Harbor Municipal Code last adopted by Ordinance 1553 section 5 in 2009 is hereby readopted and to read as follows:

19.36.070 Single-family residential signs – R-1 zones.

- (1) General. Two categories of sign uses are covered by this section:
 - (a) Existing, Legal Nonconforming Commercial Uses. The provisions herein for signs for commercial uses apply only to legal nonconforming uses which have been approved under applicable zoning ordinances prior to the enactment of this code.
 - (b) Noncommercial uses such as schools, churches, fire stations and house number identification.
- (2) Signs for Existing Legal Nonconforming Uses. No more than one primary sign is permitted for each use in this category so long as the building remains legally nonconforming under the provisions of this title as follows:
 - (a) Such sign may be either freestanding or building-mounted.
 - (b) If freestanding, the sign shall conform to the requirements of OHMC 19.36.030(5)(a) in regard to placement and OHMC 19.36.040(2)(a) in regard to size and height.
 - (c) A building-mounted sign shall conform to the requirements of OHMC 19.36.030(5)(b); provided, however, that no sign shall exceed 20 square feet in surface area.
- (3) Signs for Noncommercial Uses.

- (a) On-premises signs for churches, schools, golf courses, fire stations, police stations, noncommercial use or public service, or other similar noncommercial uses:
 - (i) Signs shall be unobtrusive, in keeping with the character of the neighborhood and constructed of quality materials, as approved in advance by the administrator of this code. No building-mounted signs shall exceed 20 feet in height and 50 square feet in surface area and no freestanding sign located between the building line and the property line shall exceed five feet in height and 25 square feet in surface area. A freestanding sign located at the building line or behind it shall not exceed 15 feet in height or 35 square feet in area. No more than one freestanding sign and one building-mounted sign is permitted from the above uses per street frontage.
 - (ii) Off-premises signs for nonconforming uses may be approved by the site plan review committee subject to the following conditions:
 - (A) The sign is to identify current events or activities;
 - (B) The sign or message is for a temporary period of time sufficient to inform the public of the event or activity with a maximum of two weeks;
 - (C) The sign shall not be located on street right-of-way except when a part of a permanent subdivision or neighborhood designation sign (see subsection (3)(d) of this section);
 - (D) The sign shall not exceed 15 square feet in area nor five feet in height;
 - (E) Not more than two such signs shall be permitted.
- (b) Illumination. Illumination from or upon any signs in single-family residential districts shall be shaded, shielded, directed or reduced so that the light intensity or brightness does not affect the enjoyment of residential property in the vicinity in any substantial way.
- (c) House Numbers. All houses in the single-family residential district shall display house numbers visible from the street and letters or numbers shall be a minimum of five inches in height.
- (d) Permanent Subdivision or Neighborhood Designation Signs. Signs shall be unobtrusive, in keeping with the character of the neighborhood, and constructed of quality materials, as approved in advance by the administrator of this code. Signs shall not exceed five feet in height and 25 square feet in surface area, and shall be located between the building line and property line unless a location of excess city right-of-way is approved by the superintendent of public works. Responsibility for the future maintenance or removal of these signs must be determined prior to their construction.

Section Four. Section 19.36.080 of the Oak Harbor Municipal Code last adopted by Ordinance 1553 section 5 in 2009 is hereby amended to read as follows:

19.36.080 Temporary and special signs.

Temporary and special signs or displays are nonpermanent in nature and are intended for use only for a short period of time. The category includes, but is not limited to, the temporary signs specified in this section on both private and public property. No permits are required for temporary and special signs. ~~any banner, pennant or advertising display constructed of canvas, fabric, wood, plastic or other semi-durable material, with or without frame. Permissible signs, with applicable limitations, are as follows:~~

(1) Temporary signs on private property.

(a) Temporary signs on private property shall adhere to the following principles.

Temporary signs shall not:

- (i) Obstruct designated vehicle or pedestrian traffic circulation areas. Vehicle or pedestrian traffic circulation areas include, but are not limited to drive aisles, private streets, parking areas, walkways, and paths;
- (ii) Represent safety problems by creating traffic distractions;
- (iii) Be in a state of disrepair including being tattered, torn, or broken;
- (iv) Contain obscene language, symbols or images;
- (v) Clutter the visual landscape by not meeting the quantity and quality standards specified in this section; and,
- (vi) All artistic embellishments and lettering shall have the appearance of professionalism.

(b) Regulations for temporary signs on private property. The following signs and regulations are presumed to meet the principles outlined in subsection (a) above.

(i)(1) Construction Signs.

(A)(a) These signs identify the architects, engineers, contractors or other individuals or firms involved with the construction of a building and announce the character of the building, or the purpose for which the building is intended. Such signs may be displayed only after a building permit is obtained and during the period of construction on the construction site. Only one such sign (which may be double-faced) is permitted per construction project for each public street upon which the project fronts.

(B)(b) In all zones other than single-family residential zones, no construction sign shall exceed 32 square feet in surface area or 10 feet in height, nor be located closer than 10 feet from the property line or closer than 30 feet from the property line of the abutting owner. Further, such signs must be removed by the date of first occupancy of the premises, or one year after placement of the sign, whichever first occurs.

(C)(c) In single-family residential zones, no construction sign shall exceed eight square feet in surface area, or be located closer than 10 feet from the property line of the abutting owner. Such signs shall be removed by the date of first occupancy of the premises or six months after first placement of the sign, whichever first occurs.

(ii)(2) General Promotions.

(A)(a) General promotions are those events which occur on a regular basis in retail businesses for the purpose of boosting sales,

attracting new business, selling of certain items (i.e., year-end, etc.), seasonal sales and the like.

~~(B)(b)~~ Allowed temporary signage for these types of events consists of posters in windows, posters under motor vehicle hoods, glass painting, small balloons of less than 12 inches in diameter and banners. ~~maximum of one banner per street frontage placed on the exterior of the building on the space that the particular business occupies.~~ The size of the banners will be limited to a maximum of four feet in height and a maximum length of either 50 percent of the length of the side of the building on which the banner is located or 30 feet. Businesses with a facade of less than 24 feet in length may have banners of up to 12 feet in length. Each separate business is permitted to have one banner on the building.

~~(C)(c)~~ No clusters of flags or pennants, ribbons, streamers, shimmering discs, spinners, twirlers, or propellers, strings of lights, moving, flashing, rotating or blinking lights, chasing or scintillating lights, flares, or large balloons, bubble machines and similar devices of a carnival nature, or containing elements creating sound or smell may be used for these types of promotions with the exception December during the Holiday Season of Christmas, when flashing Christmas type lights will be allowed.

~~(D)(d)~~ The duration of these promotions will be 30 days maximum. (except banners) and no permit will be required. Banners have no time restrictions but shall be placed solely on the building for which the banner is advertising. In the event that the banner becomes dilapidated or otherwise ruined it must be removed or replaced. Such promotions are permitted only in districts where the enterprise so advertised is allowed under district zoning regulations. Banners shall be allowed in addition to primary signage and shall not be used as primary signs. When no primary sign is installed the duration of a banner shall be no more than 30 days.

~~(iii)(3)~~ Light Pole Banners.

~~(A)(a)~~ Businesses may have light pole banners on 100 percent of the total number of poles located in privately owned parking lots.

~~(B)(b)~~ Size of banners shall be limited to three feet by seven feet free flying or two feet by six feet when attached by brackets.

~~(C)(c)~~ There shall be at least eight feet of clearance between the bottom of the banner and the ground. No banner shall extend over a public sidewalk or street.

~~(D)(d)~~ There is no time limit for light pole banners. However, when the banners become dilapidated or otherwise ruined, they must be removed or replaced.

~~(E)(e)~~ No other signage of any type shall be permitted on light poles where light pole banners are displayed.

~~(iv)(4)~~ Grand Openings and Anniversaries.

- (A)(a) Businesses may have one grand opening or anniversary promotion per year. One additional such promotion may be held if the business changes ownership or management, should this occur less than one year after a particular grand opening or anniversary promotion.
- (B)(b) In addition to those items allowed in general promotions (above) the business may also use flags, pennants, ribbons, streamers, various types of balloons (including large “hot air” types), and strings of lights.
- (C)(c) These promotions will be no more than 30 days in length.
- (v)(5) Grandfathered Commercial Promotions Signage. No existing temporary or special signage will be grandfathered. Businesses will have 60 days from the date of enactment of the ordinance codified in this chapter in which to comply.
- (vi)(6) Real Estate Signs. All exterior real estate signs must be of wood or plastic or other durable material. The permitted signs, with applicable limits, are as follows:
- (A)(a) Residential “For Sale” or “For Rent” Signs. Signs advertising residential property for sale or for rent shall be limited to one single- or double-faced sign per street frontage. Sign to be installed 30 days prior to becoming available or during a vacancy only. Residential “For Sale” or “For Rent” signs may be in place for the entire period that the unit or property is for sale or rent. The sign may not exceed four square feet in surface area, and must be placed wholly on the property for sale or rent. The “For Sale” or “For Rent” sign may remain up until the property is sold or rented.
- (B)(b) Residential Directions “Open House” Signs. Signs advertising an open house ~~and the directions to a residence for sale~~ shall be limited to one single- or double-faced on-premises ~~for sale~~ sign.
- (C)(c) Residential Condominiums, Condominium Conversions, Apartments, Mobile Home Parks and New Subdivisions.
- 1.(i) Temporary Real Estate Signs. Temporary signs, posters and banners may be used for the grand opening and ongoing promotion of new residential projects having five or more units. These signs and banners may be used in a particular project for a period not exceeding one year after the date of issuance of the final occupancy permit for that project or at such time as the project is 90 percent occupied, whichever occurs first, or in the case of subdivision and mobile home parks, one year after final plat approval. In the event that the project consists of more than one phase, as in a “phased” condominium project, the signs and banners promoting one phase must be removed prior to installing the signs and banners for the next phase. A time extension may be granted for up to one year in length by the building

official where 90 percent occupancy has not been obtained. Justification for the extension includes:

- a.(A) Certification of vacant units; and
- b.(B) Statement of reason for lack of occupancy.

2.(ii) Allowable Number and Sizes of Signs.

- a.(A) One banner of not more than 30 feet in length and four feet in height advertising the project for sale or rent;
- b.(B) Banners or signs of not more than 18 square feet each on each model unit with a maximum of three of these types allowed per project or phase;
- c.(C) “A-frame” and other signs used internally within the project as needed for the purpose of directing traffic to model units or open house functions;
- d.(D) One sign per road frontage of not more than 32 square feet per side advertising the project for rent or sale. These signs may be installed only after the construction sign has been removed.

(D)(d) Undeveloped Commercial or Industrial Property “For Sale or Rent” Signs. Signs advertising undeveloped commercial or industrial property for sale or rent shall be limited to one single- or double-faced sign per street frontage. Signs may be displayed while the property is actually for sale or rent. The sign may not exceed 16 square feet in surface area. If freestanding, the sign may not exceed five feet in height, and shall be located more than 15 feet from any abutting interior property line and wholly on the property for sale or rent.

(E)(e) Developed Commercial or Industrial Property “For Sale or Rent” Signs. Signs advertising developed commercial or industrial property for sale or rent shall be limited to one single- or double-faced sign per street frontage. Signs may be displayed while the building is actually for rent or sale. The sign may not exceed 16 feet in surface area. If freestanding, the sign may not exceed five feet in height and shall be located more than 15 feet from any abutting side or rear property line, and wholly on the property for sale or rent.

(F)(f) Residential Land Subdivision Signs. Signs advertising residential subdivisions shall be limited to one single- or double-faced sign not exceeding a total of 32 square feet in surface area placed at a right angle to the street, or two signs not exceeding a total of 32 square feet in surface area facing the street, which shall be at least 200 feet apart. No sign shall project beyond the building line. Such signs must be placed more than 30 feet from the abutting owner’s property line and may not exceed a height of 12 feet. Such signs shall be removed by the end of one year or when 75 percent of the houses in the subdivision are sold or occupied, whichever first

occurs. Permanent subdivision or neighborhood designation signs shall be approved by the administrator of this code as set forth in OHMC 19.36.070.

~~(G)(g) Subdivision Directional Signs Designating New Development.~~

~~Signs advertising the direction to a subdivision shall be furnished and placed only by the developer or residents of the subdivision, but at locations designated by the city. Signs shall be of the dimensions 12 inches by 36 inches, shall bear only the name of the subdivision and a directional arrow (no name of realtor permitted), and be limited in number to four. The city will designate placement of the signs at street intersections a maximum of one mile from the nearest subdivision entrance. The signs shall be maintained by the developer and removed at the end of one year or when 75 percent of the subdivision is occupied, whichever first occurs, unless a variance is granted by the hearing examiner.~~

~~(H)(h) Undeveloped Multifamily Property “For Sale” Signs.~~ Permissible signs and their limitations for undeveloped multifamily zoned property shall be identical to those for undeveloped commercial and industrial property “For Sale” signs as set forth in subsection (6)(d) of this section.

~~(I)(i) Undeveloped Single-Family Acreage “For Sale” Signs.~~ Permissible signs and their limitations for undeveloped, unsubdivided single-family property which may be legally divided into four or more single lots shall be identical to those for undeveloped commercial and industrial property “For Sale” signs as set forth in subsection (6)(d) of this section.

(viii) Civic Organizations. Civic organizations shall be allowed to have two A-frame signs per event or sale. This sign is in addition to directional signs that may be necessary. The sign shall be no larger than the allowed maximum for a business and subject to all requirements of portable A-frame commercial signs. The sign shall be placed solely on the property for which the activity will be conducted and written permission must be obtained from the property owner or their designee. A civic organization sign shall be in addition to any other A-frame signs existing on site at time of application.

(xi) Portable A-Frame Commercial Signs. For the purpose of this code, portable A-frame commercial signs also include sandwich board signs.

(A) Location. The portable A-frame commercial sign shall be placed solely on the property of the business for which the sign advertises. No two portable A-frames shall be closer than 10 feet from one another.

(B) Size. Each business is permitted to have one portable A-frame commercial sign no larger than 36 inches by 48 inches.

(C) Time limit. Portable A-frame commercial signs shall be placed during normal business hours and removed at the close of business each day.

- (D) Lighting. No direct or indirect lighting of any kind shall be permitted.
- (E) Construction. A-frame commercial signs shall be constructed to be sturdy and withstand all types of weather conditions.
- (F) Lettering. No more than two-thirds of the total A-frame sign area may be reader board or changeable copy.
- (x) No temporary vehicular-mounted sign shall be placed in such a manner as to subvert the intentions of this chapter.
- (xi) Political Headquarters Signs.
 - (A)(a) Party Headquarters. On-premises political signs are permitted on the premises of political headquarters located in the business districts (OHMC 19.36.030), on office buildings in the residential/office and neighborhood commercial districts (OHMC 19.36.040), and in the industrial district (OHMC 19.36.050), so long as the signs meet the requirements of those districts.
 - (B)(b) Headquarters for Candidate or Ballot Issue. On-premises political signs are permitted on the premises of the headquarters of a candidate for public elective office (whether partisan or nonpartisan) or on the headquarters of persons supporting or opposing a public issue decided by ballot, when such headquarters are located in the commercial districts (OHMC 19.36.030), on office buildings in the residential/office and neighborhood commercial districts (OHMC 19.36.040), and in the industrial district (OHMC 19.36.050), so long as the signs meet the requirements of those districts, and so long as the signs remain for a period no longer than six months. Such signs shall be removed within ~~seven~~fourteen (14) days after the general election.
- (8) (xii) Political Signs on Private Property Not a Headquarters.
 - (A)(a) ~~Political signs~~ ~~Signs, posters or bills promoting or publicizing candidates for public office or issues that are to be voted upon in a general or special election~~ may be displayed on private property. Such signs, posters or bills shall be permitted ~~only for a period of 60 days preceding the election and for~~ through a period of ~~seven~~fourteen (14) days following such election; provided, that signs, posters or bills promoting successful candidates in a primary election may remain displayed on private property until ~~seven~~fourteen (14) days following the immediately subsequent general election.
 - (B)(b) Sign Dimension and Location. Political signs shall not exceed 32 square feet in surface area per side or 10 feet in height, or be located closer than five feet from the property line or closer than 15 feet from the property line of an abutting owner. Signs must be located so as not to restrict sight distances on approaches to intersections. ~~A frame type political signs are not permitted.~~ Political signs located along SR-20 within the city limits of Oak Harbor must be located on private property. ~~Signs installed within~~

the SR-20 right-of-way will be removed by the city or State Highway Department personnel. Political signs on private property are not subject to the restriction on hand-drawn or hand-painted images or letters.

~~(C)~~(e) Removal of Signs Following Election. Any such sign, poster or bill shall be removed within ~~seven~~fourteen (14) days following an ~~the~~ general election. It shall be the responsibility of the above campaign officer or responsible official to have the signs, posters or bills removed.

(D) Political signs on private property are not subject to the “appearance of professionalism” principle.

- ~~(d) Political Signs Not Allowed on Public Property. It is unlawful for any person to paste, paint, affix or fasten on any utility pole or on the sidewalk, roadway, or on any public building or structure any such sign, poster, bill or other advertising device when such facilities are located on public property or within public easements.~~
- ~~(e) Public Notices Unaffected. Nothing in this section shall be construed to prohibit the placement of public notices required by law.~~
- ~~(f) The display of any political sign in violation of this section, or any portion thereof, shall be presumed to have been done at the direction and request of the campaign officer or responsible official.~~
- ~~(g) No permit is required for placement of political signs.~~
- ~~(9) Community Events and Fundraisers. Celebrations such as Holland Happening, the Fourth of July, and similar events scheduled for the benefit of the general community may install temporary directional signing, provided such signs are removed within two days following the event.~~
- ~~(10) Civic Organizations. Civic organizations shall be allowed to have two A frame signs per event or sale. This sign is in addition to directional signs that may be necessary. The sign shall be no larger than the allowed maximum for a business and subject to all requirements of A frames for businesses. The sign shall be placed solely on the property for which the activity will be conducted and written permission must be obtained from the property owner or their designee. A civic organization sign shall be in addition to any other A frame signs existing on site at time of application.~~
- ~~(11) Portable A Frame Signs.~~
- ~~(a) Portable A frame signs, for the purpose of this code, also include sandwich board signs.~~
- ~~(b) Portable A frame signs are allowed in all districts throughout the city except the CBD.~~
- ~~(c) Each business is permitted to have one portable A frame sign no larger than 36 inches by 48 inches. The portable A frame sign shall be included in the total allowable signage for said business.~~
- ~~(d) The portable A frame sign shall be placed solely on the property of the business for which the sign advertises during normal business hours and removed at the close of business, and located no further than four feet from the building line. No two portable A frames shall be closer than 20 feet from one another. No direct or indirect lighting of any kind shall be permitted.~~

- ~~(e) A frame signs shall be constructed to be sturdy and withstand all types of weather conditions. No more than two-thirds of the total A-frame sign area may be reader-board or changeable copy. All artistic embellishments and lettering shall have the appearance of professionalism.~~
- ~~(12) No temporary vehicular mounted sign shall be placed in such a manner as to subvert the intentions of this chapter.~~
- (2) Temporary signs on public property.
- (a) Temporary signs on public property shall adhere to the following principles.
Temporary signs on public property shall not:
- (i) Detract from the primary purpose of the public property or facility;
 - (ii) Obstruct designated vehicle, bicycle, or pedestrian traffic circulation areas; Vehicle or pedestrian traffic circulation areas include, but are not limited to drive aisles, private streets, parking areas, walkways, and paths;
 - (iii) Represent safety problems by creating traffic distractions or visual obstructions;
 - (iv) Be in a state of disrepair including being tattered, torn, ripped, defaced, or broken;
 - (v) Contain obscene language, symbols or images;
 - (vi) Be in place for more time than is specifically authorized herein;
 - (vii) All artistic embellishments and lettering shall have the appearance of professionalism.
- (b) Regulations for temporary signs on public property. Temporary signs on public property are subject to the following restrictions. These restrictions are presumed to meet the principles outlined in subsection (a) above.
- (i) Public rights-of-way. Public rights-of-way are considered to be traditional public forums by the City, places which have been historically devoted to assembly, debate, and free speech activities. However, for reasons of public safety, temporary signs are subject to the time, manner, and place restrictions below.
 - (A) General standards. The following standards apply to all temporary signs located within public rights-of-way.
 - 1. Location. For safety reasons, temporary signs may not be placed in visibility triangles which is the area along street frontages within 30 feet of an alley or an unsignallized intersection, or within 25 feet of a driveway. Temporary signs placed within the public-right-of-way may only be located within the landscape strip ("planter strip") or on the public sidewalk. However, a four foot unobstructed width for pedestrians and wheelchair access on sidewalks must be maintained. No signs may be placed within vehicle or bicycle travel lanes, medians, traffic circles, parking lanes, on utility poles or on traffic sign poles. Signs located within the State Highway 20 right-of-way are subject to State standards.

2. Safety. If a temporary sign is deemed to be a traffic safety hazard, then City personnel may move signs or request that the entity who placed the sign move them.
 - 4.3. Size. Temporary signs located within the public right-of-way may not be more than six square feet in size. Double-faced signs of six square feet on each side are permitted.
 4. Height. So as not to obstruct visibility for vehicular, pedestrian, and bicycle traffic, temporary signs may not be more than 3.5 feet in height when located within the public right-of-way.
 5. Public works projects. City personnel may remove temporary signs from public rights-of-way in order to conduct periodic maintenance activities. Staff will make an effort to replace the sign in its previous location. Signs may be returned to their prior location if still within the durational limit. City personnel may permanently remove temporary signs from public rights-of-way for the purposes of carrying out major public works projects. If temporary signs must be removed for maintenance reasons, City staff will make an effort to contact the sign owner or they will be available at the City Public Works Building for pickup for a 10-day period. If not claimed within 10 days, the sign will be disposed of.
 6. Removal of signs in disrepair. City personnel may remove any sign which is in a state of disrepair from the public right-of-way or public property at any time. For purposes of this subsection, a sign is in a state of disrepair if it is ripped, torn, broken, faded, obliterated, obscured, dilapidated, blown down, knocked over or in any other state which its message has ceased to be readable or legible.
 7. Transitory signs. Transitory signs, such as those used for protest, picketing, demonstrations, etc. are allowed within public rights-of-way subject to the standards of this section provided they do not create a public safety issue by blocking visibility and access for pedestrians, automobiles, and bicyclists using the street. Transitory signs are not subject to the “appearance of professionalism” principle.
- (B) Political signs – specific standards. In addition to the general standards, the following standards apply to political signs placed within the public right-of-way.
1. Time limits. Political signs on public property may be placed at any time prior to an election, but shall be removed within fourteen (14) days after the date of the election to which the sign pertains. Failure to remove political signs within the time limit provided shall constitute a violation of this code and shall be punishable as such. In the event that city personnel are required to remove signs from public rights-of-way after

expiration of the post-election time limit, all costs associated with such removal shall be the responsibility of the candidate or campaign organization for who the sign was posted and shall be collected in addition to any other penalty applicable for failure to remove the sign.

2. The display of any political sign in violation of this section or the general standards above, shall be presumed to have been done at the direction and request of the campaign officer or responsible official.

3. Permission. Prior to placement of political signs in the public right-of-way, permission of the adjacent and nearest property owner must first be obtained.

4. Political signs within the public right-of-way are not subject to the “appearance of professionalism” principle.

(C) Commercial signs – Specific standards. In addition to the general standards, the following standards apply to commercial signs placed within the public right-of-way. The only types of commercial signs which are allowed within the public right-of-way are those signs listed here subject to the following restrictions:

1. Portable A-frame commercial signs. Location. A-frame commercial signs may be placed within the CBD zone in downtown. There shall be at least forty-four inches (44”) unobstructed width on the sidewalk to allow for passage of pedestrians and disabled persons when the sign is in place. Signs shall be placed within three feet (3’) of the building face. No two portable A-frames shall be closer than 10 feet from one another.

Size. Each business is permitted to have one portable A-frame sign no larger than 36 inches by 48 inches.

Time limit. Portable A-frame signs shall be placed during normal business hours and removed at the close of business each day.

Lighting. No direct or indirect lighting of any kind shall be permitted.

Construction. A-frame signs shall be constructed to be sturdy and withstand all types of weather conditions.

Lettering. No more than two-thirds of the total A-frame sign area may be reader board or changeable copy.

2. Flag pole banners (a.k.a “flag banners”). Flag pole banners are allowed within the CBD zone in downtown and shall be placed within the preexisting flag pole holders along Pioneer Way. The flag pole banners may be placed during business hours, but must be removed at the close of business each day. Flag poles shall be a rigid material so that the flag pole banners do not obstruct vehicle parking and pedestrian circulation areas. Additionally, on holidays such as Martin Luther King Junior

Day, President's Day, St. Patrick's Day, Memorial Day, Fourth of July, Labor Day, and Veterans' Day, the flag pole holders shall not be used by businesses and shall be reserved for public purposes.

3. Residential directions "open house" signs. In addition to the general standards, the following standards apply to residential directions "open house" signs placed within the public right-of-way.

a. Number. Four single or double faced signs per residence which is for sale or rent are allowed within the public right-of-way. However, if a realtor has more than one house open for sale or rent in a single development or subdivision, off-premises signs are limited to five for the entire development or subdivision. All signs must be located within one mile of the property for sale.

b. Time limit. Such signs are permitted only during daylight hours and when the realtor or seller or an agent is in attendance at the property for sale. Open house or for sale signs must be removed the same day as the open house event ends.

c. Size. Open house signs located within the public right-of-way may not be more than six square feet in size. Double-faced signs of six square feet on each side are permitted.

4. Subdivision Directional Signs Designating New Development. Signs advertising the direction to a subdivision shall be furnished and placed only by the developer or residents of the subdivision, but at locations designated by the city. Signs shall be of the dimensions 12 inches by 36 inches, shall bear only the name of the subdivision and a directional arrow (no name of realtor permitted), and be limited in number to four. The city will designate placement of the signs at street intersections a maximum of one mile from the nearest subdivision entrance. The signs shall be maintained by the developer and removed at the end of one year or when 75 percent of the subdivision is occupied, whichever first occurs, unless a variance is granted by the hearing examiner.

4.5. Community Events and Fundraisers. Celebrations such as Holland Happening, the Fourth of July, and other events scheduled for the benefit of the general community, not including sales for individual businesses, may install temporary directional signs, provided such signs are put in place no sooner than 30 days prior to the event and removed within seven days following the event.

(ii) City Parks. Public parks are considered to be a traditional public forums, which have historically been devoted to assembly, debate, and free speech

activities. The following restrictions are meant to offer adequate means of expression while protecting the primary public purpose of the park as a recreational facility.

- (A) Transitory signs. Transitory signs, such as those used for protest, picketing, demonstrations, etc. are allowed within public parks. Transitory signs are not subject to the “appearance of professionalism” principle.
- (B) Sign installation prohibited. Temporary signs may not be affixed to park equipment, land or facilities in any way, This prohibition includes the pounding of temporary signs into the ground.
- (C) Exceptions. Certain exceptions for installation of temporary signs in parks applies as follows:
 - 1. Temporary, directional, event, or notification signs installed for City authorized activities such as youth sports leagues. Such signs must be removed when the recruitment period ends.
 - 2. Windjammer Park and Volunteer Park baseball fields. Signs of agencies, businesses, or organizations which sponsor youth sports activities may be placed on the outfield fences on the youth baseball fields in these two parks.
 - 3. Gateway-Beeksma Park. Sign banners from governmental agencies, non-profits, or community messages of an informational nature may be placed in this park.
- (iii) City Vehicles. City vehicles are considered to be non-public forums by the City meaning that they are not meant to be a location for public communication and are intended solely for their designated purpose. Temporary signage is prohibited on City vehicles, with the exception of government sponsored messages and communication which do not undermine the primary purpose of the vehicle.
- (iv) City buildings. City buildings are considered to be non-public forums. Temporary signage is prohibited on City buildings with the exception of government sponsored messages and communication which do not undermine the primary purpose of the building.

Section Five. Section 19.36.090 of the Oak Harbor Municipal Code last adopted by Ordinance 1553 in 2009 is hereby readopted to read as follows:

19.36.090 Street right-of-way signs.

- (1) General. Signs for the purpose of identification only, which contain no advertising, may be located upon the street right-of-way only where view-obstructing acoustical protective devices such as acoustical walls, berms or solid fences have been legally installed with city approval at property line thereby making building-mounted or conforming freestanding signs ineffective. Such signing may not exceed the maximum square footage for signs permitted in the applicable district.
- (2) Design and Materials. Street right-of-way signs shall be in keeping with the character of the zoning district in which they are located and shall be constructed of quality materials.

The proposed design and materials to be utilized in the construction of any such sign shall be approved in advance of the issuance of any sign permit by the administrator of this code.

- (3) Types of Signs Permitted. Only signs identifying the use being maintained or operated upon the immediately abutting property and incidental signs indicating the appropriate entrance to and exit therefrom are permitted upon the public right-of-way under this section; provided, that vacancy signs no larger than three square feet in surface area may be installed as an addition to the identification sign.
- (4) Sign Location. Signs permitted upon the street right-of-way shall not be installed or placed on the top of acoustical protective devices, nor shall such signs be installed upon or attached to acoustical protective devices constructed by the city.
- (5) Sign Dimensions. Street right-of-way signs shall have a maximum height of five feet measured from the street grade only, a maximum surface area of 15 square feet.
- (6) Sign Illumination. Street right-of-way sign illumination shall be from a source other than the sign itself.
- (7) Permit Requirements. Street right-of-way signs are subject to all general requirements of this code; provided, that no such sign may be erected without a permit regardless of the size of the sign; and provided further, that any application for a street right-of-way sign permit is subject to the approval of the superintendent of public works

Section Six. Section 19.36.100 of the Oak Harbor Municipal Code last adopted by Ordinance 1553 in 2009 is hereby readopted to read as follows:

19.36.100 Exempt signs or displays.

The following signs or displays are exempted from coverage under this code:

- (1) Traffic or pedestrian control signs or signals, or signs indicating scenic or historic points of interest, which are erected by or on the order of a public officer in the performance of his public duty;
- (2) Regulatory, informational, identification or directional signs installed by or at the direction of a government entity;
- (3) Signs required by law;
- (4) Official public notices, official court notices or official sheriff's notices;
- (5) The flag of a government or noncommercial institution such as schools;
- (6) Exterior signs or displays not visible from streets or ways open to the public;
- (7) Signs in the interior of a building more than three feet from the closest window or not facing a window;
- (8) Plaques, tablets or inscriptions indicating the name of a building, its date of erection, or other commemorative information, which are an integral part of the building structure or are attached flat to the face of the building, which are nonilluminated, and which do not exceed three square feet in surface area;
- (9) "No Trespassing," "No Dumping," "No Parking," "Private," and other informational warning signs, which shall not exceed three square feet in surface area;
- (10) Reasonable seasonal decorations within the appropriate public holiday season. However, such displays shall be removed promptly at the end of the public holiday season;
- (11) Sculptures, fountains, mosaics and design features which do not incorporate advertising or identification;

- (12) Existing theater marquees (freestanding and/or building-mounted);
- (13) Nonflashing, low-lumen building outline and window accent lighting may be installed by businesses in the CBD, CBD-1, CBD-2, C-3, C-4 and C-5 business and commercial districts. Permit and plan review is required.

Section Six. 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 Seven. Effective Date. This Ordinance shall be in full force (5) five days following publication.

PASSED by the City Council this ___ day of _____, 2012.

() APPROVED by its Mayor this _____ day of _____, 2012.

() Vetoed

THE CITY OF OAK HARBOR

Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

Published: _____

DRAFT

Shoreline Master Program (SMP)

Update

Public Meeting

Memo

To: Members of the Planning Commission
Cc: Steve Powers, Interim City Administrator
From: Ethan Spoo, Senior Planner
Date: 5/2/12
Re: Shoreline Master Program Update – Chapters 1-3 Review

PURPOSE

This memorandum gives an overview of Chapters 1 – 3 of the draft Shoreline Master Program (SMP), focusing on those items which generated the most discussion with the Shoreline Advisory Committee.

CHAPTER 1: INTRODUCTION

This Chapter introduces the document to the reader. Topics discussed include the purpose of the Shoreline Management Act (SMA), purpose of the SMP, shoreline jurisdiction, applicability, SMP basics, and organization of the document. Staff gave an introduction to this project covering much of the information in Chapter 1 at the April Planning Commission meeting. However, it is worth reiterating a few key points:

- **Purpose of the SMA/SMP:** The SMP implements the SMA adopted by the State of Washington. The purpose of both is to (1) preserve the fragile shoreline environment (2) prioritize water-dependent uses over non-water-dependent uses, and (3) promote public access.
- **Shoreline Jurisdiction:** Generally speaking, shoreline jurisdiction is measured as the area that is within 200 feet of the ordinary high water mark (OHWM). Shoreline jurisdiction also includes lakes over 20 acres, streams which convey over 20 cubic feet per second, as well as associated floodplains and wetlands. Oak Harbor does not have any streams or lakes which meet the above criteria. Associated wetlands include Freund Marsh wetlands, Maylor Point wetland, and Crescent Marsh wetlands. In these areas, shoreline jurisdiction extends to the outer edge of these wetlands.
- **Applicability:** The SMP applies to all uses, activities, and development within shoreline jurisdiction. Federal agency actions are exempt. All proposed activities, developments, and uses require a shoreline permit, unless specifically exempted.
- **Relationship to Comprehensive Plan.** The shoreline master program is an element of the City's Comprehensive Plan.

CHAPTER 2: ENVIRONMENT DESIGNATION PROVISIONS

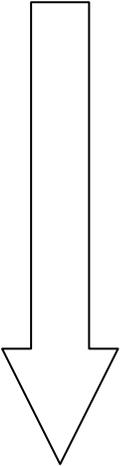
THE SCIENCE

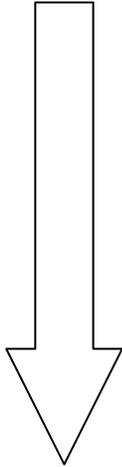
Environment designations are the equivalent of shoreline zoning. They are a useful way of classifying land within shoreline jurisdiction for its desired purpose. Areas with a higher level of ecological function and which have a more natural character, such as wetlands, should be preserved and restored. This means that a more restrictive designation is appropriate in these areas. Areas with low ecological function, such as existing developed areas and urban waterfronts, should have a less restrictive designation applied to them. Environment designations allow the most environmentally valuable areas to be preserved, while allowing for development in the least environmentally sensitive areas.

GUIDELINES AND STATE REQUIREMENTS

The State Guidelines contained in Washington Administrative Code (WAC) 173-26 set forth requirements that all SMPs must meet. The Guidelines require that all land within shoreline jurisdiction be placed in an environment designation. The environment designations are layered on top of the City's zoning requirements. That is to say, land within shoreline jurisdiction is subject to both the City's zoning ordinance and the SMP.

The draft SMP proposes seven different shoreline environment designations (see Figure 1 attached). The State Guidelines have a one-size-fits-all system available for jurisdictions to use. Oak Harbor chose to create its own environment designation system which shares similarities to the State's system, but better matches existing conditions along our shoreline. The following table compares the state and Oak Harbor's proposed environment designations.

State Designation	Types of Uses Allowed	Proposed Designations	Types of Uses Allowed	Intensity
<i>Natural</i>	low intensity, recreation, restoration	<i>N/A</i>	N/A	
<i>Aquatic</i>	Applies to area waterward of OHWM. Uses must be water-dependent, public access, or ecological restoration.	<i>Aquatic</i>	Same as for State.	
<i>Urban Conservancy</i>	Focus is on maintaining or restoring sensitive lands, wetland, etc.	<i>Residential Bluff Conservancy</i>	Focus on maintenance of bluff, plus permitting single-family residential in appropriate places	
		<i>Conservancy</i>	Focus on protection and restoration of open space and sensitive lands. Recreational uses allowed.	

State Designation	Types of Uses Allowed	Proposed Designations	Types of Uses Allowed	Intensity
N/A	N/A	Urban public facilities	Recreation, utilities. Commercial permitted conditionally.	
Shoreline Residential	Residential, public access, recreation	Residential	Single-family, recreation, public facilities.	
		Residential Bluff Conservancy	Focus on maintenance of bluff, plus permitting single-family residential in appropriate places	
High intensity	High intensity commercial, industrial, residential. Preference order: water-dependent, water-oriented, non-water-oriented.	Maritime	High intensity, water-dependent, commercial and industrial uses.	
		Urban Mixed Use	High Intensity, water-oriented commercial and residential.	
				More Intense

Each of these environment designations permits or prohibits certain uses according to the purpose of each designation. The following discussion gives more detail on the policies for each environment designation.

AQUATIC

The aquatic designation applies to areas waterward of the OHWM. These are generally tidal lands some of which are privately owned and some of which are owned by the State. Many of these areas in Oak Harbor are considered to be critical saltwater habitat because they contain Pacific Sand Land/Surf Smelt Spawning Habitat (see Figure 3c). Therefore, policies for this designation focus on protecting the existing shoreline environment and restoring the environment in the future. Policies encourage reducing the number and size of overwater structures, mitigating impacts, and achieving no net loss. New overwater structures are only allowed for water-dependent uses, public access or ecological restoration.

CONSERVANCY

This environment is meant for protection and restoration of sensitive areas, such as wetlands. This designation applies to Freund Marsh, Maylor Point wetland complex, and areas adjacent to Crescent Harbor. These tend to be areas that are not developed, although some level of human impact is present such as the dike at Freund Marsh. Policies encourage low-intensity future uses such as open space, recreation, and public access. Public utilities, such as a wastewater treatment plant would also be allowed.

The Advisory Committee expressed a concern about the impact of the fill in the Maylor Point wetland complex and possible deposition of sediment into the harbor near the Marina. The last policy in this section encourages the City to study the erosion and deposition dynamic.

URBAN PUBLIC FACILITY

This environment designation is primarily meant to accommodate park land and future, water-oriented recreational improvements. For this reason, Windjammer Park and Flintstone Park fall in this designation. This designation also allows for public access (Waterfront Trail) and public facilities such as the wastewater treatment plant and improvements to the stormwater outfall. Preservation of ecological functions and vegetation is required.

RESIDENTIAL - BLUFF CONSERVANCY

The Residential - Bluff Conservancy environment applies to the Scenic Heights Bluff area (see Figure 1). The bluff is considered to be a coastal feeder bluff, meaning that it is subject to a natural erosion process and supplies sediment to down drift beaches. The bluffs may be used as hunting areas for Bald Eagles according to the Washington Department of Fish and Wildlife (see Figure 3c). Human impacts to the bluff and upland areas such as development, vegetation removal, impervious surfaces, and stormwater runoff have a tendency to accelerate the erosion of the bluff. Thus, it is important to respect the bluff both for human safety and environmental reasons, while also allowing for a reasonable level of development to occur in areas where it is safe. The policies for the Residential – Bluff Conservancy environment are intended to encourage all of these objectives. For instance, policies encourage (1) low-intensity uses (2) avoidance of vegetation removal (3) siting and design of structures to discourage erosion. Additionally, the last policy of this section encourages the City to coordinate with residents along the bluff to identify bluff erosion and stormwater runoff issues.

RESIDENTIAL

The Residential environment designation is meant to provide for single-family residential and appropriate recreational uses, while preserving existing environment and natural features. The designation applies to the Dillard's Addition and Driftwood Beach subdivisions. Policies encourage protection of the environment and adherence to no net loss.

MARITIME

The Maritime environment designation is meant primarily for water-dependent industrial and commercial uses. The idea of allowing for industrial uses along the shoreline is a new concept for Oak Harbor. The existing SMP prohibits industrial uses saying that "Oak Harbor shorelines have been developed with, or are planned for conversion to uses that are incompatible with industrial uses." Thus, the Maritime environment designation will be a significant change for Oak Harbor. The ability to place industrial uses in this location is tempered in several respects. First, non-water oriented uses are not allowed, unless they are part of mixed use developments. Second, no net loss must continue to be met and environmental cleanup is encouraged. Third, aesthetic considerations need to be addressed such as buffers and screening.

Staff and the Advisory Committee discussions focused on the ability to use this area for economic development and job-generating uses, hence the need to open this area to water-dependent and water-oriented industry and commerce. Therefore, policies also encourage the City to explore redevelopment possibilities and to implement the Marina Redevelopment Program.

URBAN MIXED USE

The Urban Mixed Use environment is meant for water-oriented commercial, residential, and recreational uses. This is one of the more permissive environments and is roughly equivalent to the State's "High-Intensity" designation. It is meant to allow for an intense, urban development. Non-water oriented uses are only allowed as part of mixed use developments or where there is no direct access to the shoreline. Moorage structures are discouraged, but may be allowed conditionally when serving more than one residence.

CHAPTER 3: GENERAL PROVISIONS

Whereas the policies in Chapter 2 apply to specific areas called environment designations, the policies and regulations in Chapter 3 apply to all areas within shoreline jurisdiction. The Chapter contains ten different sections. Notable sections, policies, and regulations are discussed here. The sections in Chapter 3 cover topics required to be discussed by the State Guidelines (WAC 173-26) or the SMA (90.58 RCW).

ECONOMIC DEVELOPMENT

The Science

The primary science behind the economic development section pertains to protecting shoreline uses while allowing for economic use of the City's shoreline.

The Guidelines and State Requirements

The SMA, in RCW 90.58.100, requires that an economic development element be included in the shoreline master program. One of the main purposes of the SMP and master programs is to encourage water-dependent industrial and commercial uses along the shoreline.

Key Policies

As previously mentioned, the draft SMP proposes that the area of Maylor Point peninsula on either side of the Marina is proposed to be designated "Maritime" which allows for water-dependent industry and commerce. The Economic Development section of Chapter 3 further promotes economic development along the City's shoreline. Key policies in this section say that the City should study the feasibility of attracting job-generating uses to its shoreline, promote consistency with other City plans such as the "Windjammer Plan," recognize the importance of the marina as an economic asset, and say that the City recognizes the link between a high-quality environment and the ability to attract jobs.

ARCHAEOLOGICAL AND HISTORIC RESOURCES

The Science

There is no particular shoreline science associated with archaeological and historic resources. They are seen as a public benefit and worth preserving.

The Guidelines and State Requirements

This section is required by the State Guidelines. The Guidelines require that developers and property owners immediately stop work and notify the appropriate authorities if resources are uncovered. The Guidelines also require that permits be issued and an evaluation be performed by an archaeologist in areas documented to contain archaeological resources.

Key Policies

The Department of Archaeology and Historic Resources (DAHP) has sample language which was used to write this section. Generally speaking, these policies protect archaeological resources prior to development in two situations (1) when there is a known resource on the site and (2) when an inadvertent discovery is made. When there is a known resource on the site, the City will require applicants to conduct a "cultural resource site assessment" and prepare a plan for managing the resource. When there is an inadvertent or accidental discovery of archaeological resources, site work is required to be stopped immediately and an archaeologist conducts a site assessment.

CRITICAL AREAS AND FLOOD HAZARD AREAS

The Science

Critical areas, such as wetlands, flood hazard areas, fish and wildlife habitat, geologically sensitive areas, and aquifers are important parts of the City's shoreline environment. These areas are generally rich in habitat and vegetation that supports life.

The Guidelines and State Requirements

Critical areas are already regulated by OHMC Title 20 “Environment.” However, upon adoption of a new SMP, critical areas within shoreline jurisdiction will no longer be regulated by OHMC Title 20, but by the SMP itself. This means that the City is required to adopt critical areas regulations as part of the SMP or specifically reference Title 20 in the SMP. In the interest of not creating an entirely separate set of critical areas regulations, City staff have recommended referencing Title 20 in the critical areas ordinance, and note any differences in the SMP. The City is also referencing its flood ordinance since these are considered to be critical areas by the Department of Ecology.

Key Policies

The key policies in this section are numbers 1 and 2, which adopt Oak Harbor’s Critical Area Regulations and Flood regulations into the SMP document. Regulation 5 discusses flood hazard structures, such as dikes, levees, etc. New flood hazard structures are only allowed by conditional use. Repairs and replacements to flood hazard structures are allowed to their previous extent.

ENVIRONMENTAL IMPACTS AND MITIGATION

The Science

Impacts to the environment, depending on their nature, wreak havoc with plants, animals and put the ecosystem out of balance. In many cases, the environmental impacts are also human impacts, such as is the case with water quality; dirty water is bad for humans, plants, and animals alike. If impacts cannot be avoided, they should be mitigated.

The Guidelines and State Requirements

These policies are meant to minimize adverse impacts on the environment during all phases of development through “mitigation sequencing.” Mitigation sequencing is widely used across the state in critical areas regulations to prevent and minimize impacts to the environment. While the Guidelines do not directly address mitigation sequencing, Ecology has been clear that they want mitigation sequencing language in the SMP documents. In their eyes, shorelines themselves are critical areas and need to be treated as such.

Key Policies

The policies in this section set up a sequence of priorities with regard to environmental impacts.

- ***Avoid the impact wherever possible.*** This would include plans to move or relocate the development to better suited locations.
- ***Minimize impacts by using appropriate technology.*** If it is not possible to avoid the impact, then care should be taken to use construction techniques which have less of an impact.
- ***Rectifying the impact.*** Repairing, rehabilitating or restoring the affected environment.
- ***Reducing or eliminating the impact*** by preservation or maintenance operations
- ***Compensation***, by replacing, enhancing, or providing substitute resources
- ***Monitoring*** the impact and taking corrective measures.

PUBLIC ACCESS

The Science

Public access draws from policy, not science. Access to the shoreline is considered a public benefit. However, impacts to the shoreline environment from public access should be avoided and mitigated wherever possible.

The Guidelines and State Requirements

Public access is one of the three major requirements of the SMA and is defined as “the ability of the general public to reach, touch, and enjoy the water’s edge, to travel on the waters of the state, and to view the water and

the shoreline from adjacent locations” (WAC 173-26-221(4)(a)). The Advisory Committee took nearly two full meetings to discuss this topic. Public access includes both physical and view access to the shoreline. Physical access are things like paths, trails, and lateral access to the shoreline. Oak Harbor has more public access in the form of the Waterfront Trail than do most jurisdictions our size. Additionally, it is important to realize that most of Oak Harbor’s shoreline area within the urbanized area of the City is already developed. Public access is already in place in the form of the Waterfront Trail. Thus, staff doesn’t foresee that requiring physical public access will be a very common occurrence.

The right of public access to the shoreline comes from a common law known as the “Public Trust Doctrine” (PTD). The PTD essentially says that waters are publicly owned and available for all citizens to use. Additionally, private ownership of the underlying land does not invalidate the trust.¹ (SMP Handbook, Chapter 9, page 2).

Both physical and visual access are required elements of the State Guidelines. Public access requirements have been defined by state and federal courts. Jurisdictions are allowed to require public access on private properties in certain circumstances. The State Guidelines offer ground rules for when public access can be required and recommend that it be provided in the following circumstances:

1. When a development or use creates demand for public access; usually this means for all developments, excluding a single residence and for subdivisions of four lots or less.
2. When development is proposed on public land or proposed by a public entity unless such access would be unsafe or have adverse ecological impacts.
3. If a development would block, interfere with, or discourage use of existing access or public use of waters.

However, there are also certain circumstances in which public access should not be required including for reasons of safety, security of the proposed use, ecological impacts, disproportionate cost, constitutional limits on access.

Public access also includes visual or view access to the water. It’s not hard to see why views can be a very important asset to a community, such as Oak Harbor, and worthy of protection. The SMA protects views including those from a substantial number of residences, by suggesting that a 35-foot height limit be applied in shoreline jurisdiction, unless there is an overriding public interest to go above 35 feet. Please note that Oak Harbor is proposing a 55-foot height limit within the CBD zone in downtown. Staff will discuss the height limits as part of Chapter 4.

Key Policies/Regulations

“Public Access” is the longest subsection of Chapter 3. There are 15 policies and 24 regulations in this section. The regulations essentially address two basic issues: physical access and visual (view) access.

Regulations 1-19 address physical access. Regulations 1 – 5 discuss when public access can legally be required. Please note that access is not required for single-family residential development of four lots or less. Furthermore, regulation 3 exempts developments from providing public access when they are adjacent to the Waterfront Trail. Regulation 6 provides a fee-in-lieu system where access cannot be provided on site. Regulation 18 requires that public access easements, when required, be 12 feet.

Regulations 20 – 24 address view access. Public views of the shoreline (i.e. from parks, streets, etc.) can legally be protected, but private views (from houses, private properties) are much more difficult to protect legally. Policy 5 in this subsection reflects this fact. Policy 21 allows the Shoreline Administrator (Director of Development

¹ SMP Handbook, Chapter 9, page 2.

Services) to require a view study from an applicant when views from public property would be significantly impacted by proposed development. Regulation 22 specifies what the view study must address the quality of existing views and how they will be impacted by new development. Regulations 23 addresses what type of view mitigations may be required when a significant impact is identified. The Administrator may require modifications to setbacks, impervious surface limits, clustering of proposed structures and modifications to landscaping and building massing. Economic impacts on the applicant from requiring changes to a development to protect views also must be considered.

VEGETATION CONSERVATION

The Science

Vegetation is an important part of shoreline ecology. It stabilizes banks, reduces erosion, reduces the occurrence of landslides, filters sediments, provides shade for salmon and forage fish, provides organic input into the water, and provides food to aquatic life in the form of insects.

The Guidelines and DOE Guidance

To sustain all of the above mentioned functions, the Guidelines require that City's adopt vegetation conservation standards. Vegetation conservation is one area where the Guidelines are much less specific. The Guidelines simply say that SMPs must include vegetation conservation standards and that "methods to do this may include setback or buffer requirements, clearing and grading standards, regulatory incentives, environment designation standards or other master program provisions" (WAC 173-26-221(5)). Because the guidelines are much less specific in this area, vegetation conservation standards have evolved from scientific research focusing on the width of vegetative buffers and from trial-and-error in other shoreline jurisdictions.

Ecology prefers to see standards for shoreline buffers and structural setbacks. A buffer is a naturally vegetated area adjacent to a waterbody that provide a transition between the aquatic and upland areas. In addition to protecting the important ecological functions mentioned above, buffers also help protect structures from coastal hazards, i.e. house protected from storm surge. Uses within a buffer are usually limited to a trail or stairway leading down to the shoreline.²

"Setbacks are the distances separating two features such as a structure and the water. Setbacks also help protect shoreline ecology, views, and structures themselves."³

Oak Harbor has a burden to demonstrate to DOE that its draft SMP will achieve no net loss of ecological functions. There is not a single right way to meet the Guidelines for vegetation conservation. However, based upon their review of many SMPs throughout the state Ecology, has developed some rules of thumb. In urban settings, DOE has approved buffer widths as small as 30 feet.⁴

Key Policies/Regulations

Oak Harbor's draft SMP proposes a two-zone vegetation conservation system composed of a vegetation management zone (VMZ), also known as a buffer, and a setback. Zone 1, nearest the water, is a 30-foot (VMZ) buffer from the OHWM. Zone 2 is a 50-foot structural setback from the OHWM, extending 20 feet beyond the vegetative buffer. Whenever new development is proposed beyond 50% of the assessed value of the property, a shoreline landscaping plan must be submitted, which complies with vegetation conservation requirements. The following regulations apply to Zone 1:

- The VMZ should be the priority area for replacement vegetation for vegetation removed elsewhere on the site.
- Existing non-native vegetation can be maintained in the VMZ. New non-native vegetation is prohibited.

² See SMP Handbook, Chapter 11, "Vegetation Conservation", Department of Ecology, pages 2-3.

³ See SMP Handbook, Chapter 11, "Vegetation Conservation", Department of Ecology, pages 2-3.

⁴ See SMP Handbook, Chapter 11, "Vegetation Conservation", page 22.

- Pervious path no more than 6-feet wide may be allowed in the VMZ
- Improvements for the Waterfront Trail are allowed in Zone 1.
- 80% of zone shall be native vegetation

Within Zone 2, the following regulations apply:

- New non-native vegetation (ornamental plantings) are allowed.
- Impervious cover is generally limited to 20%
- Uses in Zone 2 should be water-oriented and can include pervious patios, free draining decks less than 42 inches tall, pervious paths no more than 6 feet wide, gazebos, boathouses and other accessory structures, hot tubs, spas, and pools.
- 60% of Zone 2 shall be native vegetation.

The shoreline landscaping plan requirement can be waived if the applicant can demonstrate that 80% of Zone 1 and 60% of Zone 2 is planted in native vegetation.

Significant trees (those over 12 inches) must be replaced within the VMZ at a 3:1 ratio, at a 2:1 ratio in the setback, and at a 1:1 ratio elsewhere on site.

Figure 1

Shoreline Environment Designations

-  Maritime
-  Urban Mixed Use
-  Residential
-  Residential - Bluff Conservancy
-  Urban Public Facility
-  Conservancy



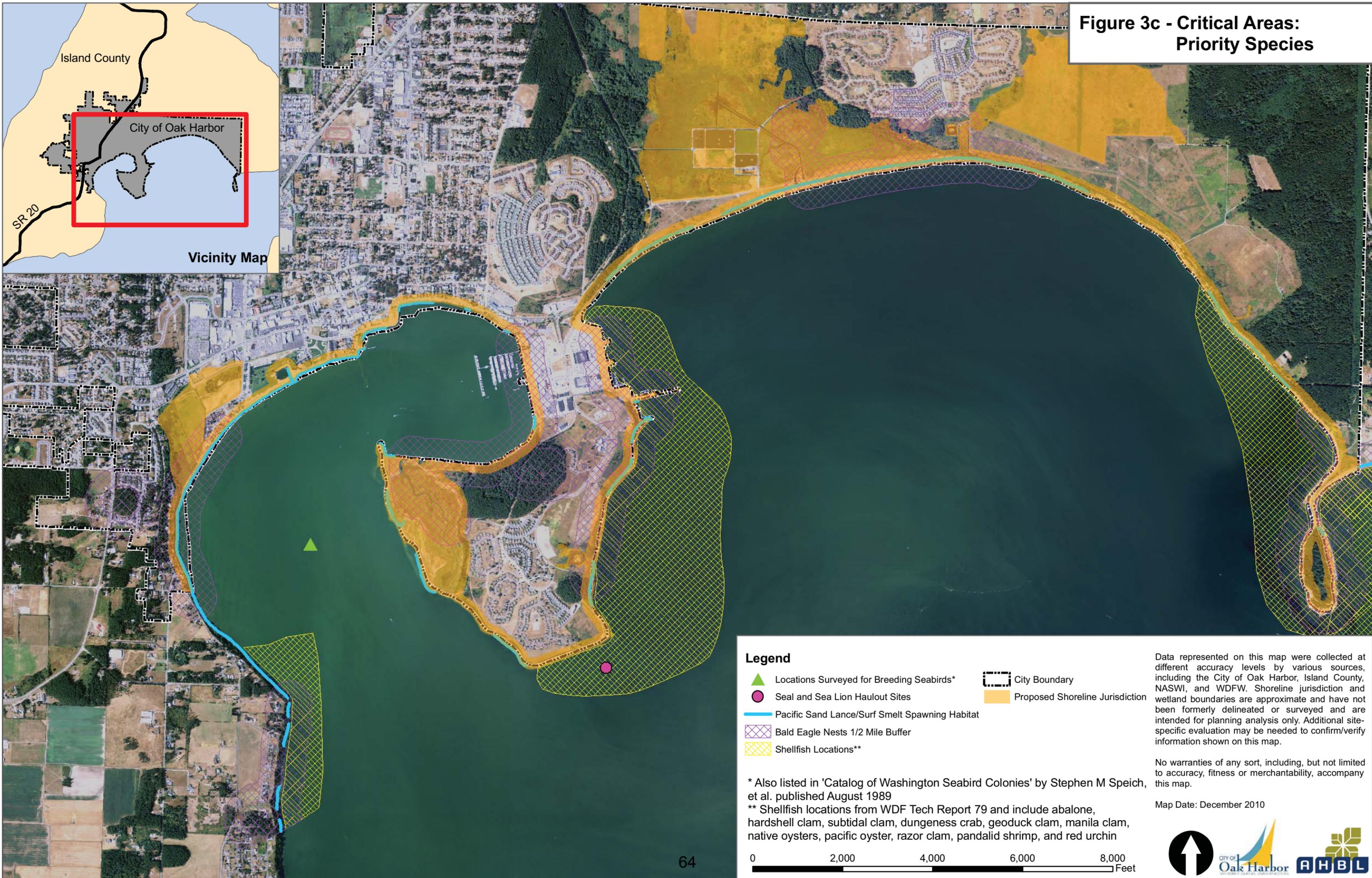
0 1,000 2,000
Feet

Data represented on this map were collected at different accuracy levels by various sources, including the City of Oak Harbor, Island County, NASWI, WA DNR Shorezone data and WDFW. Shoreline jurisdiction and wetland boundaries are approximate and have not been formerly delineated or surveyed and are intended for planning analysis only. Additional site-specific evaluation may be needed to confirm/verify information shown on this map. No warranties of any sort, including, but not limited to accuracy, fitness or merchantability, accompany this map.

Map Date: March 2012



**Figure 3c - Critical Areas:
Priority Species**



Island County

City of Oak Harbor

SR 20

Vicinity Map

Legend

- ▲ Locations Surveyed for Breeding Seabirds*
- Seal and Sea Lion Haulout Sites
- Pacific Sand Lance/Surf Smelt Spawning Habitat
- Bald Eagle Nests 1/2 Mile Buffer
- Shellfish Locations**
- City Boundary
- Proposed Shoreline Jurisdiction

Data represented on this map were collected at different accuracy levels by various sources, including the City of Oak Harbor, Island County, NASWI, and WDFW. Shoreline jurisdiction and wetland boundaries are approximate and have not been formerly delineated or surveyed and are intended for planning analysis only. Additional site-specific evaluation may be needed to confirm/verify information shown on this map.

No warranties of any sort, including, but not limited to accuracy, fitness or merchantability, accompany this map.

Map Date: December 2010

* Also listed in 'Catalog of Washington Seabird Colonies' by Stephen M Speich, et al. published August 1989
 ** Shellfish locations from WDF Tech Report 79 and include abalone, hardshell clam, subtidal clam, dungeness crab, geoduck clam, manila clam, native oysters, pacific oyster, razor clam, pandalid shrimp, and red urchin



OHMC Chapter 17.24
Sidewalks, Curbs and Gutters
Installation

Public Meeting

Memo

To: Planning Commission
From: Steve Powers, Interim City Administrator
CC:
Date: 5/16/12
Re: OHMC 17.24, Sidewalks, Curbs and Gutters Installation

Oak Harbor Municipal Code (OHMC) Chapter 17.24, Sidewalks, Curbs and Gutters Installation, establishes the requirement that a building permit may not be issued for new construction, or for remodeling projects over a certain size, unless that project provides for sidewalks, curbs and gutters if none exists on the property (see attached copy). The property owner may request a deferral from compliance with this code chapter. The City Engineer is authorized to grant such deferrals as outlined in the code.

Most property owners, contractors and/or developers expect to provide sidewalks as part of a new construction project. The same is not always true when the project involves the remodeling or expansion of an existing use. This is especially true in residential settings, especially in those neighborhoods where sidewalks are not found.¹ One on hand, the addition of sidewalks can add substantial cost to a project. On the other, sidewalks provide a safe place for pedestrians.

This item is presented at this time for the Planning Commission's discussion. It appears on your agenda at the request of Commissioner Wallin.

¹ The lack of sidewalks in a neighborhood does not imply that somehow the requirement was not followed. Rather, it is most often related to the age of the neighborhood. At the time older neighborhoods were developed the City may not have had a requirement to provide sidewalks.

Chapter 17.24 SIDEWALKS, CURBS AND GUTTERS INSTALLATION

Sections:

- 17.24.010 Prerequisite for building permit – Exception.
- 17.24.020 Plans and specifications.
- 17.24.030 Permits.
- 17.24.040 Appeal.

17.24.010 Prerequisite for building permit – Exception.

(1) No building permit shall hereafter be granted for a new commercial, industrial or residential building or structure or for the remodeling or alteration of a commercial, industrial or residential building exceeding 25 percent in value of the existing structures and buildings unless the plans and specifications therefor contain provisions for sidewalks and/or driveways across sidewalks on all sides of such property that may abut on a public street or highway to extend the full distance that such property sought to be occupied and/or developed; provided, however, that the city engineer may authorize the issuance of a building permit without compliance with the section where compliance is deemed to be impracticable or infeasible at that time or it is deemed to be in the best interest of the city to defer such construction. In making this decision, the city engineer shall consider the following:

- (a) Existence of Adjacent Walks. If no walks exist in the immediate area surrounding the site, construction may be postponed for the sidewalk installation.
- (b) Proposed Street Improvements in the Area. Alternatively, if widening or other street improvements are planned in the next five years that would require removal of the walks, a deferral may be considered.
- (c) Elevation of the Walk. If conditions require that the walk be installed at an elevation too high to be functional for access or drainage at the present time, a deferral may be granted.
- (d) Need. If there is no practical demand for sidewalks in the area, this factor will influence the decision to defer the construction.
- (e) Historical or Environmental Impact. Sidewalks may be deferred or not required if the sidewalk would destroy structures of historical significance or specimen trees such as Gerry Oaks.

(2) If determined that a deferral is acceptable to the city, the owner must be willing to sign and record an agreement binding installation at the city request or in five years, whichever is sooner. The agreement may provide for five-year extensions at the request of the owner and approval of the city council. Such deferral may be conditioned upon the posting of a satisfactory performance bond providing for said deferred construction or posting cash in lieu of a performance bond.

(3) Owners of properties proposing construction as defined in this chapter shall also construct curbs and gutters along the abutting streets unless, in the opinion of the city engineer, the conditions of drainage do not require such curbs and gutters and it is impracticable and infeasible and not in the best interest of the city to require the same. In making said decision, the city engineer shall take into consideration the history of

drainage in the area, and also the effect of the construction of the improvements proposed upon the drainage. (Ord. 750 § 1, 1986; Ord. 506 § 1, 1978).

17.24.020 Plans and specifications.

Plans for the construction of sidewalks, curbs and gutters required by this chapter shall be submitted to the building official as part of the plans submitted for obtaining a building permit. Grades for the construction of the improvements required by this chapter shall be established by the city engineer or by the approval of plans and grades furnished by the owner. All sidewalks, driveways, curbs and gutters required by this chapter shall be constructed of cement concrete and in accordance with the Standard Specifications for Municipal Public Works Construction as prepared by the Washington State Chapter, American Public Works Association. Openings for driveways for ingress and egress from the property shall be approved by the city engineer. (Ord. 750 § 2, 1986; Ord. 506 § 2, 1978).

17.24.030 Permits.

The building permit shall include the required improvement and the value of the sidewalks or other improvement and shall be added to the value of the structure and the permit fee based on the total cost. (Ord. 750 § 3, 1986; Ord. 506 § 3, 1978).

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Appeal of the city engineer's decision shall be to the city council. (Ord. 750 § 4, 1986).