



**Kitsap County Department of Community Development
Shoreline Master Program Periodic Review 2020-2021**

ATTACHMENT 3: Public Comment Matrix Part 3 (3.30.2021)

Introduction to the Planning Commission Public Comment Matrix:

The Planning Commission Public Comment Matrix includes all public comments received during the joint Kitsap County Planning Commission and Washington State Department of Ecology comment period and public hearing. The comments are binned into topic areas shown in bold text under column 3- Summary of Concern. Column one includes the Issue Reference Number. Column two includes the Comment Reference Number(s) which correspond with specific comment letters received and recorded during the public comment period. The full comment letters are numbered 1 – 20 and attached to this matrix for reference. The Summary of Concern column includes a summary of the public comment. The Department Response column indicates whether a public revision to the proposed code amendment is recommended, based on the comment and includes the reason for the recommendation.

Planning Commission Public Comment Matrix: SUMMARY AND RESPONSE			
Issue Ref. No.	Comment Reference Number(s) (PC)	Summary of Concern (See comment matrix below for detailed comments)	Department Response
1	3	View Blockage - (KCC 22.400.135) View Blockage: D.1 Any appeal process should NOT be solely Administrative. It should be a type 3.	<u>Change not recommended:</u> The proposed amendment creates an alternative pathway for an applicant to file for a “conditional waiver” from strict application of the section. Granting a conditional waiver is a Type II administrative decision. All land use appeals are a Type III decision, and subject to a Hearing Examiner, quasi-judicial decision, under KCC 21.04.290.
2	1, 5, 14, 17	View Blockage a. Add requirement to KCC 22.400.135 “New plantings within 15 feet of side yard boundary of the Buffer and Shoreline Setback	a. <u>Change not recommended:</u> Vegetation in general is not considered view blockage and vegetation along the shoreline is vitally important for ecological function.

		<p>zone described in this section above shall not be greater than 6 ft at maturity”</p> <p>b. (KCC 22.150.485) Request for accessory buildings to have a defined height so they cannot block views.</p> <p>c. Change wording in View Blockage (KCC 22.400.135) to allow for future remodeling or reconstruction.</p>	<p>b. <u>Change not recommended:</u> Kitsap County Code 22.400.120(D)(1)(e)(ii) limits the height of water-orientated storage structures (i.e. boat houses or boat storage facilities) to 14 feet above grade and comply with view blockage provisions of the Shoreline Master Program. All other structures within the shoreline jurisdiction have a height limit of 35 feet per KCC 22.400.140(A) Development Standards. The proposed language in KCC 22.400.135(B)(1) further states that accessory structures may not substantially obstruct the view of adjacent principal buildings.</p> <p>c. <u>Change recommended:</u> The Kitsap County Code 22.400.135(A) preamble describes view blockage. Clarifying language proposed to be added to cross-reference KCC 22.400.100(B) enabling future remodeling or reconstruction of those lawfully constructed existing structures and uses. Increased nonconformances as it relates to the current SMP will not be permitted.</p> <p>Proposed language: “In order to protect water views, all principal buildings <u>and all additions to or reconstruction of a principal building</u>, shall be so located as to maintain the minimum shoreline structure setback line. <u>All such buildings, including reconstruction of existing principal buildings allowed per Section</u></p>
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		<p>d. (KCC 22.400.135) Why change? The existing SMP is not ambiguous regarding use of structures in view blockage calculation, including ADUs and boathouses. The line should be set by the largest structure.</p>	<p><u>22.400.100(B)</u>, must also be designed not to significantly impact views from principal buildings on adjoining and neighboring property or properties. The shoreline structure setback line for the purpose of this subsection is based on the location of the principal building(s) at the time of a permit for a new principal building, and shall be determined as:"</p> <p>d. Change not recommended: The Department proposed the language clarification in order to apply development standards consistently and streamline Permit Center customer inquiries. The proposed language is consistent with the Director’s Interpretation – Shoreline View Blockage, Adjacent and Accessory Structure published on December 27, 2018: https://www.kitsapgov.com/dcd/CodeInterpretations/T21%20-%20D1%20Shoreline%20View%20Blockage%20Adjacent%20Accessory%20Structure.pdf</p>
3	8	<p>View Blockage</p> <ul style="list-style-type: none"> (KCC 22.400.135 (A)(3)) WDFW does not support the use of stringline setbacks if the setbacks would increase the need for future bank protection at the site. 	<p>Change not recommended: Kitsap County Code 22.600.170(B)(3) includes the requirement that new and remodeled residential development and new subdivisions not be designed or located such that stabilization structures would be needed to protect such structures and uses.</p>
4	8	<p>Light Penetration</p> <ul style="list-style-type: none"> (KCC 22.400.120(D)(1)(c)) Proposed language specifies grating with 40% light penetration on stair landings. WDFW suggests 	<p>Change recommended: Proposed language: “Stair landings in the vegetation conservation buffer or below OHWM must comply with the provisions of WAC 220-660-380 in saltwater areas or WAC 220-660-140 in freshwater areas.”</p>

		making this 60% light penetration, which would be consistent with the state Hydraulic Code requirements for overwater structures.	
5	8	<p>Trams</p> <ul style="list-style-type: none"> (KCC 22.400.120(D)(d)) WDFW recommends that Kitsap County require tram landings to be landward of the ordinary high water mark 	<p><u>Change not recommended:</u></p> <p>While the County agrees that tram landings should be located landward of the ordinary high water mark, their location shall only be limited in geologically hazardous areas which are not always conducive to a safe upland position. Trams provide shoreline access, particularly in geologically hazardous areas (steep slopes) and require geotechnical reports and documentation of No Net Loss to shoreline ecological functions, prepared by a qualified professional. Tram projects and their landings are subject to Hydraulic Project Approval from Washington Department of Fish and Wildlife. Trams are prohibited in aquatic and natural shoreline environment designations.</p>
6	11	<p>No Net Loss</p> <ul style="list-style-type: none"> (KCC 22.600) Require specific language of no net loss of ecological functions for specific uses and modifications 	<p><u>Change not recommended:</u></p> <p>The requirement to achieve no net loss of ecological functions (NNL) is required throughout the SMP, including application to all development under KCC 22.400.115, Mitigation, subsection A.2, which requires that mitigation sequencing achieve NNL of ecological functions. Furthermore, the requirement to document NNL is listed specifically in most use and modification regulations in KCC 22.600. Reference to No Net Loss requirements is also included in many policies, specifically Policies SH-8 for critical areas in the shoreline jurisdiction and SH-20 for shoreline use and development activities.</p>

7	11, 12	<p>Mitigation Options</p> <ul style="list-style-type: none"> - (KCC 22.500.100(C)(3)(c) and KCC 22.600.175(C)(11)(b)(i)) Recommend a strong mitigation funding system, where new purchasers of shorelines properties pay into a mitigation account used to purchase or restore shorelines - Consider use of a mitigation banking system for shoreline improvements so voluntary shoreline enhancement is incentivized 	<p><u>Change not recommended:</u></p> <p>The County currently requires mitigation sequencing per KCC 22.400.110 (mitigation sequencing options and compliance) but currently does not have a shoreline property mitigation bank. The County may undertake discussion of mitigation funding options in the future, the creation of a mitigation funding system, including a shoreline property mitigation bank. The creation of a mitigation bank is outside the scope of the periodic update. The County appreciates this suggestion for future consideration.</p>
8	2, 3, 6, 7, 11, 16	<p>Climate Change</p> <ul style="list-style-type: none"> - Removing hearing examiner review will result in buffer reductions with adverse effects (Table 21.04) - (KCC 22.300.125) Include requirements for climate change affects such as sea level rise and storm surge - (KCC 22.400.105 & KCC 22.400.150) require avoidance of effects of climate change - (KCC 22.700.130) Require cumulative climate change effects analysis - Limit new development due to the exacerbating effects on climate 	<p><u>Change not recommended:</u></p> <p>The Shoreline Management Act and Ecology Guidelines currently contain no requirements for SMPs to address climate change or sea level rise. The Guidelines do encourage jurisdictions to consult Ecology guidance for new information on emerging topics such as sea level rise WAC 173-26-090(1).</p> <p>In June 2020, Kitsap County completed a Climate Resiliency Assessment, which documents and evaluates risk from a variety of climate change and sea-level rise impacts based on magnitude, confidence, and timing. The assessment is available at: https://www.kitsapgov.com/dcd/Pages/Climate_Change_Resiliency_KC.aspx Impacts evaluated include public health, economic impacts, culture and recreation, coastal flooding and infrastructure, land use, geologic and natural hazards, habitat and fire. That assessment is intended to inform a more holistic community-based</p>

		<p>change</p> <ul style="list-style-type: none"> - Limit development to allow landward migration of vegetation and wetlands in response to rising sea level - Change floodplain regulations to account for 2100 sea level - Prohibit redevelopment in same footprint when damage is due to rising seas - (KCC 22.400.150) recommend a moratorium on building construction within 1 meter vertical height above OHWM on the FEMA coastal flooding and marine tsunami zones. - Address climate change in SMP, provide a timeline for sea level rise adaptation, and describe how addressed in the future 	<p>approach, rather than a piecemeal approach, to addressing climate resiliency, possibly guided by recent action in the legislature to include climate planning as a Comprehensive Plan element.</p>
9	6	<p>Tribal Lands & Tribal Treaty Rights</p> <ul style="list-style-type: none"> - Concern over threats to physical access to the shoreline to practice social and cultural Tribal Treaty Rights 	<p><u>Comments noted.</u> Kitsap County fully recognizes the Point No Point Treaty and sovereign nations' treaty rights. Additionally, public access to shorelines is encouraged by the Shoreline Management Act whenever feasible and within County regulations while protecting ecological functions of the shoreline.</p> <p>Prior to shoreline use and development, there are specific permit processes to inform tribes prior to a local decision. In many cases, whether that be an</p>

			Administrative CUP, a Shoreline CUP or a Type II or Type II Variance, after a local decision, the Department of Ecology must approve the local action as well.
10	3, 15	<p>Letter of Exemption</p> <ul style="list-style-type: none"> - (KCC 22.500.100(C)(2) the requirement to have shoreline exemptions undergo shoreline review will add time and expense - requirement that the County prepare a 'Letter of Exemption' for any action not undergoing formal review under the SMP 	<p><u>Change not recommended:</u></p> <p>The proposed amendment is a clarification to specifically describe the process the County currently takes to document review and approve shoreline exemptions. A Shoreline Exemption is an exemption from a Shoreline Substantial Development Permit as guided by RCW 90.58.030 and by WAC 173-27-040. These authorized exemptions must still comply with requirements under the Shoreline Master Program and Shoreline Management Act.</p>
11	5, 14, 15, 17	<p>Study requirements and added cost to landowner concerns</p> <p>a. (KCC 22.400.120(D)(1)(a) Adding stormwater requirements for trails is costly; retain original language</p> <p>b. (KCC 22.400.120(D)(1)(b) Adding no net loss requirements is costly; retain original language</p>	<p>a. <u>Change recommended.</u> Stormwater requirements will apply anyway when triggered, the change was to merely note that possibility.</p> <p>Proposed language: "Trails <u>may be permitted but</u> shall be limited to five feet in width, except where demonstrated necessary for a water-dependent use. <u>Trails shall comply with requirements of Title 12 (Storm Water Drainage) if applicable.</u>"</p> <p>b. <u>Change not recommended.</u> Current code unintentionally provides a loophole for oversized decks and viewing platforms that does not</p>

		<p>c. (KCC 22.400.125) request not to require SDAP</p>	<p>protect ecological functions. The County’s recommended amendment closes this loophole and is consistent with other allowed dimensional standards.</p> <p>c. <u>Change not recommended.</u> This is an existing requirement of KCC Title 12 Storm Water Drainage and is not within the scope of the Shoreline Master Program periodic review amendments.</p>
12	3, 7	<p>Shoreline Stabilization</p> <p>a. Add a statement that recognizes that all shoreline stabilization measures come with the requirement for appropriate maintenance</p> <p>b. Request a critical area study to determine buffers for geologic hazard areas</p>	<p>a. <u>Change not recommended.</u> The County agrees with the comment, shoreline stabilization may need maintenance following installation. However, an unmaintained structure on a property is subject to Kitsap County Code Chapter 9.56 Public Nuisances. Maintenance of property and structures is the responsibility of individual property owners and encouraged under KCC Title 9 Health, Welfare and Sanitation, specifically KCC 9.56.020(10).</p> <p>b. <u>Change not recommended.</u> Kitsap County Code 22.700.120 requires that whenever a development is proposed in a geologically hazardous area where required in this program, or when the department determines that additional soils and slope analysis is appropriate on a particular site, the applicant is required to submit a geotechnical or geological report that evaluates the surface and subsurface soil conditions on the site. Furthermore, KCC 22.700.120(D)(5) describes</p>

			<p>geological report submittal standards to include conceptual siting's of structures and general recommendations, which include methods and practices that avoid and/or reduce slope and shore impacts. KCC 22.700.120 also contains required elements of a geotechnical report and geological report.</p>
13	8	<p>Hybrid Shoreline Stabilization a. (KCC 22.150.570) Additional clarification is needed to help differentiate between "soft" and "hybrid" bank protection</p>	<p>a. <u>Change recommended.</u> The Department agrees with this comment, a clear differentiation between soft and hybrid bank protection definitions is valuable for applicants during the design process and project feasibility. One of the benefits of using the term "hybrid" is it promotes soft shoreline stabilization by allowing design flexibility for properties with adjoining hard stabilization or significant erosion risks. The County disagrees with the commenter's suggestion to limit use of hard elements only for the anchoring of large wood. However, the County does agree that some length limitation is warranted for the use of hard measures.</p> <p>Proposed language: 22.150.570 Shoreline Stabilization "Actions taken to address erosion impacts to property and dwellings, businesses, or structures caused by natural processes, such as current, flood, tides, wind or wave action.</p> <p>These actions include structural and nonstructural methods. Nonstructural methods, for example,</p>

			<p>include approaches such as building setbacks, structure relocation, groundwater management, and land use planning. Structural methods can be “hard” or “soft.” “Hard” structural stabilization measures refer to those with solid, hard surfaces, such as concrete bulkheads, while “soft” structural measures rely on less rigid materials, such as bioengineering vegetation measures or beach enhancement.</p> <p>“Hybrid” structures are a composite of both soft and hard elements <u>and techniques</u> along the length of the armoring. <u>If any portion of a proposed development contains a measure or measures related to those listed in Section 22.150.570(B), except hard measures necessary to protect the connection to existing hard stabilization on adjoining properties and measures no more than 15 percent of the shoreline length proposed for development, the whole development must be considered a ‘hybrid’.</u> Generally, the harder the construction measure, the greater the impact on shoreline processes including sediment transport, geomorphology, and biological functions.</p> <p>There are a range of measures for shoreline stabilization varying from soft to hard that include, but are not limited to:</p> <p>A. Soft. 1. Vegetation enhancement; 2. Beach enhancement; 3. Bioengineering measures; 4. Anchor<u>ed</u> logs and stumps; and 5. Gravel placement/beach nourishment. B. Hard. 1. Rock revetments; 2. Gabions; 3. Groins; 4. Bulkheads; 5. Seawalls; <u>and 6. Pile Walls”</u></p>
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<p>14</p>	<p>4, 7, 11</p>	<p>Environmental Toxins</p> <p>a. (KCC 22.150.321, KCC 22.200.100) concern about effluent discharging from and proliferation of floating homes in Manchester</p> <p>b. (KCC 22.400.115C.2) Request for updated riparian buffers to prevent toxins from entering fish habitat</p>	<p>a. Comment noted. Puget Sound is a 'No Discharge Zone' under federal and state regulations. Vessel sewage must be managed in accordance with WAC 173-228. In addition, Kitsap County Code 22.600.160 states that mooring buoys and/or anchors shall not be used for moorage of live-aboard vessels. Other extended moorage or anchoring shall only be allowed in waters of the state when permission is obtained from the state and impacts to navigation and public access are mitigated.</p> <p>b. Comment noted. Kitsap County recognizes the site potential tree height recommendations in the Department of Fish and Wildlife Riparian Ecosystem Management Recommendations (Volume 2). Further evaluation of riparian buffers will be considered during the critical areas ordinance (CAO) comprehensive update due in 2025. The scope of this Shoreline Master Program Periodic Review does not cover an evaluation of riparian buffers.</p>

		c. (22.600.185) Mitigation is needed to address excessive nutrients from sewage treatment plants	c. Comment noted. Wastewater treatment plants have separate permit requirements under the state’s Department of Health and Department of Ecology. Any sewage discharge or associated mitigation are administered by appropriate state agencies through their permitting requirements and associated RCWs; not enforced at the local level.
15	3	Internal County Monitoring Request for program consistency monitoring (i.e. shoreline permit consistency between permit authors) and permit enforcement and monitoring to ensure no net loss.	<u>Change not recommended.</u> Kitsap County Code 22.500.105(K) states that the County will track all shoreline permits and exemption permits to evaluate whether the Shoreline Master Program is achieving no net loss of ecological functions. the County is to conduct system-wide monitoring of shoreline conditions and development activity that occur in shoreline jurisdiction outside of critical areas and their buffers to the degree practical. Activities tracked using the County’s permit system include development, conservation, restoration and mitigation. Project monitoring is also required for individual restoration and mitigation projects consistent with the critical areas’ regulations (KCC 22.400.115). Additionally, the Department is currently developing, with assistance of a National Estuary Program grant, a sustainable program to monitor projects after completion to ensure mitigation efforts maintain no loss of ecological function. This project will conclude in 2022. Long term, the County will use data and information from the permit system and monitoring reports to ensure the code is working effectively and applied consistently.

			<p>A No Net Loss Addendum to the Cumulative Impacts Analysis of Kitsap County's Shoreline Master Program completed in January 2013 is being developed to address new development standards and provisions for this SMP periodic review update.</p>
<p>16</p>	<p>7, 8, 9</p>	<p>Critical Areas a. Request a critical area study to determine buffers for geologic hazard areas b. (22.500.105(C)(11)(e)) Require the delineation of critical areas within 200 feet of the project to ensure the project won't impact buffers.</p>	<p>a. <u>Change not recommended</u> The County already requires a special report to determine buffers when slope hazard indicators are present per KCC 22.400.115(A) which references the Critical Areas Ordinance and Appendix E: KCC 19.400.415 (upon adoption, the new CAO provision referenced will be KCC 19.400.435).</p> <p>b. <u>Change not recommended</u> KCC 22.500.105(C) outlines the minimum requirements for application submittal for a Shoreline Substantial Development Permit (SSDP), Shoreline Conditional Use Permit and Shoreline Variance requests. These minimum requirements also include the submittal of a SEPA checklist and special reports, if required. Both require the applicant to identify any environmental constraints on the property and within its vicinity. The current code does not preclude the need for special reports as noted in KCC 22.700 such as a wetland delineation and the minimum requirements contained within it. To require an actual wetland delineation if there are no mapped critical areas present or noted with field verification within 200 feet of the proposal is a costly burden to applicants. Additionally, prior to determination of application completeness and permit intake review,</p>

		<p>c. (19.200.210(C)) The section on exemptions for small isolated wetlands is not consistent with most recent Ecology guidance. WDFW recommends updating this section to meet "no net loss" requirements.</p>	<p>the Department will review the proposed application submittal with the applicant to ensure all necessary reports are uploaded prior to determination of application completeness.</p> <p>c. Change recommended After review of Ecology's 2016 Best Available Science on exempt wetlands and associated buffer guidance (https://apps.ecology.wa.gov/publications/documents/1606001.pdf) the Department proposes revisions to KCC 19.200.210(C) to ensure it meets 1) the intent of the periodic review of the SMP update of no net loss for lands within the SMP jurisdiction, 2) meets the intent of the Growth Management Act of use of best available science for Critical Areas Ordinances and 3) ensures internal consistency and predictability for applicants and reviewers by using one standard for exempt wetlands, whether it be it in the SMP or CAO jurisdiction.</p> <p>Proposed language: C. Exemptions for Small Wetlands. Category III wetlands that are less than one thousand two thousand five hundred square feet and Category IV wetlands that are less than four thousand seven thousand five hundred square feet that do not contain federally listed species or their critical habitat are exempt from the buffer provisions in this chapter when the following are met:</p> <ol style="list-style-type: none">1. They are isolated wetlands and not part of a wetland mosaic;
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		<p>d. (19.200) Washington State Department of Ecology reviewed for consistency with their published guidance and recommends several amendments to the wetland section, including exemptions for small wetlands, buffer reduction limits, and reference to mitigation standards.</p>	<p>2. They are not associated with riparian areas or their buffers;</p> <p>23. They are not associated with shorelines of the state or their associated buffers;</p> <p>34. They do not contain a Class I fish and wildlife habitat conservation area, identified by the Washington Department of Fish and Wildlife;</p> <p>5. <u>They do not contain federally listed species or their critical habitat;</u> and</p> <p>46. <u>The A</u> wetland report <u>is prepared that</u> identifies the specific wetland function affected or at risk and <u>the proposes</u> mitigation to replace the <u>affected or lost</u> wetland function, on a per function basis.</p> <p>d. <u>Change recommended</u> See response to 16.c on exempt wetlands.</p> <p>With regard to the suggested deletions in KCC 19.200.220(B)(1) and (2), these provisions act to limit to the ability to modify the standard buffer widths and deleting would potentially allow greater reductions. Further, buffer reductions (through averaging or administrative reductions) are only allowed “where the applicant can demonstrate that such averaging can clearly provide as great or greater functions and values as would be provided under the standard buffer.” This satisfies the SMA’s no net loss requirements. We are open to considering a more</p>
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			<p>streamlined or simplified approach as is suggested by WDOE, for this and other wordsmithing changes, but so long as the existing CAO language will satisfy the SMA's requirements for no net loss such is not within the proposed scope of changes for this SMP periodic review update.</p> <p>With regard to inserting references to KCC 19.200.230(D) to allow applicants to utilize provisions contained in the KCC 19.200.230, the Department agrees, and proposed language is suggested below:</p> <p>Proposed language: KCC 19.200.220(B)(2) The department may administratively reduce the buffer pursuant to the variance criteria listed in Section 19.100.135. <u>Applicants may propose to utilize provisions contained in KCC 19.200.230.</u></p> <p>KCC 19.200.220(B)(2)(c)(v) <u>Applicants may propose to utilize provisions contained in KCC 19.200.230.</u></p> <p>KCC 19.200.220(B)(3) Variance. In cases where proposed development cannot meet the administrative buffer reduction criteria described in this section, a variance shall be required as described in Section 19.100.135. <u>Applicants may propose to utilize provisions contained in KCC 19.200.230.</u></p> <p>KCC 19.200.225(C)(4) Mitigation shall be performed in accordance with specific project mitigation plan</p>
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			<p>requirements. <u>Applicants may propose to utilize provisions contained in KCC 19.200.230.</u></p> <p>With regard to inserting new language into KCC 19.200.225(G)(5) to address drilling in utility corridors, the Department has reviewed Ecology’s 2016 Best Available Science on activities in wetlands and associated buffers (https://apps.ecology.wa.gov/publications/documents/1606001.pdf), and proposes the following addition to KCC 19.200.225(G)(5) to ensure it meets 1) the intent of the periodic review of the SMP update of no net loss for lands within the SMP jurisdiction, 2) meets the intent of the Growth Management Act of use of best available science for Critical Areas Ordinances and 3) ensures internal consistency and predictability for applicants and reviewers by using consistent standards for utility corridors in wetlands and their buffers.</p> <p>Proposed language: KCC 19.200.225(G)(5)(d) <u>Drilling for new utility corridors shall have entrance/exit portals located completely outside of the wetland buffer boundary, and drilling shall not interrupt the ground water connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the ground water connection to the wetland or percolation of surface water down through the soil column would be disturbed.</u></p>
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17	10	<p>Site Specific Concerns</p> <ul style="list-style-type: none"> - Concern regarding unstable slope near home and future planned upland development impacts 	<p><u>Change not recommended:</u> Site specific considerations related to existing and future development are reviewed at the time of a development application.</p>
18	3, 11	<p>Federal and Tribal Land Exclusions</p> <ul style="list-style-type: none"> - request that Tribal Trust Land not have an exemption in KCC 22.100.120(d) - (KCC 22.100.120(B)) – Military bases and national parks should meet the requirements of the SMP 	<p><u>Change not recommended:</u> Exclusions of federal and tribal lands are not discretionary as these are explicitly stated in WAC 173.27.060. The Department of Ecology Periodic Review Checklist Guidance states, “Ecology amended a permit rule that addressed lands within federal boundaries to clarify that areas and uses in those areas that are under exclusive federal jurisdiction as established through federal or state statutes are not subject to the jurisdiction of the SMA. For example, exclusive jurisdiction ceded to the United States in Mount Rainier National Park (RCW 37.08.200), Olympic National Park (RCW 37.08.210), and for acquisition of land for permanent military installations (RCW 37.08.180).”</p> <p>The County prefers to provide these statements in KCC 22.100.120 for consistency with state law. KCC 22.100.120(B) describe that direct federal agency activities affecting the uses or resources subject to the Act must be consistent to the maximum extent practicable with the enforceable provisions of the Act and with this master program as required by WAC 173-27-060.</p> <p>There are no National Parks or National Forests in Kitsap County.</p>

19	3, 11	<p>Should vs Shall</p> <ul style="list-style-type: none"> - Throughout many of the management policies, refrain from using the term “should” and replace with “shall” or rephrase to remove apparent ambiguity (e.g. use “prohibited” rather than “discouraged”) - (KCC 22.600.145(a)) replace ‘may’ with ‘shall’” Forest practice that includes new or reopened right of ways, grading, culvert installations or stream crossings SHALL (may) be considered development. 	<p><u>Change not recommended:</u></p> <p>Policies commonly use the term “should” and it is defined to mean that a particular action is required unless there is a sufficient reason to not take the action. The term “shall” be commonly used in regulation to define when a specific action is required, such as those policies that apply to no net loss. “May” is a permissive term, used to convey an actions acceptability but may not always apply. It is not necessarily interchangeable with “shall.”</p>
20	11	<p>Nonconforming Uses and Structures</p> <ul style="list-style-type: none"> a. (KCC 22.400.100(A)(2) Non-conforming developments should not be allowed to have their non-conformity increase by expanding and modifying their uses, footprints, etc. b. (KCC 22.400.100(B)(1)(a) If structures could not meet the requirements of this program today, then they should be considered non-conforming as they no longer meet the current law. 	<p><u>Comments noted.</u></p> <ul style="list-style-type: none"> a. and b. Local governments typically develop their own approaches to addressing non-conforming use and development per WAC 173-27-080. In 2014, during the last comprehensive SMP update, non-conforming use and developments were reviewed as part of that process. KCC 22.400100(A)(1) states that lawfully established uses occurring as of the effective date of this program shall be considered conforming to this program, with the exception of existing over-water residences and existing non-water oriented commercial or industrial uses, which shall be considered nonconforming. This is consistent with RCW 90.58.620. Furthermore, this is consistent with WAC 173-27-080, comply with the SMA and SMP, and demonstration of no net loss.

21	15, 18	<p>Lack of available information and public participation</p> <p>a. Consistency Analysis Report is not readily available</p>	<p>Comments noted.</p> <p>a. Please find the Consistency Analysis Report available online at the following locations:</p> <ul style="list-style-type: none"> • https://www.kitsapgov.com/dcd/PEP%20Documents/Kitsap%20County%20Consistency%20Analysis.pdf • https://www.kitsapgov.com/dcd/PCDocs/Executive%20Summary%20Shoreline%20Master%20Program%20Briefing%20Consistency%20Analysis.pdf • The Consistency Analysis Report was presented to the Board of County Commissioners on November 25, 2020. The full report was posted on the Shoreline Master Program periodic review webpage under Meeting Date 11/25/2020 Board of County Commissioners briefing. • On December 1, 2020, the Consistency Analysis Report was presented to the Kitsap Planning Commission. The Consistency Analysis Report is also posted under Meeting Date 12/01/2020 Planning Commission briefing. • On December 5, 2020, Department staff sent via email the Consistency Analysis Report to partners and interested parties listed including Kitsap Alliance of Property Owners on the Shoreline Master Program periodic review Public Participation Plan. • Directions to navigate the project website and find project documents and links were provided at monthly project updates, to the Board of County Commissioners, and to the Planning Commission.
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		<p>b. Concern about lack of availability of SMP appendices mentioned in staff report and confusion surrounding lack of attachments which are also mentioned</p> <p>c. All non-mandated amendments should be removed as the process has lacked involvement by shoreline property owners. Only items #3 and #24 in the “Other Issues for Consideration” section of the Consistency Analysis, should be considered to carry forward</p>	<p>b. All attachments to the Staff Report are available on the Kitsap SMP periodic review webpage. Please find Staff report and associated attachments: https://www.kitsapgov.com/dcd/PEP%20Documents/SMP%20Planning%20Commission%20Staff%20Report%202-10-2021.pdf</p> <p>c. Please see response to a. and b. In addition, Staff Report Section 7 ‘Public Involvement and Outreach’ contains a list of various outreach activities available to the public, property owners and development community (Page 11 of 14). Note, monthly project update notification are distributed via Kitsap GovDelivery, to sign-up for notifications please visit https://public.govdelivery.com/accounts/WAKITSAP/s/subscribe/new?topic_id=WAKITSAP_36&pop=t</p> <p>Please find monthly project update presentations links below:</p> <ul style="list-style-type: none">• December 2020: https://www.kitsapgov.com/dcd/Documents/Monthly%20Project%20Update%20Dec%2017.pdf• January 2021: https://www.kitsapgov.com/dcd/PEP%20Documents/Monthly%20Project%20Update%20January%2021.pdf• February 2021: https://www.kitsapgov.com/dcd/PEP%20Documents/Monthly%20Project%20Update%20February%2018.pdf
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			<p>Upcoming monthly project updates:</p> <ul style="list-style-type: none"> • March 18, 2021 • April 15, 2021 • May 20, 2021 • June 17, 2021 <p>Discretionary items noted as part of this scope of work was approved by the Board of County Commissioners. These proposed amendments are intended to assist and provide predictability to applicants and reviewers in the permitting process, clarify regulation problematic language experienced since the last SMP update, fix errors or omissions, expand upon existing state legislation, and incorporate best practices for improved ecological function within the shoreline jurisdiction.</p>
22	13, 16	<p>Trails</p> <p>a. (KCC 22.400.120(D)(1)(a)) State Parks is concerned about strict limitations on appropriate materials for trail surfacing especially in the light of the Americans with Disabilities Act (ADA), which should be included in this amendment. More latitude and flexibility to meet ADA standards would be helpful.</p>	<p>a. <u>Change not recommended.</u> While pervious surface materials such as mulch and organics are required for trails within the vegetation conservation buffer, the last sentence of KCC 22.400.120(D)(1)(a) states: <i>pervious surfaces shall be utilized except where determined infeasible</i>. Other pervious trail surfacing options that meet the intent of the Americans with Disabilities Act include pavers, pervious asphalt, and pervious concrete. The ADA is referenced in KCC 22.600.165(C)(13), which states that public access sites shall be made barrier-free and accessible for physically disable uses where feasible, and in accordance with the Americans with Disabilities Act (ADA).</p>

		<p>b. (KCC 22.400.120(D)(1)(a)) Remove raised boardwalks as pervious surface as an option for trails</p>	<p>b. <u>Change not recommended:</u> Raised boardwalks composed of untreated wood or an equivalent are often desirable in certain shoreline or riparian conditions as a method of protecting native vegetation and managing foot traffic. A boardwalk is also considered a pervious surface because water can flow between the boards and infiltrate. The desire to have vegetation growing under a boardwalk is inconsistent with other trail surfacing materials such as mulch and other organic material where there is no such expectation.</p>
<p>23</p>	<p>3, 6, 7, 8, 11</p>	<p>Increase Protection Standards a. (KCC 22.400.100(B)(1)(d)) Allow only one year for construction after shoreline permit approval instead of two</p> <p>b. (KCC 22.500.110) Under Enforcement and Penalties, add consideration for lost ecological function and cost to replace/mitigate ecological damage</p>	<p>a. <u>Change Not recommended:</u> Two years is consistent with RCW 90.58.143(2). Reducing the construction completion window to one year is impractical for many reasons including fish construction windows required under state and federal law, which in many cases reduces the construction window to a few weeks. Construction windows are required to protect salmonids, forage fish and groundfish during spawning periods and periods of presence.</p> <p>b. <u>Comment Noted:</u> The Department recognizes the authority by the Department of Ecology and WAC 173-27-260 in the findings related to civil penalty in the implementation of the SMA. Additionally, KCC 22.500.110(B)(2) states that the choice of enforcement action and the severity of any penalty should be based on the nature of the violation, the damage or risk to the public or to public resources, and/or the existence or degree of</p>

		<p>c. General concerns over water quality and quantity, loss of habitat, proliferation of in-/over-water structures</p> <p>d. Do not allow expansion of existing structures further waterward within riparian buffers</p> <p>e. Update riparian buffers to 200-year site potential tree height (SPTH)</p>	<p>bad faith of the persons subject to the enforcement action. We believe the combination of the WAC and the SMP addresses the comment.</p> <p>c. <u>Comment Noted:</u> General goals and policies referenced in KCC Chapter 22.300 address critical areas ecological protection, water quality and quantity, shoreline use and site planning, and cultural resources among others.</p> <p>d. <u>Comment Noted:</u> Proposed language in KCC 22.400.120(C)(2)(c) states that expansion of development shall not occur further waterward of the existing structure, unless no other feasible option exists due to physical constraints of the property.</p> <p>e. <u>Comment Noted:</u> Kitsap County recognizes the site potential tree height recommendations in the Department of Fish and Wildlife Riparian Ecosystem Management Recommendations (Volume 2). Those management recommendations also state, “under the SMA, the Department of Ecology (Ecology) has a role approving Shoreline Master Program (SMP) updates when they are deemed consistent with all statutory and regulatory requirements. Ecology also has a direct role in implementation of SMPs, including issuing the final decision to approve, deny, or put conditions on locally conditional use permits and variances.” As such, the Department relies on Department of Ecology guidance for buffer widths</p>
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		<p>f. (KCC 19.200.220(A)) WDFW does not oppose the Ecology-supported change in wetland buffers. However, WDFW is concerned about the potential impact on fish habitat.</p> <p>g. (KCC 22.400.115(C)(1)(b) and (2)(b) Do not allow buffer reductions or averaging, nor any construction within habitat buffers.</p>	<p>within the shoreline jurisdiction.</p> <p>Additionally, Kitsap County has opted to adopt numerical buffer standards as part of the administrative application and implementation of Title 19 Critical Areas' Ordinance. In the future update of the CAO due in 2025, the County will consider all best available science at the time of that update.</p> <p>f. <u>Comment noted.</u> The County is incorporating latest guidance from Department of Ecology's published in July 2018 (https://apps.ecology.wa.gov/publications/parts/1606001part1.pdf) regarding Modifications for Habitat Score Ranges for wetlands into KCC Chapter 19.400. KCC Chapter 19.300 outlines that fish and wildlife habitat conservation areas as well as associated development standards. No changes are proposed for KCC Chapter 19.300 in this SMP periodic review update.</p> <p>g. and j. <u>Change not recommended.</u> The SMA in RCW 90.58.020 states that it is the policy of the state to manage the shorelines by planning and fostering all reasonable and appropriate uses. We must be mindful of reasonable use of property area of law and regulations do not result in a taking in violation with Washington State Constitution. Additionally, WAC 173-27-170 outlines criteria for granting a variance permit. One of those variance criteria notes "is the minimum necessary to afford relief."</p>
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		<p>h. (KCC 22.400.120) Infill provisions should be removed. Expansions, especially waterward of existing development, should not be allowed.</p> <p>i. (KCC 22.500.100 and KCC 22.600.160) Proliferation of docks and mooring buoys within shellfish resource areas may increase potential for shellfish closures due to use densities.</p> <p>j. (KCC 22.500.100(E)(4)(a) and (5)(a) Not being able to build a house on a currently empty lot due to buffer restrictions should not be considered reasons to grant variances.</p>	<p>h. <u>Comment Noted:</u> See response to comment 23.d.</p> <p>i. <u>Comment Noted:</u> Washington State Department of Natural Resources (RCW 79.105.430) outlines mooring buoy requirements on state aquatic lands. In addition, KCC 22.600.160(C)(7) provides guidelines on use and quantity of mooring buoys and is consistent with RCW 79.105.430.</p> <p>The proposed draft amendments in Section 22.400.140 bulk and dimension standards, adjust side yard setbacks in order to encourage shared docks and shared uses, with the intent to reduce proliferation of docks and mooring facilities.</p> <p>j. <u>See response to 23.g</u></p>
24	3, 5, 8	<p>Clarifying Edits</p> <p>a. (KCC 22.400.120(C)(20(c))) state again that this variance is only</p>	<p>a. <u>Comment noted.</u> All variances must meet the requirements of the SMA</p>

		<p>given if the policies and requirements of the plan are met; the proposed language should also be revised to change the word 'could' to 'should' in the sentence</p> <p>b. (KCC 22.600.160(C)(3)(b)) revision should say “no less than 20 ft” rather than “spaced 20 ft”</p> <p>c. (KCC 22.100.125) – use the most up-to-date water typing and mapping from WDFW or the Wild Fish Conservancy and all additional mapping since 2010</p> <p>d. (KCC 22.400.120(B)(3)) “shorelines of statewide significance” clarification requested to limit this section only to Hood Canal</p> <p>e. (KCC 22.600.160) This section in</p>	<p>and SMP when located within the shoreline jurisdiction as outlined in WAC 173-27-170 and restated in KCC 22.500.100(E).</p> <p>b. Change recommended. Proposed language: “ New pilings must be spaced no less than twenty feet apart lengthwise. Replacement pilings must be spaced no less than twenty feet apart lengthwise when installed to support a replacement structure. If the new or replaced structure is less than twenty feet in length, pilings may be allowed at the ends of the structure only...”</p> <p>c. Change not recommended. During application review, the Department currently uses the most up to date Department of Natural Resources watertyping maps as amended with Wild Fish Conservancy data.</p> <p>d. Change Recommended. Proposed language: KCC 22.400.120(B)(3) “Additional Standards for Applying the Reduced Standard Buffer within the Rural Conservancy and Natural Designations and Shorelines of Statewide Significance. Buffers may be reduced for single-family residences and water-oriented uses in the rural conservancy designation, natural designation, and shorelines of statewide significance for (Hood Canal) only under the following circumstances...”</p> <p>e. Change Not Recommended.</p>
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		<p>general is a bit unclear on what portions apply to marine vs freshwaters. Please add clarification</p> <p>f. (KCC 22.600.160(C)(3) Please clarify whether this is for docks in lakes or just marine shorelines? In lakes, dock pilings are typically smaller and not placed 20 feet apart.</p> <p>g. (KCC 22.400.120(D)(1)(f)(v)) add “designation” to end of sentence as part of “natural environment.”</p>	<p>Unless specified otherwise, this section applies to both marine water and freshwater.</p> <p>f. <u>Comment noted.</u> Unless specified otherwise, this section applies to both marine water and freshwater.</p> <p>g. <u>Change Recommended.</u> Proposed language: “v. Boat houses shall be prohibited in the natural environment designation.”</p>
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Additional Department of Community Development Recommended Corrections to Proposed Code Amendments:

- KCC 22.150.321 Floating homes**
 From: [KCC 22.150.325 Floating homes](#)
 To: [KCC 22.150.321 Floating homes](#)
- KCC 22.150.322 Floodway**
 From: [KCC 22.150.330 Floodway](#)
 To: [KCC 22.150.322 Floodway](#)

- **KCC 22.600.170(A)(3)(d):**

From: SDP for subdivisions unless every new lot created by the subdivision is entirely outside the shoreline jurisdiction. Where development of the subdivision, e.g., grading, road construction, or installation or construction of infrastructure, is within the shoreline jurisdiction and does not meet the SDP exemption criteria, an SDP shall be required for such development.

To: SDP for subdivisions shall be required when any proposed lot(s) would be created within or partially within the shoreline jurisdiction and when the proposed lot(s) is/are undeveloped.

- **KCC 22.400.135 View Blockage**

All diagrams under the view blockage section including Figure 22.400.135(A)(1), Figure 22.400.135(A)(2)(a), Figure 22.400.135(A)(2)(b), Figure 22.400.135(A)(3), and Figure 22.400.135(A)(4) will be updated to portray clearer lines and descriptions and include a legend. A correction to shoreline structure setback line in Figure 22.400.135(A)(3) is also proposed.

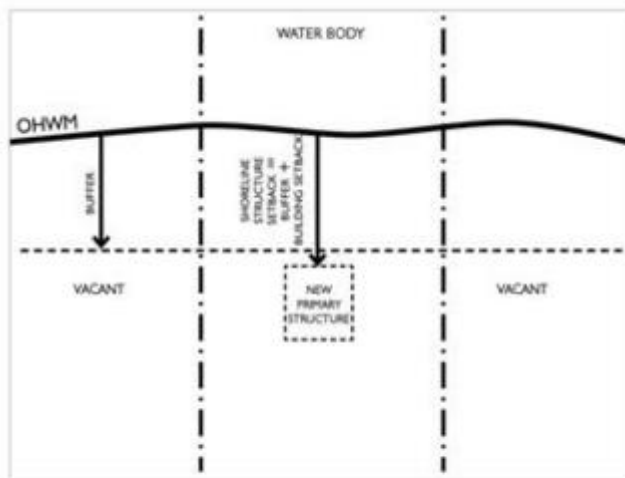


Figure 22.400.135(A)(1)

Buffer and shoreline structure setback with no adjacent primary structure.

From:

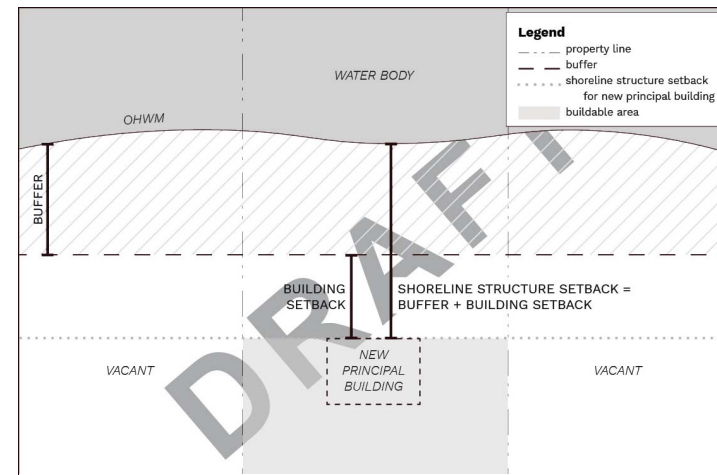


Figure 22.400.135(A)(1)

Buffer and shoreline structure setback with no adjacent primary structure.

To:

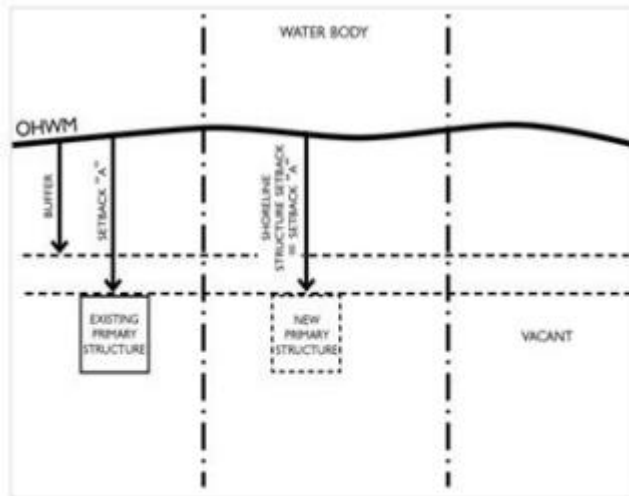


Figure 22.400.135(A)(2)(a)
Buffer and shoreline structure setback with adjacent primary structure landward of buffer on one side.

From:

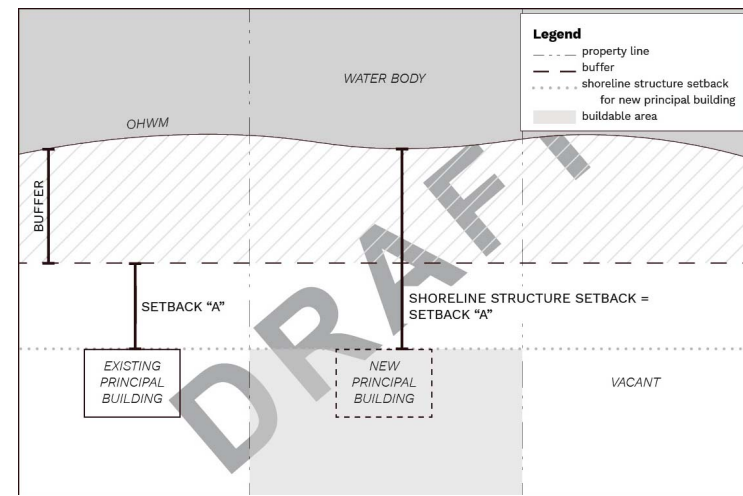


Figure 22.400.135(A)(2)(a)
Buffer and shoreline structure setback with adjacent primary structure landward of buffer on one side.

To:

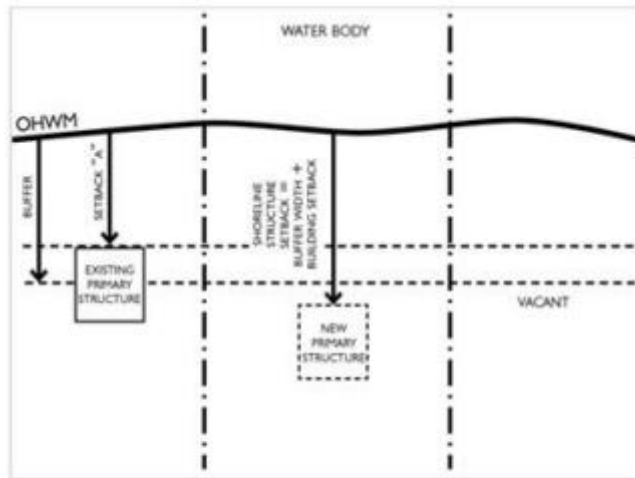


Figure 22.400.135(A)(2)(b)
Buffer and shoreline structure setback with adjacent primary structure within buffer on one side.

From:

To:

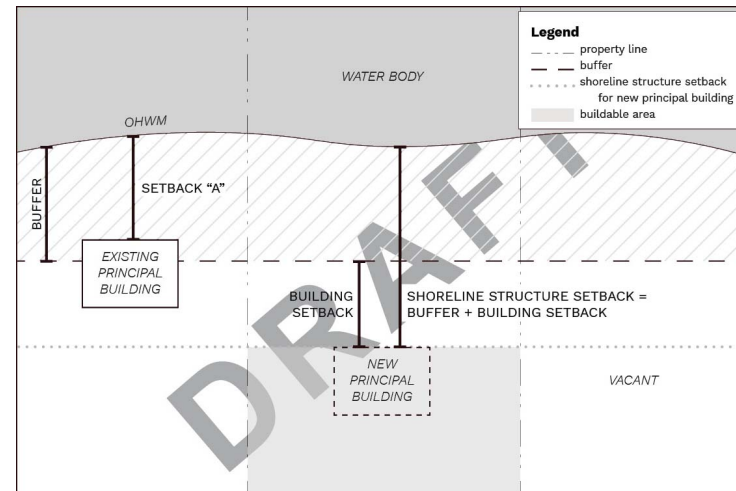


Figure 22.400.135(A)(2)(b)
Buffer and shoreline structure setback with adjacent primary structure within buffer on one side.

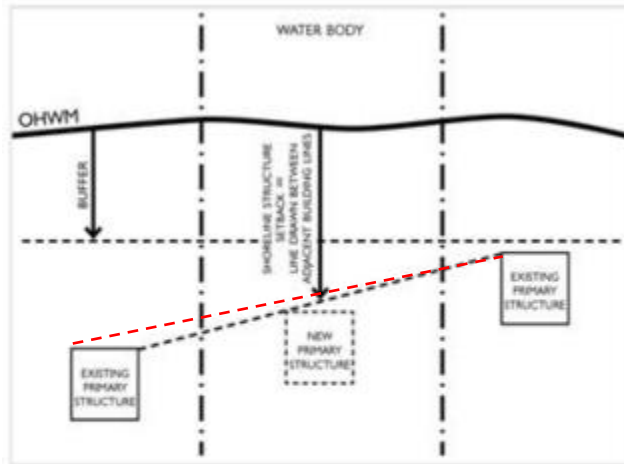


Figure 22.400.135(A)(3)
Buffer and shoreline structure setback on a regular shoreline with adjacent primary structures on both sides.

From:

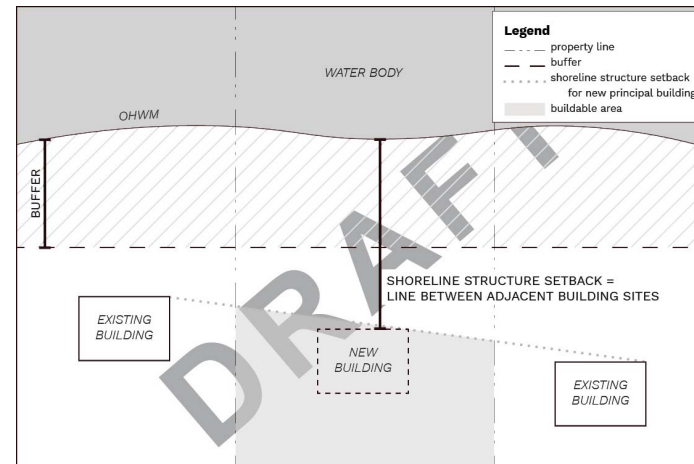


Figure 22.400.135(A)(3)
Buffer and shoreline structure setback on a regular shoreline with adjacent primary structures on both sides.

To:

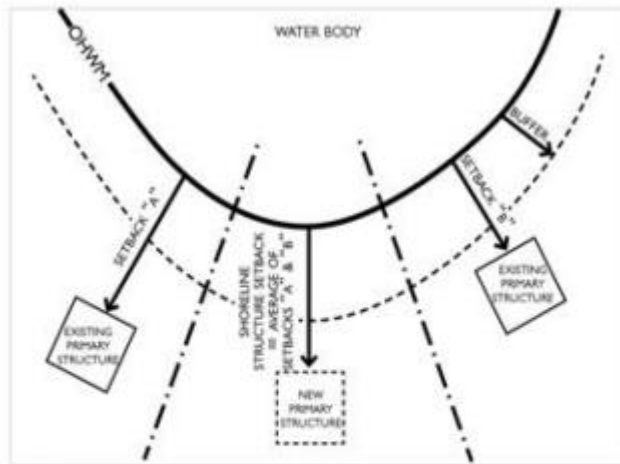


Figure 22.400.135(A)(4)
Buffer and shoreline structure setback on an irregular shoreline with adjacent primary structures on both sides.

From:

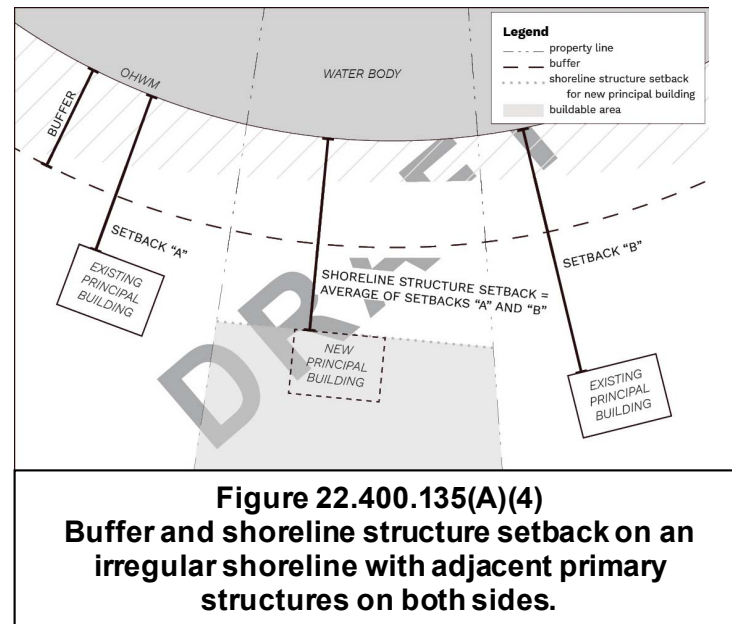


Figure 22.400.135(A)(4)
Buffer and shoreline structure setback on an irregular shoreline with adjacent primary structures on both sides.

To: