

# Planning Commission Workshop

## Nonconformities & Substitute

### Senate Bill 5451



1. What we do now
2. What we are required to do
3. How utilizing SSB 5451 might impact Bremerton

# Background on Nonconformities

- Existing SMP references the Zoning Code
  - Shoreline development is treated the same as upland development.
- SMP is a State Code
  - references to local codes get complicated
- Planning Commission recommends matching SMP and Zoning as much as possible by:
  - 1) Not creating a separate name for shoreline legal nonconformities**
  - 2) Maintaining voluntary rebuild parameters**



# Nonconforming Building Blocks

## What is a Legal Nonconformity?

- Something that was built in compliance, but does not comply anymore.
  - Use
  - Structure
  - Lot
- Code protects property owners from Compliance to new rules.



# Nonconforming Building Blocks

- Example of a Legal Nonconforming Use:

Discontinuation:  
Use can continue  
until building has  
been vacant for  
1 year or more.



# Nonconforming Building Blocks

- Example of an Illegal Nonconformity:

This is not  
Grandfathered

It was never  
permitted in  
The first place



# Nonconforming Building Blocks

**Eventual Compliance** – At some point in the future regulations should become applicable

Current Code:

**Structures:** When 75% of the structures value is replaced

**Uses:** When the building has been vacant for 1 year



# Nonconforming Building Blocks

- Non-intentional destruction:
  - You can rebuild 100%
  - New codes do not apply (1 year grace period)
  - Building can be in the same location as Original was.
  - Every jurisdiction is different.

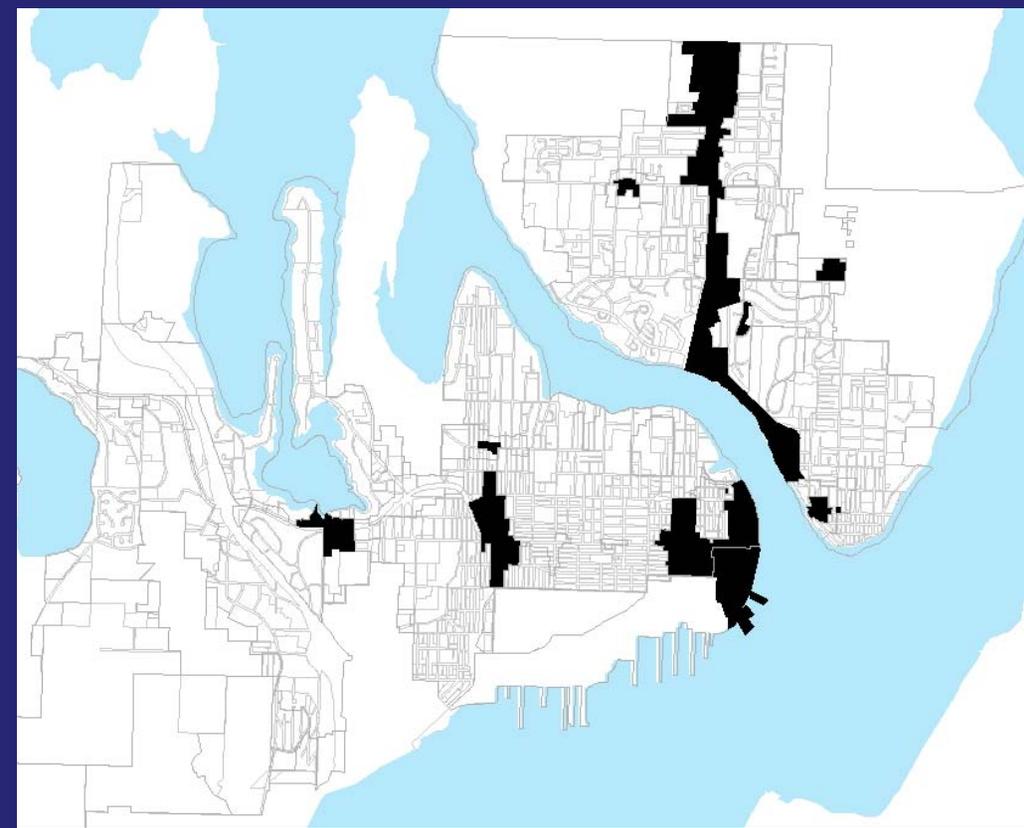
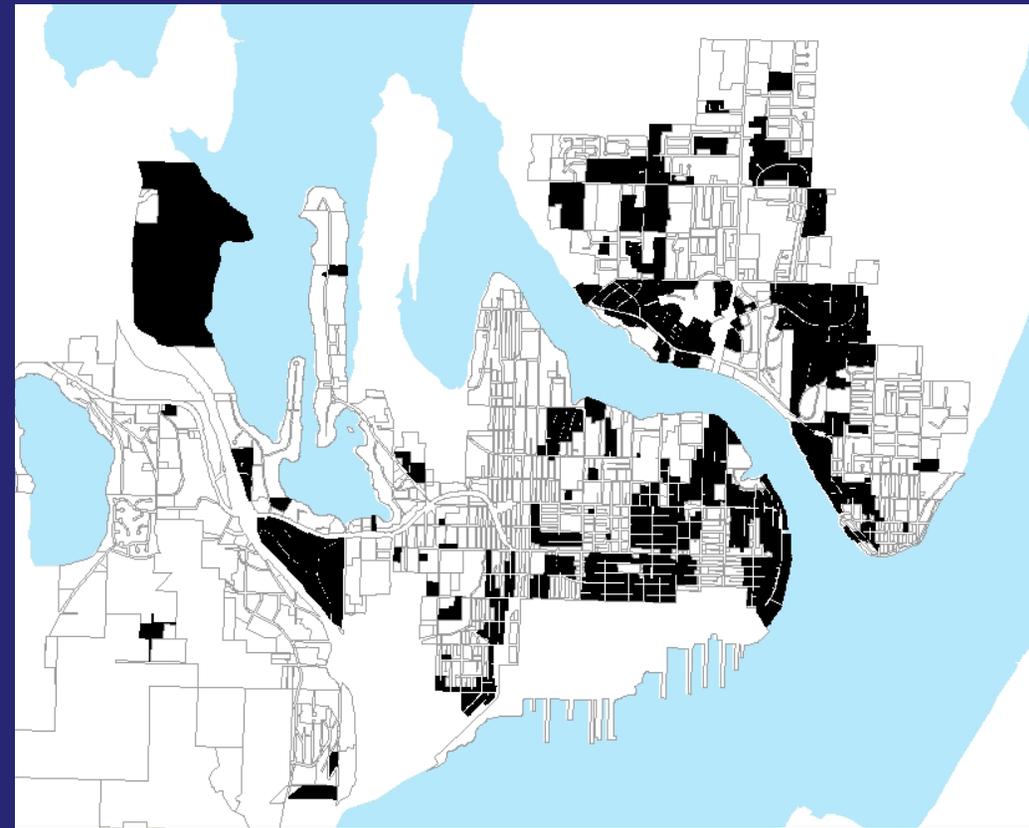


# 2005 Zoning Code Update

Zones allowing multi – family development

Before 2005

After 2005



# Shore Drive - 50' Buffer/Setback



**50' Buffer/setback:  
Nonconforming:  
90%**

Setback Distance

- 25'
- 50'

# Shore Drive - 20% Buffer



**20% Buffer/and Setback**  
**Smallest: 15'**  
**Largest: 40'**  
**Average: 21'**  
**Nonconforming: 50%**

# Substitute Senate Bill 5451

## Legislatures intent - Why was it created?

- To clarify Ecology's role & respond to public concerns

## Impacts - What does it say?

Ecology will let local jurisdictions be creative so long as No Net Loss is achieved.

- 1) Ecology can approve SMP's that calls legal nonconforming residences "conforming"
- 2) Ecology can approve SMP's that allow for full replacement of these structures.



# Name Change

Many people are concerned about the term nonconforming:

- Will it affect resale?
- Will it impact loans?
- Will it restrict maintenance?

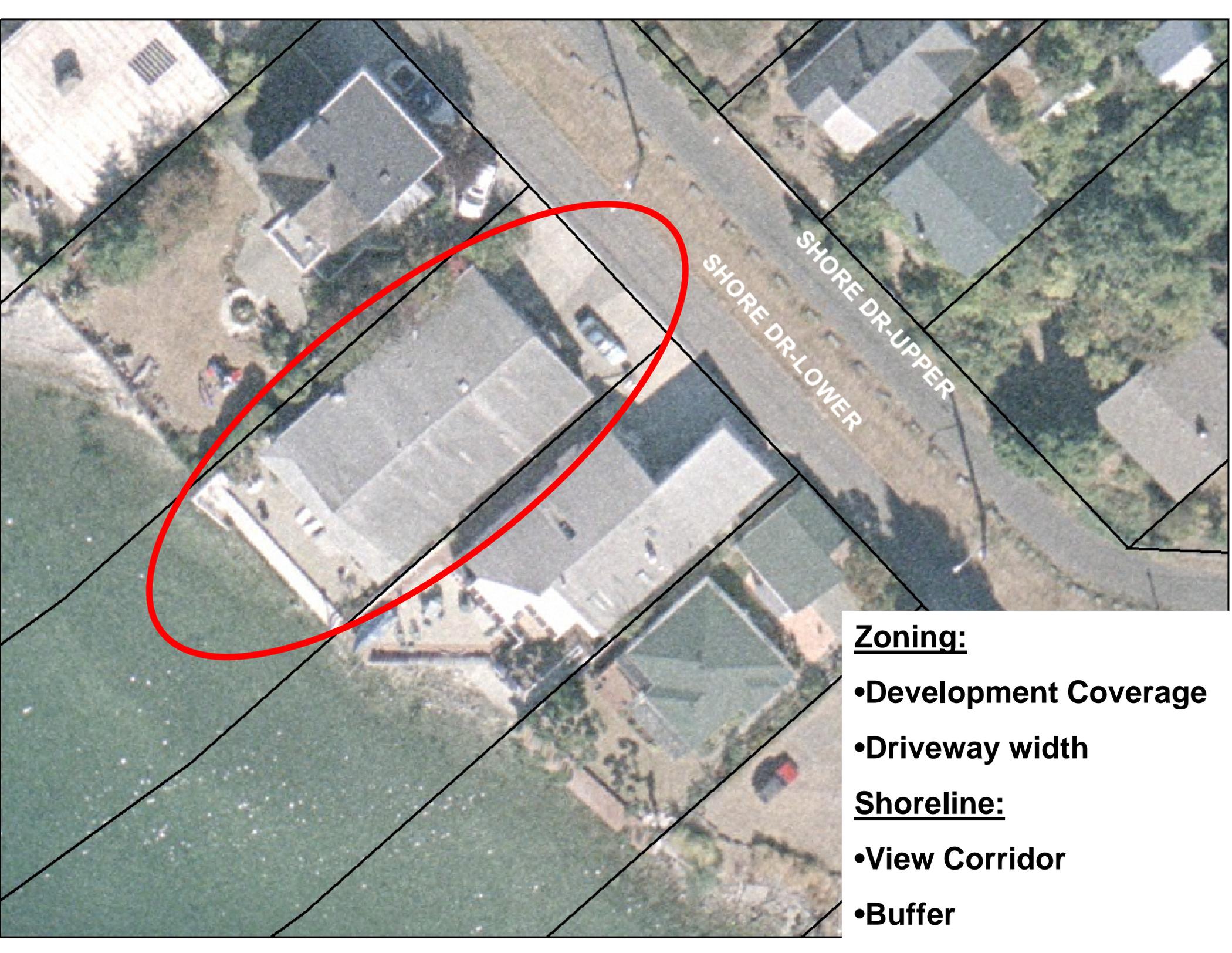
Why not just change the name?

Applicability is limited

- Only for existing shoreline residences
- Not Commercial, apartments, bulkheads, boathouses, docks etc.

Added complexities

- Inconsistencies with Zoning Code
- The word conforming misleadingly implies conformance



**Zoning:**

- Development Coverage
- Driveway width

**Shoreline:**

- View Corridor
- Buffer

# Nonconformities and Home Loans

How does the name impact sales?

Classification	Units Sold	Avg. Sale Price	Avg. Assessed Value
<b>Bainbridge Island 2011</b>			
Conforming	17	\$ 1,597,000	\$ 964,000
Non-Conforming	16	\$ 1,723,000	\$ 854,000
<b>Bremerton 2011</b>			
Conforming	15	\$ 330,000	\$ 309,000
Non-Conforming	7	\$ 298,000	\$ 330,000
<b>Bremerton 2006</b>			
Conforming	8	\$ 647,000	\$ 349,000
Non-Conforming	13	\$ 599,000	\$ 323,000

# Lending Guidelines

- Freddie Mac:

“Freddie Mac may purchase a mortgage secured by a property that does not conform to applicable zoning and use restrictions if the property is a legal nonconforming use (commonly referred to as grandfathered use).”
- Fannie Mae:

Allows lending on illegal nonconformities if they can be rebuilt.



# Appraisers

- Follow Fannie Mae & Freddie Mac guides
  - Loans can be denied if the nonconformity cannot be rebuilt after unintentional destruction (fire).

Dimensions	Area	Shape	View
Specific Zoning Classification	Zoning Description		
Zoning Compliance	<input type="checkbox"/> Legal <input type="checkbox"/> Legal Nonconforming (Grandfathered Use) <input type="checkbox"/> No Zoning <input type="checkbox"/> Illegal (describe)		
Is the highest and best use of the subject property as improved (or as proposed per plans and specifications) the present use? <input type="checkbox"/> Yes <input type="checkbox"/> No			

Nonconforming requires a letter or code citation attached to the appraisal form.



# Lenders

- Lenders use the term nonconforming to discuss people.
  - People who have bad credit, or
  - People who have gone through foreclosure, or
  - People who apply for more money than is allowed by Fannie or Freddie.
  - Lenders wont lend to a nonconforming person and require additional paperwork for a nonconforming property.



# Ecology will allow 100% Rebuild?

– Yes, so long as we achieve No Net Loss:

NNL is  
measured  
from today

But...what  
about  
continuing  
impacts?



# Current Provisions for Legal Nonconformities and No Net Loss

Minor Expansion (<500sf)

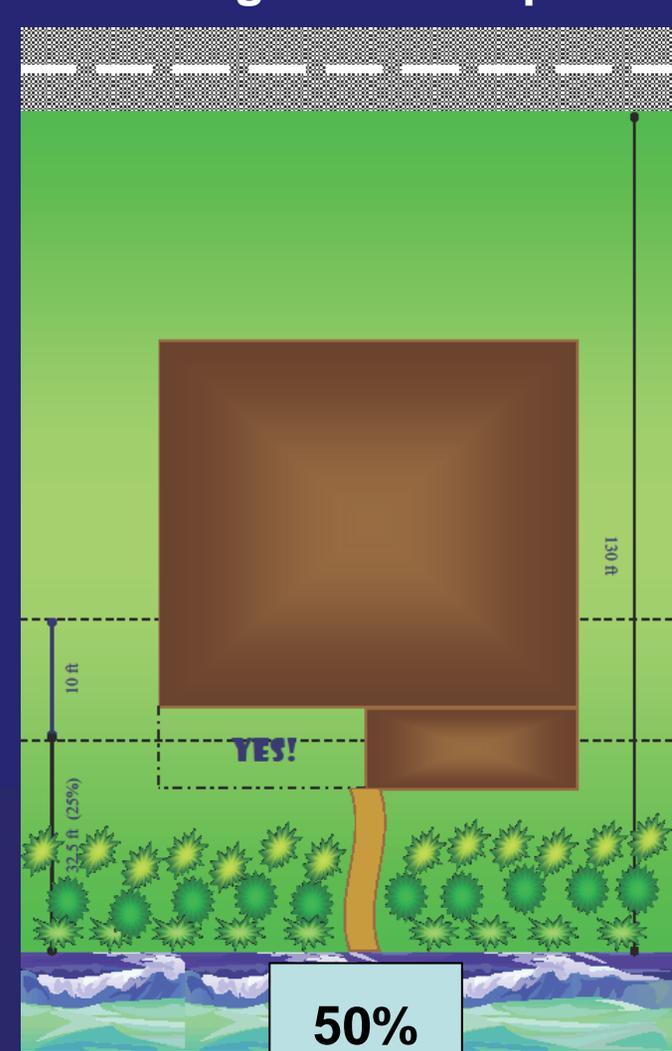
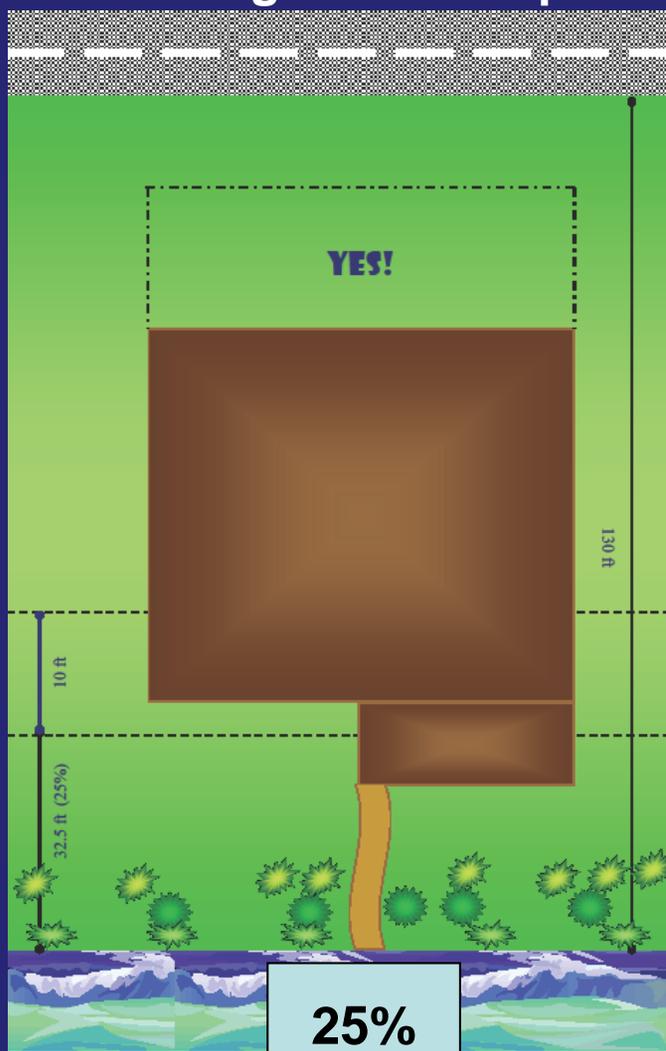
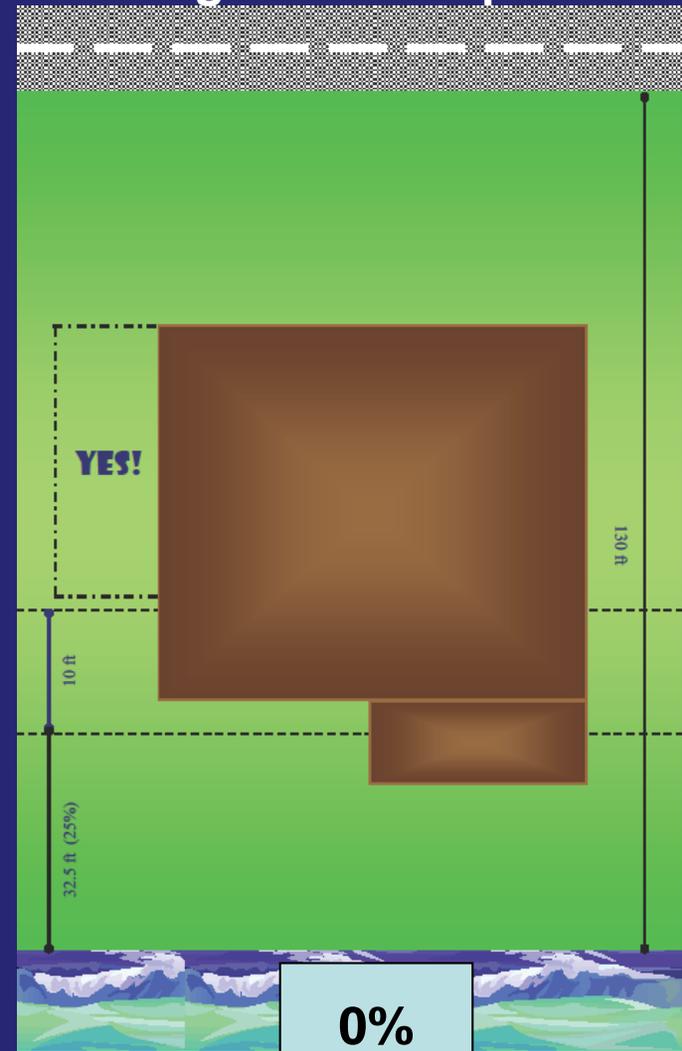
No Vegetation Required

Large Expansion (>500sf)

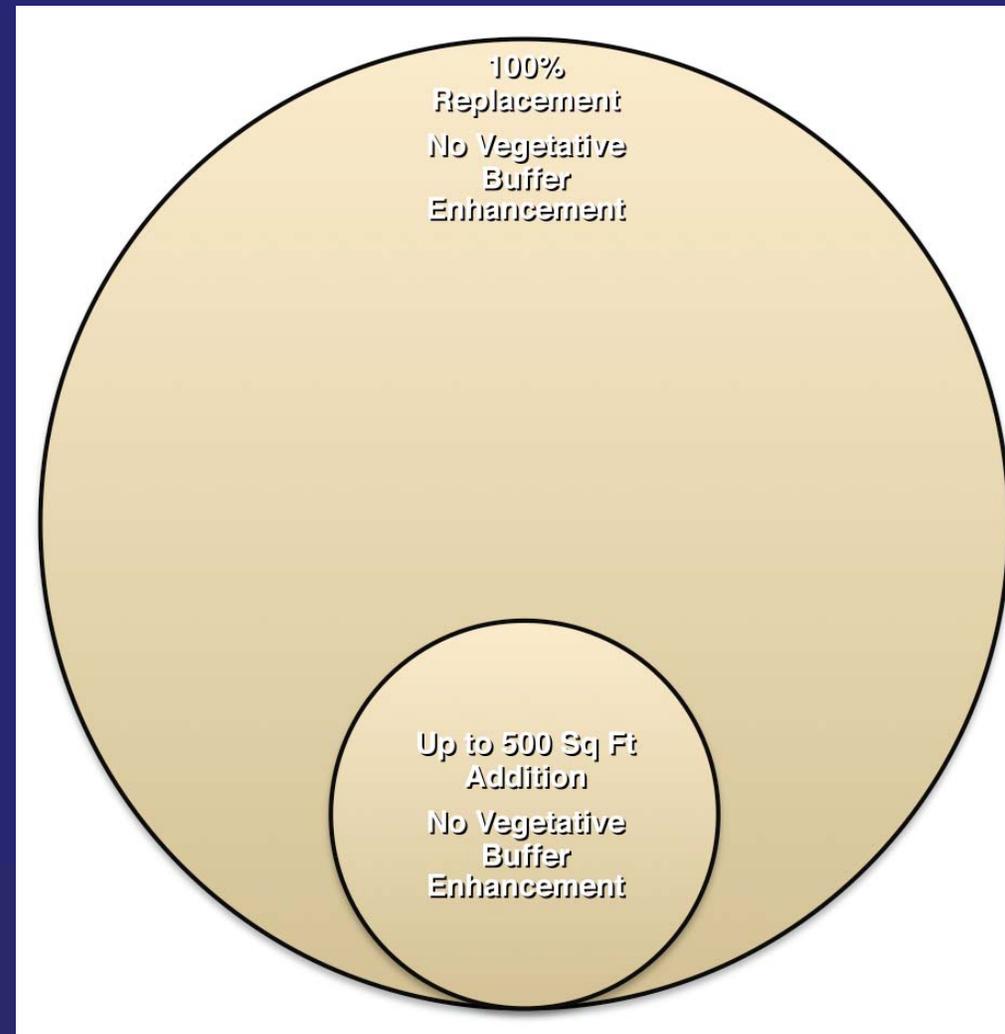
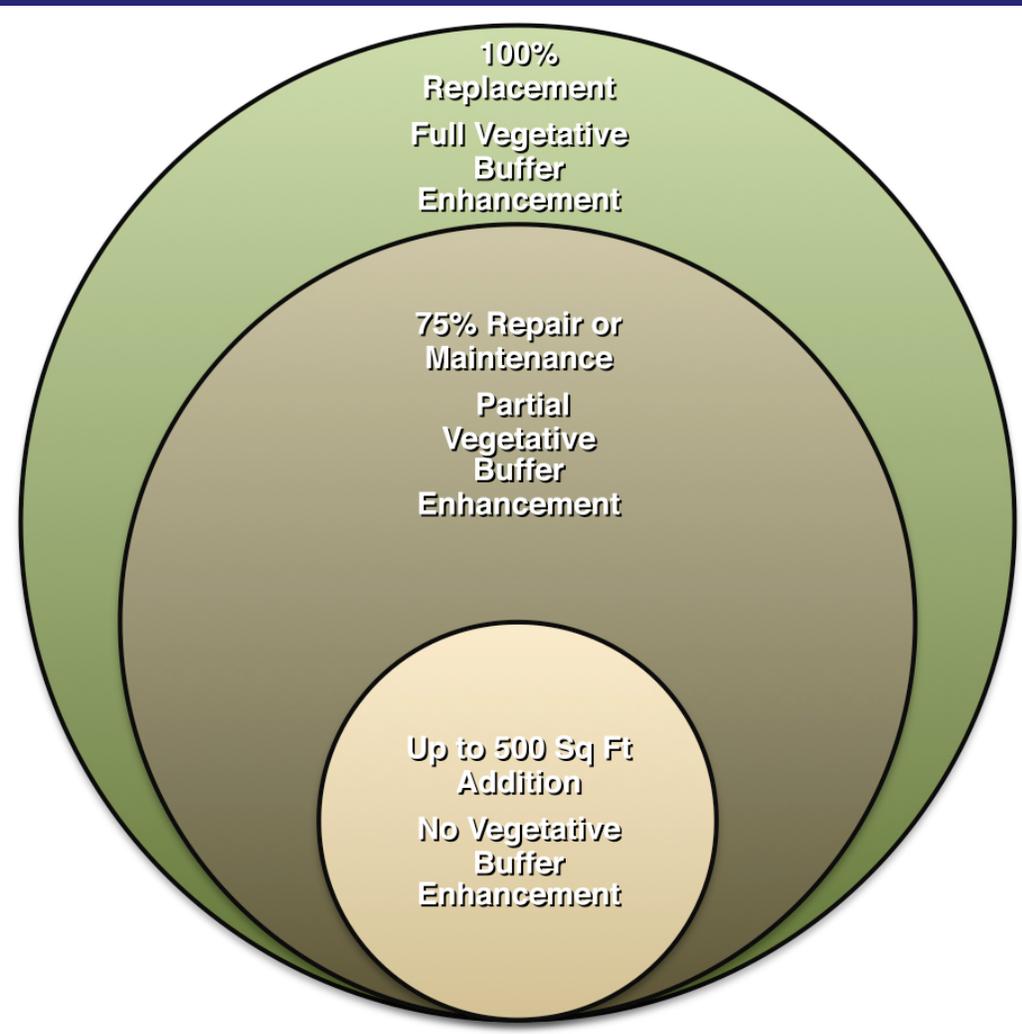
Partial Vegetation Required

Expansion in Buffer

Partial Vegetation Required



# 100% Rebuild and No Net Loss



# Implications of 100% Rebuild



- **Eliminates eventual compliance for shoreline regulations.**
- **Adds complexity for Zoning and Shoreline compliance.**
- **Sets different rules for neighbors.**
- **Will require increased regulations to achieve NNL**

# 75% Rule in Action

- Existing remodel project on Shore Dr
- 75% of \$266k allows a remodel of up to \$199k
- This remodel represents 45% or \$120k



Before

After

# Existing Code – Voluntary Rebuild

- **Shoreline Buffer 35'**
- **Shoreline Setback 15'**
- **View Corridor**
- **Zoning setbacks**
- **Building envelope**



# Existing Code – Voluntary Rebuild

- **Habitat Management Plan 25' min. buffer**
- **Trees 8' apart**  
**Shrubs 3' apart**
- **View Corridor**
- **Reductions to Zoning Setbacks**
- **Building envelope**



# New Code – Voluntary Rebuild

- 20% buffer w/ vegetation (20')
- Buffer Averaging ~ 20'
- 5' shoreline setback
- Zoning Setbacks
- Building envelope

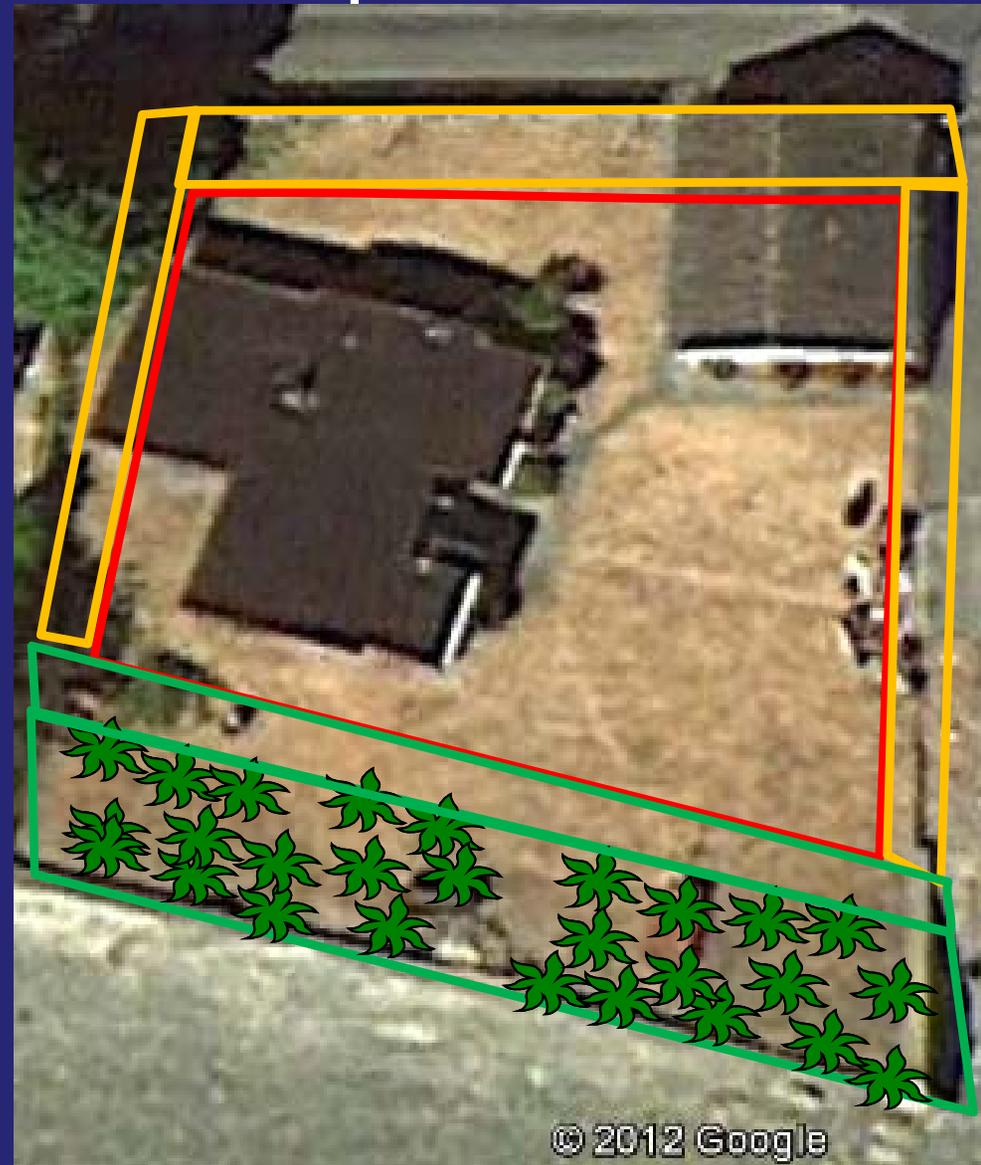


# Voluntary Rebuild

Current Code



Proposed Code



# Neighboring Jurisdictions

## Port Orchard:

- Allows residences to be called “conforming”
- Allows voluntary replacement w/o enhanced vegetation (no expansions)

## • Kitsap County:

- Allows existing residences to be called “conforming”
- Allows voluntary replacement without enhanced vegetation (expansion require mitigation)

## • Poulsbo:

- Keeps name of nonconforming
- Allows residences to be called “conforming” (permit required)
- Voluntary replacement is only allowed through a variance (vegetation required)

## • Bainbridge Island:

- Keeps the name nonconforming
- Voluntary replacement is only allowed with enhanced vegetation

# Planning Commission Recommendation

1. No change / addition to the name of the Nonconforming chapter.
  - Too complicated and confusing
  - Inconsistent with existing codes
  - No clear evidence that a name change will resolve issues
2. Maintain consistency with Zoning Code provisions for voluntary rebuilds – keep the 75% rule.
  - Maintains long standing policy of eventual compliance
  - Ensures consistency between codes and neighbors
  - Allows for reduced buffer sizes overall