

3.80 18.34.900 – Existing Buildings and Uses within Shorelines

- A. Subject to the provisions of this Chapter, a use, lot, or structure lawfully existing prior to the effective date of this Shoreline Program or any amendment thereto, which is rendered nonconforming by the shoreline program may continue and may also be repaired, remodeled, and/or restored in the manner and to the extent that it existed upon the effective date of this Shoreline Program.
- B. In addition to and independent of the provisions below, existing roads, trails, utility lines and similar linear facilities, together with any associated facilities such as pump stations or stormwater treatment ponds, which do not conform to the provisions of Chapter 18.34 may expand within existing easements and rights-of-ways. Modification or expansion outside of existing easements or rights-of-way which would otherwise be prohibited may be authorized by the decision maker upon finding there is no feasible alternative, the development is necessary for the public welfare, as proposed and designed including appropriate mitigation, and the development is not likely to result in a net loss of shoreline ecological functions.

Comment [TS1]: Proposed clarification

Comment [TS2]: To clarify scope of this section.

3.81 18.34.910 – Alteration of Nonconforming Structures in Shoreline Jurisdiction

~~A.~~ Shoreline Structures – The following regulations apply to nonconforming structures located in shoreline jurisdiction. Alterations pursuant to this section shall not result in a net loss of shoreline ecological functions and processes. The applicant shall obtain all required permits or approvals prior to construction. All alterations shall comply with applicable development regulations.

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Comment [TS3]: Reformatted to move general provisions to the front of section. Section to be re-outlined accordingly.

Comment [TS4]: New subtitle consistent with format of section 2 below

- 1. Structures within Shoreline Setbacks – Alteration of structures located landward of the Ordinary High Water Mark within a required shoreline setback is limited to:
 - a. For structures located partially within the shoreline setback, alterations shall be limited to the addition of height and expansion into areas outside the shoreline setback.
 - b. For structures located entirely within the shoreline setbacks, alterations shall be allowed for the addition of height or expansion on the upland side of the structure, or both.
 - c. Interior and exterior remodels and the addition of upper stories are permitted. Except as provided above, such additions shall not extend beyond the existing or approved building footprint. Any Expansion of nonconforming structures that further encroach on the Ordinary High Water Mark setback by decreasing the distance between the structure and the Ordinary High Water mark shall require a shoreline variance.
- 2. Overwater Structures – Alteration of structures located water-ward of the Ordinary High Water Mark is prohibited except:
 - a. ~~Except for~~ Alterations to the footprint or building envelope may be permitted when required by Washington State Department of Natural Resources for light penetration prohibited.
 - a.b. Alterations that do not increase or expand the building footprint nor increase the height are permitted; and
 - b.c. Existing covered moorage may be maintained, repaired or replaced pursuant to WAC 173-27-040.
 - c. ~~Except for modifications required by the Washington Department of Natural Resources for light penetration, alterations to the footprint or building envelope are prohibited.~~

Comment [TS5]: Moved from former 'c' below and rephrased for clarity to avoid 'exception to the exception' style.

Comment [TS6]: Added to be consistent with and reinforce provision above.

~~3.~~

~~Actions shall not result in a net loss of shoreline ecological functions and processes and the applicant shall obtain all required permits or approvals prior to construction.~~

4.3. Structure within Vegetation Conservation Areas. Alteration of structures located landward of the ordinary high water within a required vegetation conservation area (VCA) that include expansion of the building footprint ~~shall not be permitted is prohibited.~~ Only interior and exterior remodels and the addition of upper stories are permitted.

Comment [TS7]: Subtitle added consistent with style above.

Comment [TS8]: Rephrased to emphasize prohibition.

5. ~~All alterations shall comply with applicable development regulations in the Olympia Municipal Code.~~

B. Unintentionally damaged or destroyed nonconforming structures.

1. In the event that a structure or building that does not conform to the shoreline setback is damaged or destroyed by fire, explosion, act of nature, or act of public enemy, the structure may be restored within the existing footprint.

~~2. In the event that a structure or building housing a nonconforming use is damaged or destroyed by fire, explosion, act of nature, or act of public enemy, such damage or destruction shall not constitute a discontinuation of the nonconforming use. In the event that a structure or building housing an existing use considered a "conditional" use is damaged or destroyed by fire, explosion, act of nature, or act of public enemy, such use may be re-established without obtaining a conditional use permit.~~

Comment [TS9]: Proposed to be deleted – this section relates to nonconforming uses, not structures. Uses are addressed below.

3. In order to take advantage of this section, a complete application for a building permit must be submitted within one year of the unintended event that caused the destruction of the structure. The applicant loses their rights under this subsection if the building permit lapses without construction of the structure proposed under the building permit.

3.82 18.34.920 – Existing Nonconforming Shoreline Uses and Lots

Comment [TS10]: Proposed change for clarity. Nonconforming provisions for uses and lots differ and combining may lead to lack of clarity. See new section 3.82 proposed below.

A. Conversion and discontinuation of nNonconforming uses in shoreline jurisdiction shall be governed by OMC 18.37.060(A) and (E).

B. ~~except e~~Expansion of nonconforming shoreline uses. The hearings examiner may authorize expansion of a use that does not conform to the Shoreline Master Program ~~provided if~~ the applicant ~~can~~ demonstrates all of the following:

1. The use clearly requires a specific site location on the shoreline not provided for under this Chapter, and

2. Extraordinary circumstances preclude reasonable use of the property in a manner consistent with this Chapter. Provided, however, that eExpansion of uses in shoreline jurisdiction that are also nonconforming with zoning use restrictions ~~shall not be authorized are not authorized by this section.~~ See OMC 18.37.060(B).

Comment [TS11]: Clarifying 'not authorized' revisions to ensure that if Olympia relaxes zoning nonconforming use provision to allow some expansion, this SMP provision would not preclude such.

~~3. The Hearing Examiner may grant a conditional use permit that allows a nonconforming use to change to another nonconforming use that would not normally be allowed in the district in which it is located; provided, that the following can be clearly demonstrated by the applicant:~~

~~a. The structure that houses the existing nonconforming use cannot be used for any permitted uses because of its particular design; and~~

- ~~b. The proposed use will be more compatible with the permitted uses of the use district than the existing use; and~~
- ~~c. Provisions have been made to safeguard the adjoining properties against any detrimental effects that might result from allowing the proposed use.~~

Comment [TS12]: This section is redundant with OMC 18.34.920 (A) referenced above.

~~4. Historic properties. The Hearing Examiner also may grant a conditional use permit for ten years to allow the following uses to change to another residential or commercial use that is not typically allowed in the district in which it is located:~~

- ~~a. An existing commercial or institutional structure in a residential zone when such structure is on the National, State or Olympia Heritage Register; or~~
- ~~b. An existing commercial or institutional structure within a National, State or Olympia Historic District, excluding the South Capitol Historic Register; or~~
- ~~c. An existing commercial or institutional structure conditioned on restoration of a structure to achieve Register status; provided, that the following can clearly be demonstrated by the applicant:~~
 - ~~1) The structure cannot be utilized for any of the uses normally permitted within that district; and~~
 - ~~2) The proposed use will not alter the historic features documented at the time of Register placement; and~~
 - ~~3) Provisions have been made to safeguard the adjoining properties and the neighborhood against any detrimental effects that might result from allowing the proposed use, subject to the requirements in 18.48.040, Additional Conditions.~~

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~~B. Nonconforming lots in shoreline jurisdiction shall be governed by OMC 18.37.080~~

- ~~1. Except as provided by OMC 18.34.920(A), a nonconforming use, when abandoned or discontinued, shall not be resumed. Discontinuation or abandonment occurs under any of the following:~~
 - ~~a. When land used for a nonconforming use shall cease to be used for that particular use for twelve (12) consecutive months; or~~
 - ~~b. When a building designed or arranged for a nonconforming use shall cease to be used for that particular use for twelve (12) consecutive months; or~~
 - ~~c. When a building designed or arranged for a conforming use but used for a nonconforming use shall cease to be used for such nonconforming use for twelve (12) consecutive months.~~
- ~~2. The Hearing Examiner may, by conditional use permit, allow a discontinued or abandoned use to resume operations if it can be proven that all of the following conditions exist:~~
 - ~~a. That discontinuation or abandonment was caused by a condition over which the owner and operator of such use had no control; and~~
 - ~~b. That it is impossible for the owner to change the use of the premises to a permitted use without causing a hardship to himself; and~~
 - ~~c. That resumption of the nonconforming use will not have a detrimental effect on surrounding properties.~~

Comment [TS13]: This section is also redundant with OMC 18.34.920 (A).

Comment [TS14]: Clauses below related to nonconforming uses, not lots. See proposed section below combining provisions of WAC 173-27-080 with local code.

ATTACHMENT B

An undeveloped lot, tract, parcel, site, or division of land located landward of the ordinary high water mark which was established in accordance with local and state subdivision requirements prior to the effective date of the Shoreline Master Program which does not conform to the present lot size standards of the Program may be developed if the lot conforms with OMC 18.70.080 and the development conforms to all other requirements of the Master Program.

Comment [TS15]: Proposed new section to specifically address legal nonconforming lots of record.