



**CITY OF BAINBRIDGE ISLAND**  
**DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT**

**SMP Regulatory Guidance Memo**

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**Title:** Applicability of General Exemptions to Critical Areas Regulations

**Number:** 15-05

**Date:** August 4, 2015

**SMP Citation:** SMP Appendix B-2 (C)4 and (D)2

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**Background**

The SMP includes both general and type-specific exemptions to the critical areas regulations that are more or less restrictive and/or inconsistent.

**Regulatory Language**

SMP Appendix B-2 (C)4 states, in part:

Exemptions. The following activities are exempt from the requirements of this chapter:

4. Structural alterations to buildings that do not increase the structural footprint or introduce new adverse impacts to an adjacent critical area, except for structures located on geologically hazardous areas which are not exempt.

SMP Appendix B-2 (D)2 states, in part:

2. Existing structures, not located in a geologically hazardous area, that were legally built or vested prior to the effective date of Ordinance No. 2012-4 may be altered if:

- a. There is no change in the footprint of the building;
- b. The remodel is entirely inside the existing building;
- c. There is no further encroachment into the buffers required pursuant to this chapter unless a Variance is first approved

### Need for Regulatory Clarification

Clarification is needed because the SMP provides general exemptions to the entire critical areas section as well as specific, more restrictive exemptions for geologically hazardous areas or their buffers. It is not clear which exemption should be used for geologically hazardous areas or their buffers.

### Analysis

These two sections were originally drafted and adopted into the City's Critical Areas Ordinance (CAO) and subsequently incorporated into the Shoreline Master Program ("SMP"). When the CAO was originally adopted by the City Council, a geologically hazardous area was defined as including both the hazardous area and its associated buffer. A later amendment to the CAO removed the buffers from the definition of geologically hazardous areas. However, the later amendment did not change the language, above, to reflect that these exemptions were not intended for geologically hazardous areas or their buffers. This inadvertent omission is accordingly also reflected in the SMP. The SMP contains more specific provisions that apply to homes and structures located within geologically hazardous areas or their buffers, and the provisions are inconsistent with SMP Appendix B-2 (C)4 and SMP Appendix B-2 (D)2. Ordinances should be given a sensible construction that avoids absurd results.

### Conclusion

SMP Appendix B-2 (C)4 and SMP Appendix B-2 (D)2 do not apply to geologically hazardous areas or their buffers.

### Approved by:

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Date