



## JEFFERSON COUNTY

### DEPARTMENT OF COMMUNITY DEVELOPMENT

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# Shoreline Substantial Development Permit (SDP), SDP Exemption, Shoreline Conditional Use and Shoreline Variance

The shoreline permit application information and instruction material is designed to help you understand the basics of how freshwater and saltwater “shorelines” (as defined below) are regulated in Jefferson County and the steps for acquiring shoreline permits or permit exemptions for activity within shoreline jurisdiction. Familiarizing yourself with this information before applying will facilitate a timely and well-informed decision on your application. In most cases, you will need to complete, sign and submit the Pre-Application Conference request form first. Department of Community Development (Department) staff will provide you the Master Permit Application (MPA), Joint Aquatic Resources Permit Application (JARPA), and other required application materials at the Pre-Application Conference and explain in greater detail the shoreline review process for your proposal. The project planner will assist you throughout the process and remain your County point of contact for information regarding the status of your shoreline, Building, and other related permits.

## About Shoreline Permits

The goal of the Washington State Shoreline Management Act (SMA) of 1971 is “to prevent the inherent harm in an uncoordinated and piecemeal development of the state’s shorelines” (RCW 90.58.020). The SMA and Section 5 of the Jefferson County Unified Development Code (UDC)—the Jefferson County Shoreline Master Program (SMP)—regulate use and development along the shorelines of Jefferson County. **Shoreline jurisdiction** (a.k.a., **shorelines**) includes all marine waters, streams with a mean annual flow greater than 20 cubic feet per second, lakes larger than 20 acres, and upland areas called “shorelands” 200 feet landward from the edge (“ordinary high water mark” or “floodway,” whichever is greater) of these waters. In addition, shoreline jurisdiction includes wetlands and river deltas hydrologically *associated* with the above-defined waters, and all wetlands within the 100-year floodplain. See SMP Appendix A for a list of jurisdictional lakes, rivers, and creeks in Jefferson County.

Any person who wishes to undertake “substantial development” within shoreline jurisdiction must first apply for a Substantial Development Permit (SDP). **Development** is defined as “a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to the act at any stage of water level” (WAC 173-27-030(6)). Examples of development regulated under the SMP include the construction or installation of houses, gazebos, decks, docks, stairs, fences, stormwater tightlines, bulkheads, roads, culverts, etc., regardless of the need for a Building Permit.

Certain developments are considered “exempt” (listed in WAC 173-27-040 and codified in SMP 3.40) from the SDP requirement. Any person who wishes to undertake “exempt development” within shoreline jurisdiction must first apply for an SDP Exemption. To say that a development is “exempt” under the SMP means only that it is exempt from the requirement to obtain an SDP. Exemption from SDP requirements does not mean that the development is exempt from the provisions of the SMP or the SMA. The SDP Exemption may contain conditions to ensure that the activity is consistent with the SMA, SMP, and other sections of the UDC.

Each shoreline is characterized by an **environment designation**, which under the current SMP are *Aquatic, Natural, Conservancy, Suburban, Urban*, or a combination of these. The Classification Table (SMP 4.40) sets forth permitted, conditional and prohibited uses within the various shoreline environment designations. An application is categorized in this way as a Primary Use SDP, Secondary Use SDP, or Shoreline Conditional Use. If an element of the proposal varies from the policies and performance standards of the SMP, a Shoreline Variance will also be required. Be advised that “exempt development” may require review under the State Environmental Policy Act (SEPA), be processed as a Conditional Use depending on the environment designation, and/or be accompanied by a Shoreline Variance according to the specifications of the proposal.

The Washington Department of Ecology (DOE) shares responsibility for administering the SMA with local government (WAC 173-27). Shoreline Conditional Use Permits and Variances must be submitted to DOE for review after issuance by the local government. DOE has 30 days to approve, approve with conditions, or disapprove the action. Barring appeal, Shoreline SDPs and SDP Exemptions issued by the local government represent the final decision under shoreline review.

## Process

**Step 1 – Pre-Application Conference Required (Optional for SDP Exemptions):** A Pre-Application Conference (Pre-App.) is required for an SDP, Conditional Use, and Variance and is optional but strongly encouraged for many types of SDP Exemptions. The Department may require a Pre-App. for an SDP Exemption application that is not categorically exempt from review under SEPA or otherwise presents complex review issues. Conceptual plans, County requirements, necessary permits, etc., and answers to related questions are discussed at the Pre-App., which may occur either at the Department or at the project site, when possible in the company of the Area Habitat Biologist representing the Washington Department of Fish and Wildlife (WDFW), if Hydraulic Project Approval (HPA) is also required (see WAC 220-110-010).

Staff will provide you with the required application forms at the Pre-App. If your application does not require a Pre-App., those forms are found at the Department and on the Department website. The JARPA is also found on-line at this URL: <http://www.ecy.wa.gov/programs/sea/pac/jarpa.html>, and the SEPA Environmental Checklist at this URL: <http://www.ecy.wa.gov/programs/sea/sepa/forms.htm>. We recommend that you develop and submit a “Conceptual Design,” as described in the Pre-App. request form, *before* completing the JARPA and final plan designs. Your project proposal may be influenced by the Pre-App., which is intended to identify early in the process elements of your proposal that may be in conflict with Jefferson County policies, ordinances, and performance standards. Remedying these issues before applying for a permit saves times and fosters a smoother permit process.

**Step 2 – Determination of Completeness:** Following submittal of your application, which will include the MPA; JARPA; location map, plan view site plan, and cross-sectional drawing as described in the one-page “Guidance for Completion of Drawings” included among the JARPA instructions; and the SEPA Environmental Checklist (if necessary, see WAC 197-11-800 for categorical exemptions); staff will make a determination within 28 days as to whether your application is complete. You may be required to submit additional information within a specified time period.

**Step 3 – Formal Application Review, Public and Agency Comment Period, and Decision:** Following the determination of completeness, a final decision must be made by the County within 120 calendar days, though typically the timeframe is shorter. There are instances, however, when the “clock” is stopped to obtain additional information or pursue studies relevant to project review. The specific process to be followed is determined by the Permit Type as established in UDC Table 8-1. In summary, shoreline review is categorized in this fashion in Table 8-1:

- Type I: SDP Exemptions, though SDP Exemptions that are not categorically exempt from SEPA review are processed as a Type II decision due to public notice requirements related to SEPA review (see UDC 8.10 for SEPA implementation)
- Type II: Primary Use SDP
- Type III: Secondary Use SDP, Shoreline Conditional Use Permit, Shoreline Variance

Public notice requirements are detailed in UDC Section 8. In general, public and agency comment periods for shoreline permits are 30 days (UDC 8.3.8.b). For Type II permits, following the comment period the Department renders a decision, subject to appeal. For Type III permits, following the comment period the Department schedules an Open Record Public Hearing, after which the Hearing Examiner renders a written decision, subject to appeal, within 10 working days. Shoreline decisions are transmitted to DOE per WAC 173-27-130. *For Shoreline Conditional Use Permits and Shoreline Variances, DOE has 30 days to approve, approve with conditions, or disapprove the action.* DOE will notify the applicant of the concurrence decision and, if approved, work may begin after a 21-day appeal period, unless an appeal is made to the Shoreline Hearings Board. SDPs issued by the local government represent the final decision under shoreline review, barring appeal under the UDC or to the Shoreline Hearings Board within 21 days after DOE receives the transmittal. SDP Exemptions can only be appealed to Superior Court. UDC 8.5 and 8.10.12 (SEPA) outline the local appeal process. *SDP Exemptions expire in one year. For Shoreline SDPs, Conditional Use Permits, and Variances, permitted activities must be commenced within two years* (with the possibility of a one-year extension) *and authorization to conduct permitted development activities expires in five years* (with the possibility of a one-year extension). See WAC 173-27-090.

**Step 4 – Building Permit and other permits/approvals may be required:** It is important to note that many shoreline permits and SDP Exemptions require a Building Permit before construction may commence. The shoreline approval is a land use approval only. The Building Permit application may be submitted concurrently with the shoreline application or after shoreline approval is acquired. The project planner will assist the applicant in determining whether a Building Permit and/or other County permits, such as a Stormwater Management Permit, are required. Permits or approvals from other agencies may also be required, such as HPA from WDFW, authorization from the Washington Department of Natural Resources for use of state-owned aquatic lands, Army Corps of Engineers (COE) Section 404 or 10 permit, or Endangered Species Act consultation. The JARPA is intended for multi-agency review and begins with a check box for other aquatic resources permits or approvals required for the proposal. The project planner will assist you in determining what is required by other agencies, but *it is ultimately the responsibility of the applicant to ensure that all necessary permits and approvals are acquired.* The Department generally forwards the JARPA and other application materials to agencies with jurisdiction during the project review process. You may be contacted directly by those agencies and asked to provide additional information. We will help coordinate multi-agency review as much as possible.

## Approval Criteria and Permit Conditions

Your shoreline application will be evaluated on the basis of the information you provide, the criteria listed in the relevant section of the SMP and other applicable sections of the UDC, including the provisions for environmentally sensitive areas. Shoreline use and development must also be consistent with the SMA and the *Jefferson County Comprehensive Plan*. Section 4 of the SMP describes the shoreline environment designations and project classifications (SDP and Conditional Use), including relevant review criteria. Section 5 outlines policies and performance standards for various uses and development within shoreline jurisdiction. Section 7 provides criteria for review of Variances. If your proposed use or development is not listed in the Classification Table (4.40), it will be processed as a Conditional Use.

The Department or the Hearing Examiner may place conditions on your shoreline permit or SDP Exemption in order to ensure consistency with the SMA, SMP, UDC and the *Comprehensive Plan*. Permit conditions may also be established as a result of SEPA review. At times, a multi-agency review process may result in a request to the applicant for additional information based on the permit or approval process of another agency with jurisdiction. Information, mitigation measures, or permit conditions found in studies, permits or approvals required by other agencies may become permit conditions in Jefferson County permits granted to the applicant.

## Where to Find More Information

The UDC is found at the Department or on-line at this URL: <http://www.co.jefferson.wa.us/commdevelopment/>. The current SMP is Section 5 of the UDC. A July 2000 draft SMP is also found on-line at the URL above. Jefferson County will update the SMP within the next few years, using the July 2000 draft as a framework. Until such time as the SMP is updated through a public participation and legislative process, the 1989 SMP with amendments remains in effect. All County codes may be viewed or purchased at the Department. Other useful information may be found on-line:

- DOE Shorelands & Wetlands (<http://www.ecy.wa.gov/programs/sea/shorelan.html>)
- State Permit Assistance Center (<http://www.ecy.wa.gov/programs/sea/pac/index.html> or call 1-800-917-0043)
- Washington Administrative Code (<http://slc.leg.wa.gov/wacbytitle.htm> then click Title 173 WAC for DOE)
- WDFW Hydraulic Project Approval (<http://www.wa.gov/wdfw/hab/hpapage.htm>)
- US Army Corps of Engineers Seattle District (<http://nws.usace.army.mil/reg/reg.htm>)

## COMMONLY REQUESTED INFORMATION ABOUT SHORELINE USE AND DEVELOPMENT

### Single-Family Residence Construction in Shoreline Jurisdiction or *near* Marine Shorelines

#### *SDP EXEMPTION, REQUIRED APPLICATION FORMS, AND STORMWATER MANAGEMENT PROVISIONS*

SMP 3.402.5 provides that construction by an owner, lessee, or contract purchaser of a single-family residence for the owner's or owner's family's use is considered "exempt development" under certain provisions. Projects of this nature in shoreline jurisdiction require a written SDP Exemption along with the Building Permit and other applicable Jefferson County approvals. Generally, a JARPA form will *not* be required to accompany the MLA form in order to make a complete application for proposed construction of a single-family residence in shoreline jurisdiction that meets the criteria of SMP 3.402.5. Please note that there are special stormwater management provisions for construction within 500 feet of any marine shoreline, pursuant to UDC 3.6.5.c(3) Seawater Intrusion Areas. Refer to the **Stormwater Calculation Sheet** and UDC 6.7 **Stormwater Management Standards** for more information about the stormwater management requirements for residential construction near marine shorelines. Generally, if the UDC Administrator concurs that stormwater infiltration is not "practicable" and a tightline stormwater runoff utility that terminates at or near the marine shoreline is included in the development application, a JARPA will be required along with the MLA and other application materials. SEPA review and HPA from WDFW may also be required depending on the specifications of the proposal. Additionally, a **Drainage and Erosion Control Plan** may be required even if the development falls below the threshold levels found in UDC 6.7 if there are environmentally sensitive areas on the parcel (see UDC 3.6.4 *et seq.*, 6.6.4, 6.7, the Stormwater Management Permits information sheet, and the section below concerning removal of vegetation along marine shorelines).

#### *RESIDENTIAL DEVELOPMENT SETBACKS FROM THE ORDINARY HIGH WATER MARK OR TOP OF BANK*

SMP 5.160 Residential Development governs residential setbacks. Performance Standard #10 of that section states, "The standard setback for residential structures, including common appurtenant structures such as garages and workshops, shall be thirty (30) feet or one (1) foot for each foot of bank height, whichever is greater. This setback shall be measured from the bank's edge when the bank height exceeds 10 feet. When the bank's height is less than 10 feet, the setback shall be measured from the ordinary high water mark. The setback shall not exceed 100 feet." Refer to SMP 5.160 for additional provisions related to residential development in shoreline jurisdiction. Please note that recommendations found in geotechnical reports prepared pursuant to UDC 3.6.7 Geologically Hazardous Areas may extend the required building setback beyond that of the standard shoreline setback prescribed by SMP 5.160.

## Removal of Vegetation and Other Land-Disturbing Activities along Marine Shorelines

UDC 3.6.4 addresses environmentally sensitive areas, among which are **fish and wildlife habitat areas** (FWHAs). FWHAs include marine shorelines per UDC 3.6.8.a, in that Type 1 waters include all marine waters of the state and at this time marine shorelines provide primary association habitat for Federal and State-listed endangered, threatened, and sensitive species (i.e., Puget Sound Chinook, Hood Canal Summer Chum, and/or Coastal/Puget Sound Bull Trout). Among the provisions in UDC 3.6.8 Fish and Wildlife Habitat Areas, are **general prohibitions** related to the alteration of FWHAs or their buffers (UDC 3.6.8.f)—including clearing, grading, and removing vegetation—regardless of whether a permit is required for the activity or not. Additionally, there are **protection standards** (UDC 8.6.8.g) that address drainage and erosion control, grading, vegetation retention, and buffers for activities on parcels that contain a designated FHWA or its buffer. UDC 3.6.8.g(5) states that FWHAs shall have buffers and building setbacks established. The FHWA buffer for marine shorelines is 30 (thirty) feet, which is the minimum “standard setback for residential structures” in the SMP (see previous paragraph). The buffer/setback is measured from the ordinary high water mark or the top of the bank for banks that exceed 10 feet in vertical height. *Please note that land-disturbing activity in the 30-foot marine shoreline buffer, including the removal of vegetation, may occur only with approval from this Department under specific circumstances.*

If the marine shoreline parcel in question also contains a **geologically hazardous area**—such as an erosion, landslide, or seismic hazard area—additional protection standards apply (UDC 3.6.7(b)), including the provision that excavation, grading and earthwork construction regulated in UDC 3.6.7 shall only be allowed from April 1 to November 1, unless the applicant demonstrates that such activities would not result in impacts contrary to the protection requirements therein. Landslide hazard area buffer widths are determined pursuant to UDC 3.6.7(b)(6) and, in general, a geotechnical report prepared by a qualified professional is required for a complete development application pursuant to UDC 3.6.7(b)(9).

For more information on this topic, refer to DOE Publication 93-31, “Vegetation Management: A Guide for Puget Sound Bluff Property Owners.” DOE offers property owner guides on its website, including a “Vegetation Management Guide” (<http://www.ecy.wa.gov/programs/sea/pubs/93-31/intro.html>), a guide to “Slope Stabilization and Erosion Control Using Vegetation” (<http://www.ecy.wa.gov/programs/sea/pubs/93-30/intro.html>), a guide to “Surface Water and Groundwater on Coastal Bluffs” (<http://www.ecy.wa.gov/programs/sea/pubs/95-107/intro.html>), and a guide entitled, “At Home with Wetlands: A Landowner’s Guide” (<http://www.ecy.wa.gov/programs/sea/pubs/90031/index.html>). Call DOE Publications at (360) 407-7472 or visit the DOE website to order hard copies of these or other DOE publications.

## Shore Defense Works

“Soft-bank protection” methods are generally preferred over “hard-bank protection” methods by regulatory agencies, including Jefferson County. Among soft-bank protection methods are biotechnical bank stabilization and bioengineering, where vegetation is planted specifically to address erosion and slope stability; the placement and fastening of large wood along the toe of a bank to retain sediments and absorb wave energy; and beach nourishment projects, where sediment is artificially added to the beach to re-create the natural beach conditions that have a certain amount of built-in erosion protection. Hard-bank protection methods include seawalls and wood and riprap bulkheads. For more information on bank protection methods, please refer to DOE Publication #00-06-012, “Alternative Bank Protection Methods for Puget Sound Shorelines,” May 2000, and the DOE property owner guides cited above. Note that a shore defense work proposal must comply with the UDC section on environmentally sensitive areas (3.6.4-3.6.10), as well as the SMP.

## Pre-Existing Uses and Development

Shoreline uses or developments that pre-date the SMA or the Jefferson County SMP are called “pre-existing.” If the use of a development is consistent with the SMP, permits are only required if new development is proposed. If the use of a pre-existing development is proposed to be changed, the new use must be consistent with the SMP. If the proposed new use is a Conditional Use in the SMP, a Conditional Use Permit is required whether or not new development is proposed.

“Legal nonconforming” describes those uses or structures legally constructed or established prior to the effective date of the applicable SMP provisions that do not conform to present shoreline management rules or policies. Legal nonconforming use and development is regulated pursuant to WAC 173-27-080. Generally, such “grandfathered” use and development may continue as long as it is not enlarged, intensified, increased, or altered in any way that increases its nonconformity. Nonconforming uses are considered abandoned if they are discontinued for more than twelve consecutive months or for twelve months during any two-year period. Any subsequent use must conform to the requirements of the SMA and SMP and cannot be changed to another nonconforming use or moved any distance within the shorelines of the state. It is sometimes important to distinguish between a nonconforming structure with a conforming use and a nonconforming use. Please contact the Department for more information about specific pre-existing use or development.

[end]