

This Preliminary Draft SMP (PD SMP) is based on comments from staff, advisory committees, Ecology, and the general public on the May 2008 Revised Committee Working Draft SMP and subsequent revised sections thereof. The proposed SMP policies and regulations are packaged together here as a stand-alone document for Planning Commission review. Ultimately policies, regulations, and administrative provisions may reside in separate documents including the Jefferson County Comprehensive Plan and applicable sections of the County's Unified Development Code, Title 18 of the Jefferson County Code.

ARTICLE 9 – PERMIT CRITERIA AND EXEMPTIONS

1. Substantial Development Permit Criteria

- A. To be authorized, all uses and developments shall be planned and carried out in a manner that is consistent with this Program and the policy of the Act as required by RCW 90.58.140(1), regardless of whether a shoreline permit, statement of exemption, shoreline variance, or shoreline conditional use permit is required.

2. Exemptions from Shoreline Substantial Development Permit Process

- A. Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemptions from the substantial development permit process.
- B. An exemption from the substantial development permit process is not an exemption from compliance with the Act or this Program, or from any other regulatory requirements. To be authorized, all uses and developments must be consistent with the policies and provisions of this Program and the Act.
- C. A use or development or use that is listed as a conditional use pursuant to this Program or is an unlisted use or development, must obtain a conditional use permit even if the development or use does not require a substantial development permit.
- D. When a development or use is proposed that does not comply with the bulk, dimensional and/or performance standards of the Program, such development or use shall only be authorized by approval of a shoreline variance even if the development or use does not require a substantial development permit.
- E. The burden of proof that a development or use is exempt is on the applicant/proponent of the exempt development action.
- F. If any part of a proposed development is not eligible for exemption, then a substantial development permit is required for the entire proposed development project.
- G. All permits or statements of exemption issued for development or use within shoreline jurisdiction shall include a written findings prepared by the Administrator, including compliance with bulk and dimensional standards and policies and regulations of this Program. The Administrator may attach conditions to the approval of exempt developments and/or uses as necessary to assure consistency of the project with the Act and the Program.

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3. Exemptions Listed

A. The following activities shall be considered exempt from the requirement to obtain a shoreline substantial development permit in accordance with RCW 90.58.030 and WAC 173-27-040.

1. Fair Market Value - Any development of which the total cost or fair market value, whichever is higher, does not exceed five thousand seven hundred eighteen dollars (\$5,718), if such development does not materially interfere with the normal public use of the water or shorelines of the state. For the purpose of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state as defined in RCW 90.58.030(2)(c). The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials.
2. Maintenance & Repair - Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. Normal maintenance includes those usual acts to prevent a decline, lapse or cessation from a lawfully established condition. Normal repair means to restore a development to a state comparable to its original condition within a reasonable period after decay or partial destruction except where repair causes substantial adverse effects to the shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or the environment.
3. Residential Bulkhead - Construction of the normal protective bulkhead common to single-family residences. A normal protective bulkhead includes those structural and nonstructural developments installed at or near, and parallel to, the ordinary high water mark for the sole purpose of protecting an existing single-family residence and appurtenant structures from loss or damage by erosion. A normal protective bulkhead is not exempt if constructed for the purpose of creating dry land. When a vertical or near vertical wall is being constructed or reconstructed, not more than one (1) cubic yard of fill per one (1) foot of wall may be used for backfill. When an existing bulkhead is being repaired by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated such that an ordinary high water mark has been established by the presence and action of water landward of the bulkhead, then the replacement bulkhead must be located at or near the actual ordinary high water mark. Beach nourishment and bioengineering erosion control

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1 projects may be considered a normal protective bulkhead when any structural
2 elements are consistent with the above requirements and when the project has
3 been approved by the Washington Department of Fish and Wildlife.

4 4. Emergency Construction - Emergency construction necessary to protect property
5 from damage by the elements. An emergency is an unanticipated and imminent
6 threat to public health, safety or the environment that requires immediate action
7 within a time too short to allow full compliance with this Program. Emergency
8 construction does not include development of new permanent protective
9 structures where none previously existed. Where new protective structures are
10 deemed by the Administrator to be the appropriate means to address the
11 emergency situation, upon abatement of the emergency situation the new structure
12 shall be removed or any permit that would have been required, absent an
13 emergency, pursuant to RCW 90.58, WAC 173-27 or this Program, shall be
14 obtained. All emergency construction shall be consistent with the policies of
15 RCW 90.58 and this Program. As a general matter, flooding or other seasonal
16 events that can be anticipated and may occur but that are not imminent are not an
17 emergency.

18 5. Agriculture - Construction and practices normal or necessary for farming,
19 irrigation, and ranching activities, including agricultural service roads and
20 utilities, construction of a barn or similar agricultural structure, and the
21 construction and maintenance of irrigation structures including, but not limited to,
22 head gates, pumping facilities, and irrigation channels. A feedlot of any size, all
23 processing plants, other activities of a commercial nature, or alteration of the
24 contour of the shorelands by leveling or filling other than that which results from
25 normal cultivation, shall not be considered normal or necessary farming or
26 ranching activities. A feedlot shall be an enclosure or facility used or capable of
27 being used for feeding livestock hay, grain, silage, or other livestock feed, but
28 shall not include land for growing crops or vegetation for livestock feeding and/or
29 grazing, nor shall it include normal livestock wintering operations.

30 6. Drainage - Operation and maintenance of any system of dikes, ditches, drains, or
31 other facilities existing on June 4, 1975 that were created, developed or utilized,
32 primarily as a part of an agricultural drainage or diking system.

33 7. Navigation Aids - Construction or modification, by or under the authority of the
34 Coast Guard or a designated port management authority, of navigational aids such
35 as channel markers and anchor buoys.

36 8. Single-Family Residences - Construction on shorelands by an owner, lessee, or
37 contract purchaser of a single-family residence for their own use or for the use of
38 their family, which residence does not exceed a height of thirty-five (35) feet
39 above average grade level and that meets all requirements of the state agency or
40 local government having jurisdiction thereof. Single-family residence means a
41 detached dwelling designed for and occupied by one (1) family including those

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1 structures and developments within a contiguous ownership which are a normal
2 appurtenance as defined in Article 2.

- 3 9. Residential Docks - Construction of an individual/single-user or shared dock for
4 private non-commercial pleasure craft, for use by the owner, lessee, or contract
5 purchaser of a single-family or multi-family residences. The private dock
6 exemption applies if either:

- 7 i. In saltwater, the fair market value of the dock does not exceed two
8 thousand-five hundred dollars (\$2,500). For the purpose of this section
9 saltwater shall include the tidally influenced marine and estuarine water
10 areas of the state including local marine waters and all associated bays,
11 inlets and estuaries;
12 ii. In fresh waters the fair market value of the dock does not exceed ten
13 thousand dollars (\$10,000), but if subsequent construction having a fair
14 market value exceeding two thousand-five hundred dollars (\$2,500) occurs
15 within five (5) years of the completion of the prior construction, the
16 subsequent construction shall be considered a substantial development for
17 the purpose of this Program.

- 18 10. Irrigation - Operation, maintenance, or construction of canals, waterways, drains,
19 reservoirs, or other facilities that now exist or are hereafter created or developed
20 as a part of an irrigation system for the primary purpose of making use of system
21 waters including return flow and artificially stored ground water for the irrigation
22 of lands, provided that this exemption shall not apply to construction of new
23 irrigation facilities proposed after December 17, 2003.

- 24 11. State Property - The marking of property lines or corners on state owned lands,
25 when such marking does not significantly interfere with normal public use of the
26 surface of the water.

- 27 12. Energy Facilities - Any project with a certification from the governor pursuant to
28 RCW 80.50.

- 29 13. Site Exploration - Site exploration and investigation activities that are prerequisite
30 to preparation of a development application for authorization under this Program,
31 if:

- 32 i. The activity does not interfere with the normal public use of surface waters;
33 ii. The activity will have no significant adverse impact on the environment
34 including but not limited to fish, wildlife, fish or wildlife habitat, water
35 quality and aesthetic values;
36 iii. The activity does not involve the installation of any structure and, upon
37 completion of the activity, the vegetation and land configuration of the site
38 are restored to conditions existing before the activity;
39 iv. A private entity seeking development authorization under this section first
40 posts a performance bond or provides other evidence of financial

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- 1 responsibility to the Administrator to ensure that the site is restored to
2 preexisting conditions; and
3 v. The activity is not subject to the permit requirements of RCW 90.58.550.
- 4 14. Noxious Weeds - The process of removing or controlling aquatic noxious weeds,
5 as defined in RCW 17.26.020, through the use of an herbicide or other treatment
6 methods applicable to weed control that are recommended by a final
7 environmental impact statement published by the Department of Agriculture or
8 the Department of Ecology jointly with other state agencies under RCW 43.21C.
- 9 15. Watershed Restoration - Watershed restoration projects as defined herein and by
10 RCW 89.08.460. The Administrator shall review the projects for consistency with
11 the Program in an expeditious manner and shall issue its decision along with any
12 conditions within forty-five (45) days of receiving a complete application form
13 from the applicant/proponent. No fee may be charged for accepting and
14 processing applications for watershed restoration projects as defined in this
15 section.
- 16 16. "Watershed restoration project" means a public or private project authorized by
17 the sponsor of a watershed restoration plan that implements the plan or part of the
18 plan and consists of one or more of the following activities:
- 19 i. A project that involves less than ten (10) miles of stream reach, in which
20 less than twenty-five (25) cubic yards of sand, gravel, or soil is removed,
21 imported, disturbed or discharged, and in which no existing vegetation is
22 removed except as minimally necessary to facilitate additional plantings;
23 ii. A project for the restoration of an eroded or unstable stream bank that
24 employs the principles of bioengineering, including limited use of rock as a
25 stabilization only at the toe of the bank, and with primary emphasis on using
26 native vegetation to control erosive forces of flowing water; or
27 iii. A project primarily designed to improve fish and wildlife habitat, remove or
28 reduce impediments to migration of fish, or enhance the fishery resource
29 available for use by all of the citizens of the state, provided that any
30 structures, other than a bridge or culvert or instream habitat enhancement
31 structure associated with the project, is less than two hundred (200) square
32 feet in floor area and is located above the ordinary high water mark.
- 33 17. "Watershed restoration plan" means a plan, developed or sponsored by the
34 Department of Fish and Wildlife, the Department of Ecology, the Department of
35 Transportation, a federally recognized Indian tribe acting within and pursuant to
36 its authority, a city, a county or a conservation district that provides a general
37 program and implementation measures or actions for the preservation, restoration,
38 recreation, or enhancement of the natural resource character and ecology of a
39 stream, stream segment, drainage area or watershed for which agency and public
40 review has been conducted pursuant to RCW 43.21C, the State Environmental
41 Policy Act.

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1 18. A public or private project, the primary purpose of which is to improve fish or
2 wildlife habitat or fish passage, when all of the following apply:

- 3 i. The project has been approved in writing by the Department of Fish and
4 Wildlife as necessary for the improvement of the habitat or passage and
5 appropriately designed and sited to accomplish the intended purpose;
6 ii. The project received Hydraulic Project Approval by the Department of Fish
7 and Wildlife pursuant to RCW 75.20; and
8 iii. The Administrator has determined that the project is consistent with this
9 Program. The Administrator shall make such determination in a timely
10 manner and provide it by letter to the project proponent.

11 **4. Statements of Exemption**

12 A. The Administrator is hereby authorized to grant or deny requests for statements of
13 exemption from the shoreline substantial development permit requirement for uses and
14 developments within shorelines that are specifically listed above. Such statements shall
15 be applied for on forms provided by the Administrator. The statement shall be in
16 writing and shall indicate the specific exemption of this Program that is being applied
17 to the development, and shall provide a summary of the Administrator's analysis of the
18 consistency of the project with this Program and the Act. As appropriate, such
19 statements of exemptions shall contain conditions and/or mitigating measures of
20 approval to achieve consistency and compliance with the provisions of the Program and
21 Act. A denial of an exemption shall be in writing and shall identify the reason(s) for
22 the denial. The Administrator's actions on the issuance of a statement of exemption or
23 a denial are subject to appeal pursuant to the appeal provisions in Article 10.

24 B. Exempt activities related to any of the following shall not be conducted until a
25 statement of exemption has been obtained from the Administrator: dredging, flood
26 control works and instream structures, archaeological or historic site alteration, clearing
27 and ground disturbing activities such as landfill or excavation, dock construction, shore
28 stabilization, free-standing signs, or any development within a Priority Aquatic,
29 Aquatic or Natural shoreline designation; provided that no separate written statement of
30 exemption is required for the construction of a single-family residence when a County
31 building permit application has been reviewed and approved by the Administrator;
32 provided further, that no statement of exemption is required for emergency
33 development pursuant to WAC 173-14-040(1)(d).

34 C. No statement of exemption shall be required for other exempt uses or developments
35 unless the Administrator has cause to believe a substantial question exists as to
36 qualifications of the specific use or development for the exemption, or the
37 Administrator determines there is a likelihood of adverse impacts to shoreline
38 ecological functions.

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- 1 D. Whenever the exempt activity also requires a U.S. Army Corps of Engineers Section 10
2 permit under the Rivers and Harbors Act of 1899 or a Section 404 permit under the
3 Federal Water Pollution Control Act of 1972, a copy of the written statement of
4 exemption shall be sent to the applicant/proponent and Ecology pursuant to WAC 173-
5 27-050.

6 5. Variance Permit Criteria

- 7 A. The purpose of a variance is to grant relief to specific bulk or dimensional requirements
8 set forth in this Program where there are extraordinary or unique circumstances relating
9 to the property such that the strict implementation of this Program would impose
10 unnecessary hardships on the applicant/proponent or thwart the policies set forth in
11 RCW 90.58.020. Use restrictions may not be varied.

- 12 B. Variances will be granted in any circumstance where denial would result in a thwarting
13 of the policy enumerated in RCW 90.58.020. In all instances extraordinary
14 circumstances shall be shown and the public interest shall suffer no substantial
15 detrimental effect.

- 16 C. Proposals that qualify as a Reasonable Economic Use Variance pursuant to JCC
17 Chapter 18.15.220 shall require a shoreline variance.

- 18 D. Variances may be authorized, provided the applicant/proponent can demonstrate all of
19 the following:

- 20 1. That the strict application of the bulk or dimensional criteria set forth in
21 this Program precludes or significantly interferes with a reasonable
22 permitted use of the property;
- 23 2. That the hardship described above is specifically related to the property,
24 and is the result of conditions such as irregular lot shape, size, or natural
25 features and the application of this Program, and not, for example, from
26 deed restrictions or the applicant's/proponent's own actions;
- 27 3. That the design of the project will be compatible with other permitted
28 activities in the area and will not cause adverse effects on adjacent
29 properties or the shoreline environment;
- 30 4. That the variance authorized does not constitute a grant of special
31 privilege not enjoyed by the other properties in the area, and will be the
32 minimum necessary to afford relief;
- 33 5. That the public interest will suffer no substantial detrimental effect;
- 34 6. That the public rights of navigation and use of the shorelines will not be
35 materially interfered with by the granting of the variance; and

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1 7. Mitigation is provided to offset unavoidable adverse impacts caused by
2 the proposed development or use.

3 E. In the granting of all variances, consideration shall be given to the cumulative
4 environmental impact of additional requests for like actions in the area. For example, if
5 variances were granted to other developments in the area where similar circumstances
6 exist, the total of the variances should also remain consistent with the policies of RCW
7 90.58.020 and should not produce significant adverse effects to the shoreline ecological
8 functions and processes or other users.

9 F. Other factors that may be considered in the review of variance requests include the
10 conservation of valuable natural resources and the protection of views from nearby
11 roads, surrounding properties and public areas. In addition, variance requests based on
12 the applicant's/proponent's desire to enhance the view from the subject development
13 may be granted where there are no likely detrimental effects to existing or future users,
14 other features or shoreline ecological functions and/or processes, and where reasonable
15 alternatives of equal or greater consistency with this Program are not available. In
16 platted residential areas, variances shall not be granted that allow a greater height or
17 lesser shore setback than what is typical for the immediate block or area.

18 G. Permits and/or variances applied for or approved under other County codes shall not be
19 construed as shoreline permits under this Program.

20 **6. Conditional Use Permit Criteria**

21 A. The purpose of a conditional use permit is to allow greater flexibility in administering
22 the use regulations of this Program in a manner consistent with the policies of RCW
23 90.58.020. In authorizing a conditional use, special conditions may be attached to the
24 permit by the County or the Department of Ecology to control any undesirable effects
25 of the proposed use.

26 B. Uses specifically classified or set forth in this Program as conditional uses and unlisted
27 uses may be authorized provided the applicant/proponent can demonstrate all of the
28 following:

- 29 1. That the proposed use will be consistent with the policies of RCW
30 90.58.020 and this Program.
- 31 2. That the proposed use will not interfere with normal public use of public
32 shorelines.
- 33 3. That the proposed use of the site and design of the project will be
34 compatible with other permitted uses within the area.
- 35 4. That the proposed use will not cause adverse effects to the shoreline
36 environment in which it is to be located.

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1 5. That the public interest suffers no substantial detrimental effect.

2 C. In the granting of all conditional use permits, consideration shall be given to the
3 cumulative environmental impact of additional requests for like actions in the area. For
4 example, if conditional use permits were granted for other developments in the area
5 where similar circumstances exist, the sum of the conditional uses and their impacts
6 should also remain consistent with the policies of RCW 90.58.020 and should not
7 produce a significant adverse effect to the shoreline ecological functions and processes
8 or other users.

9 D. Permits and/or variances applied for or approved under County zoning or subdivision
10 code requirements shall not be construed as shoreline variances under this Program.

11 **7. Unclassified Uses**

12 A. Other uses not specifically classified or set forth in this Program, including the
13 expansion or resumption of a non-conforming use, may be authorized as conditional
14 uses provided the applicant/proponent can demonstrate that the proposal will satisfy the
15 criteria set forth above, and that the use clearly requires a specific site location on the
16 shoreline not provided for under the Program, and extraordinary circumstances
17 preclude reasonable use of the property in a manner consistent with the use regulations
18 of this Program.

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