



SMP Periodic Review

January 16, 2024



 **BERK**

 **SHANNON & WILSON**

Shoreline Exemptions

- Some types of development are exempt from requirements for a substantial development permit. The law ([RCW.90.58.030\(3\)\(e\)](#)) calls out shoreline development and activities that are not considered substantial development and therefore are not subject to this specific permit requirement. (Or associated fees.)
 - Effective July 1, 2022, the dollar threshold for **substantial development** is \$8,504 ([WSR-22-11-036](#)).
 - The dollar amount is adjusted for inflation by the Office of Financial Management every five years. The next adjustment is due July 1, 2027.
 - Effective Aug. 5, 2023, the dollar threshold for **substantial development for construction of residential docks** is \$28,000 (RCW 90.58.030(3)(e)(vii)(I)) or \$13,900 for all other docks constructed in fresh waters RCW 90.58.030(3)(e)(vii)(II).
 - The dollar amount is adjusted for inflation by the Office of Financial Management every five years. The next adjustment is due July 1, 2028.
 - Exempt development must still meet SMP policies and regulations.
 - 18.25.550 (2) 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.

Proposed Pathways on Single Family Homes

Standard

Conforming Lot

Meet Standard Buffer
Marine & River: 150 feet
Lake: 100 feet

Process for reducing/averaging buffer
to 50-75% of standard

Modest Home Provision (Nonconforming Lot)

Non-conforming Lot Depth defined

Buffer reduced to min. necessary and
not less than 30 feet

Building/footprint size retained (2,500
sf house and 1,000 sf driveway)

Not subject to geologic hazards

Enhance 80% of shoreline frontage

Common Line (now Conforming Lot)

Accommodate Shoreline Views

Address parameters of side-by-side
homes

Enhance 80% of shoreline frontage

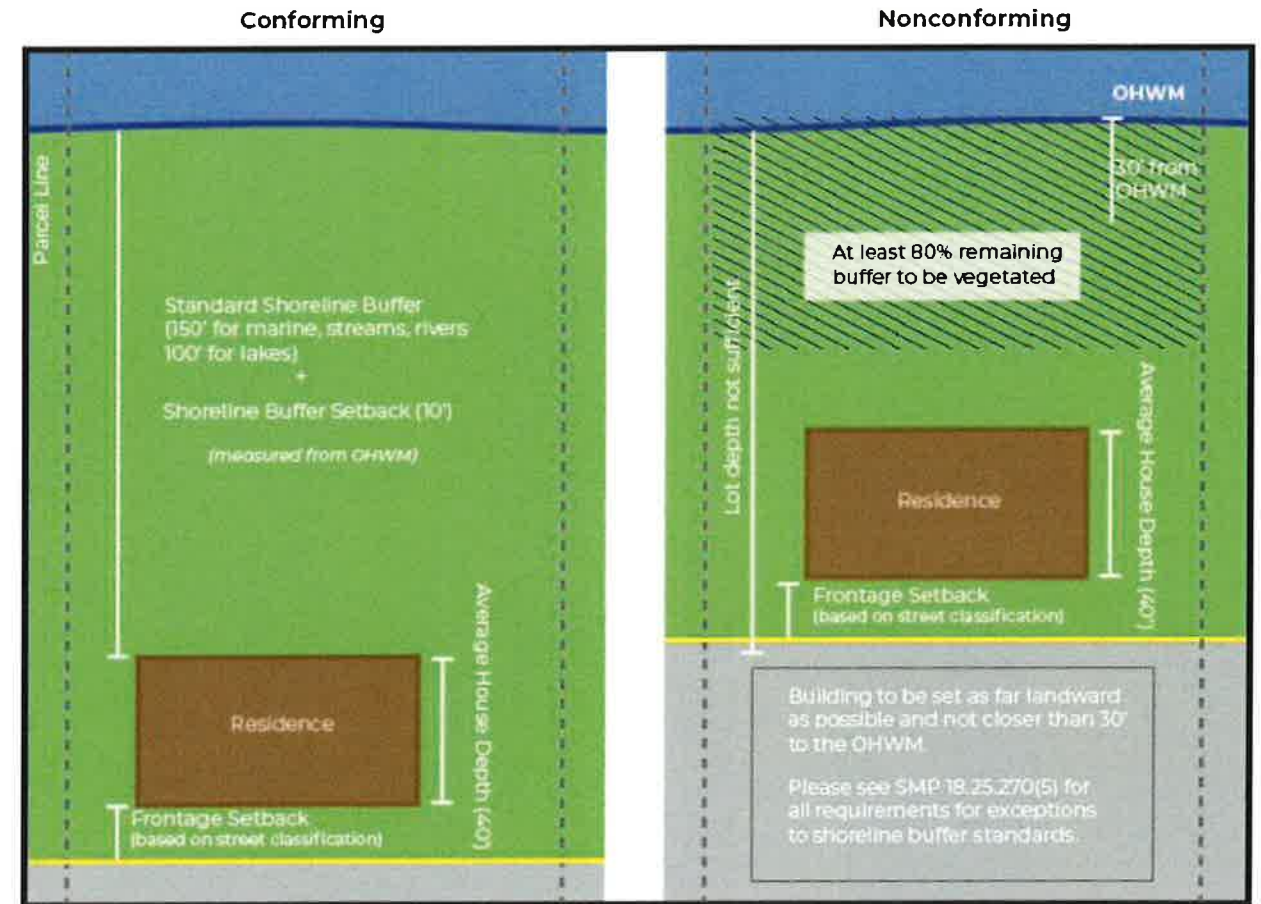
Modest Home Provisions

■ Purpose

- Allow home on lot that is nonconforming in depth to allow reasonable sized home while protecting buffer functions (It could be used by new home or replacement.)

■ Revisions

- Clarified that Modest Home is for non-conforming lot and defined dimensions in non-conforming lot definition.
 - An example is: standard marine shoreline buffer 150 feet + shoreline building setback 10 feet + common house depth 40 feet + frontage setback 20 feet = 220 feet.
- Size of home/driveway retained: 2,500 sf house and 1,000 sf driveway
- Criteria includes minimizing intrusion and enhancing 80% of shoreline frontage.
- Added criteria as recommended by Ecology (e.g. no bank).
- Provide option for applicant to submit a geotechnical report to prove the site is not subject to geologic hazards.



Definition of modest home

Nonconforming Lot Definition

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- (h) "Nonconforming lot" means a legal lot of record in existence prior to the effective date of this program and any amendments thereto, on which it is not possible to construct a primary structure outside of/landward of the standard shoreline buffer or which does not otherwise meet the minimum due to insufficient lot size requirements as set forth in this program, depth or width. Depth of lot is measured as the distance from ordinary high water mark to the inside edge farthest landward property line. Where the side property lines are not equal in length, lot depth is calculated as the mean of the frontage setback, those two distances. A non-conforming depth is equal to the sum of:
- (i) Standard shoreline buffer per JCC 18.25.270(4)(d)
- (ii) Shoreline building setback per JCC 18.25.300(b)
- (iii) Common house depth, 40 feet
- (iv) Frontage setback, per JCC 18.30.050, Table 6-1.
- An example is: standard marine shoreline buffer 150 feet + shoreline building setback 10 feet + common house depth 40 feet + frontage setback 20 feet = 220 feet.

Criteria



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- (a) Nonconforming Lots—Development Allowed without a Variance (Modest Home Provision). New single Single-family development, either new or replaced, on any legal a nonconforming lot in shoreline jurisdiction that is nonconforming with respect to the required buffer standards may be allowed encroach into the standard shoreline buffer without a shoreline variance when:
- (i) The lot is nonconforming as defined by this program at JCC 18.25.100(14)(h) and the depth of the lot (distance from the ordinary high water mark to the inside edge of the frontage setback) is equal to or less than the standard shoreline buffer as indicated in, setbacks, and dimensions required by subsection JCC 18.25.100(14)(h) and (4)(e) of this section; and
- (ii) The building area lying landward of the shoreline buffer and interior to required side yard setbacks as defined in JCC 18.25.100(x)(iii) is not more than 2,500 square feet and the driveway is not more than 1,100 square feet, and both meet required side yard and/or frontage setbacks unless varied under (v) below. The driveway may traverse the frontage setback to provide access in a practicable and efficient manner. The building area means the entire area that will be disturbed to construct the home, normal appurtenances (except drainfields), and landscaping; and
- (iii) All single family residences approved under this section shall not extend waterward of the common line buffer; and
- (iv)(iii) Appropriate measures are taken to mitigate all adverse impacts, including using low impact development measures such as pervious pavement for driveways and other hard surfaces; and
- (v)(v) Opportunities to average or reduce the standard shoreline buffer per (4)(i) above, and/or to vary the side yard and/or frontage setbacks are implemented to alleviate or reduce the nonconformity when doing so will not create a hazardous condition or a condition that is inconsistent with this program and Chapter 18.30 JCC, and
- (v)(v) The residence is located in the least environmentally damaging location relative to the shoreline and any critical areas; and
- (vi)(vi) There is no opportunity to consolidate lots under common ownership that will alleviate the nonconformity; and
- (viii) The lot is not subject to geologic hazards; and
- (ix) All (vii) The lot is not subject to geologic hazards, or the proposed development is demonstrated in a report prepared by a qualified geotechnical engineer to neither be at risk from nor to increase risk of landslides or erosion on and off the site, and is not a no-bank marine shoreline at risk for impacts of sea level rise; and
- (viii) The standard shoreline buffer is reduced by the minimum necessary to ensure that all structures are as far landward as possible and not closer than 30 feet from the ordinary high water mark. The standard building setback of JCC 18.25.300 still applies to the reduced buffer; and
- (ix) At least 80 percent of the remaining buffer area between the structures and the shoreline and/or critical area is maintained in a naturally vegetated condition, or, if not fully vegetated, enhanced by planting native vegetation per the applicable planting standards of JCC 18.25.660(11).

Modest Home

Commerce [critical areas ordinance guidance](#) suggests reasonable use allowances for modest uses:

- “A reasonable use is often thought to be a modest single-family home, although some other structure might be ‘reasonable’ depending on zoning, adjacent uses, and the size of the property.”
- Other communities address size of modest house and driveways (including Bellevue, Lakewood, Mukilteo, and others).

Map of Shoreline Environment Designations

- Primary Source:

<https://gisweb.jeffcowa.us/LandRecords/>

- Also: [Shoreline Master Program Periodic Review Story Map](#)



Aquatic and Priority Aquatic

- Priority Aquatic
 - The priority aquatic designation protects to the highest degree possible and, where feasible, restores waters and their underlying bedlands deemed vital for salmon and shellfish.
- Aquatic
 - The aquatic designation protects, manages, and, where feasible, restores lake, stream, and marine waters and their underlying bedlands that are not designated as priority aquatic.
- Mapped during SMP Update adopted in 2014
- No map changes at this time.

Cumulative Impacts Analysis

- Prepared in 2009 for full SMP
- CIA Addendum per Ecology
 - Beach Access Structures
 - Nonconforming Lots –
Development Allowed
Without a Variance (Modest
Home Provision)
 - Minor Expansion
Nonconforming
Development
 - Common Line Buffer

Geoduck/Aquaculture and Aesthetics

- SMA approach to geoduck/aquaculture as preferred, water-dependent use and balance with visual impacts clause elsewhere.
- WAC 173-26-221(4)(d)(iv) :
“Where there is an irreconcilable conflict between water-dependent shoreline uses or physical public access and maintenance of views from adjacent properties, the water-dependent uses and physical public access shall have priority, unless there is a compelling reason to the contrary .”

Washington Sea Grant report

- website:

<https://wsg.washington.edu/research/26155-2-10/>

- report:

https://wsg.washington.edu/wordpress/wp-content/uploads/Bogeberg_WSGProgressReport_2020

- Responses were generally regional- and species- specific, highlighting how a complex of local environmental and habitat conditions, aquaculture type, focal species, and vertical position in the water column, can interact to influence the response of species to bivalve aquaculture.
- The habitat function of bivalve aquaculture varies by aquaculture type, focal species, and regional environmental and habitat conditions.
- Relative to mudflats and eelgrass, species diversity and richness did not change with the presence of aquaculture in Hood Canal, increased on aquaculture sites in North Sound, and decreased on aquaculture sites in South Sound.

Appendix

Key Issues

▪ Requirements and Engagement

- Meet Periodic Update Requirements
 - Ecology Required and Recommended Changes
- SMP Task Force and Public Comments 2020-2023
- Planning Commission Recommendations 2021-2023

▪ Aquatic Uses

- Aquaculture
 - **See following slides**
- Mooring Buoys and Marinas
 - Match federal and state guidelines

▪ Buffer Modifications

- **See following slides**
 - Modest Home Standards
 - Common Line
 - Buffer Reduction
 - Buffers Crossing Roads

Aquaculture History

- Task Force stage (2020): changes required to address State laws/rules
- Planning Commission stage (2021):
 - Received many comments (letters and testimony)
 - Considered approaches from other counties
 - Require standard CUP and incorporate Kitsap County regulations
- Planning Commission stage (2023): Address Ecology comments and continue evaluation per ongoing public comment

Aquaculture - Recent Input

- Supporting aquaculture as a water-dependent industry in the county while applying appropriate standards for no-net-loss of shoreline ecological function
- Ensure regulations (e.g. submittal requirements) are focused on geoduck and not unintentionally affecting other aquaculture
- Support both commercial aquaculture for local food production and restoration projects involving aquaculture activities

Aquaculture Approach

- Apply a mix of standard and discretionary CUPs for new, conversion, or expansions depending on shoreline environment designation.
 - Similar to Ecology guidance at time state rules were being developed
- Create a table of submittal requirements that distinguish different types of aquaculture.
 - Helpful tribal and producer comments.
 - Include aesthetics analysis as a submittal requirement to consider state rules, with the allowance that: Applicants may omit information from Table 18.22.400 that is demonstrably not applicable to a specific aquaculture proposal.

Common Line Provisions

▪ Purpose

- Accommodate Shoreline Views
- Recognize existing development patterns
- Continue to achieve no-net-loss of shoreline ecological function

▪ Amendments

- Clarify to be for conforming lots with 1 or 2 homes on either side
- Shorten distance between proposed and adjacent homes to 150'
- Require applicant to demonstrate buffer averaging/reduction would not provide adequate views and that proposed reduction is minimum necessary
- Require applicant to provide 80% of remaining buffer with native vegetation

Next Steps

Jefferson County Board of County Commissioners Consideration & Approval

- December 2023 – Q1 2024

Washington Department of Ecology

- Standard Process (WAC173-26-100)
- Ecology review process will start with a state comment period
- Following the Ecology comment period, Ecology determines whether to accept the county proposal or require changes