

A Voice for Landowners,
Actively Preserving Traditional Rural Values

Olympic Stewardship Foundation



Jefferson County Shoreline Master Program

Olympic Stewardship Foundation (OSF)

- We believe that the people who live on and own their land are the best stewards of that land, not government bureaucrats or activists who have their own agendas that are not in the best interests of the people.
- OSF was formed when our local elected officials repeatedly ignored the wishes of rural landowners and adopted land use regulations written in collaboration with Washington's Department of Ecology (DoE) and rejected the work, suggestions and requests of involved rural landowners.
- OSF became a voice for the county's rural property owners.
- OSF is a nonprofit, non-partisan organization without ties to any political party.
- OSF is a strictly volunteer organization.

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Jefferson County Shoreline Master Program

After several years of contentious development, the Jefferson County Shoreline Master Program (SMP) update was approved and adopted on February 14th, 2014.

The updated SMP significantly changed the regulations governing property use within the designated shoreline.

The designated shoreline includes all land within 200 feet of the ordinary high water mark.

The updated SMP differs greatly from the original SMP. The overriding consideration in the update is the DoE concept of “no net loss”, which has no foundation in statute. There is no baseline or methodology for measuring “no net loss” . . . Interpretation is left to the county employees administering the Shoreline Master Program.

The update created a new 150 foot buffer from the ordinary high water mark. Very few new activities, including construction of any kind are allowed within the new buffer. Existing activities continue to be allowed, but they are now designated as nonconforming uses.



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Nonconforming Uses

- All existing structures within the new buffer are designated as nonconforming uses.
- Homes within the buffer are now classified as nonconforming structures and are being reassessed at lowered values. This significantly reduces the market value of the affected shoreline properties.
- It is now far more difficult to qualify for bank financing for the affected properties, particularly where prospective buyers are using federal loan programs offered by federal agencies, such as FHA, VA, and USDA.
- Insurance companies often charge significantly higher rates for properties that include nonconforming structures.



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Comparison Between Original and Updated SMP

Original SMP	Updated SMP
<ul style="list-style-type: none">• Few restrictive regulations.• Approximately 20 pages long.	<ul style="list-style-type: none">• Highly detailed restrictive regulations.• More than 200 pages long.• Prohibits or severely restricts many previously allowed uses.• Introduces many new rules governing what a landowner can or cannot do.• Makes many existing uses nonconforming.• Makes permitting process very complicated and far more expensive than previously.



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Comparison Between Original and Updated SMP Critical Areas, Shoreline Buffers, and Ecological Protection

Original SMP	Updated SMP
<ul style="list-style-type: none">• 30 foot setback, or 1 foot setback per 1 foot of bank height for high bank (more than 10 feet high), measured from top of bank.• No buffer.	<ul style="list-style-type: none">• Extensive rules for mitigation, cumulative impacts, critical areas, buffers, and setbacks.• New 150 foot shoreline buffer plus an additional 10 foot setback.• Strict vegetation management rules within the new buffer.• Strict limitation on vegetation disturbance for beach access (up to 20% or 15 linear feet of water frontage).



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Comparison Between Original and Updated SMP Residential Structures

Original SMP	Updated SMP
<ul style="list-style-type: none">• 35 foot setback from ordinary high water mark (OWHM).• 1 foot setback per 1 foot of bank height for high bank (10 feet or greater), minimum of 35 foot setback.• Setback alignment when there are adjoining structures.• Appurtenant structures must be above the OWHM.	<ul style="list-style-type: none">• 150 foot buffer plus a 10 foot setback.• For properties in the Natural designation, a single family dwelling is allowed with no accessory structures or boathouse permitted.• Vegetation disturbance limited to 2,500 square feet for the home and 1,100 square feet for a driveway in the Natural designation.



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Comparison Between Original and Updated SMP
Shoreline Designations – Similar to land use zoning, define the set of rules that apply to allowed uses of the affected property.

Original SMP	Updated SMP
<ul style="list-style-type: none">• Aquatic	<ul style="list-style-type: none">• Priority Aquatic• Aquatic

These refer to water bodies only and are not included in this discussion.



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Comparison Between Original and Updated SMP Natural Designation

Original SMP	Updated SMP
<ul style="list-style-type: none">• Applied to only those portions of properties that are unique or fragile, such as highly erosive bluffs, tidal marshes, estuaries, etc.• Properties with such features could have “split” designations, such as a combination of Conservancy and Natural	<ul style="list-style-type: none">• Applies to areas that are determined to be ecologically intact, minimally disturbed, cannot support new development, or have the potential to revert to original natural conditions, etc.• Over 40% of the county’s shorelines were designated Natural, despite most being zoned 1:5 with extensive single family residential development already in place.



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Comparison Between Original and Updated SMP Conservancy Designation

Original SMP	Updated SMP
<ul style="list-style-type: none">• Areas with valuable resources (soil, timber, shellfish, etc.) to be protected and managed to ensure that a continual supply is maintained.• Low density residential and recreational uses allowed.	<ul style="list-style-type: none">• Areas that are relatively undeveloped.• Can support low density residential use and low intensity water-oriented use.• Areas that are good candidates for ecological restoration.



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Comparison Between Original and Updated SMP

Original SMP	Updated SMP
<p>Suburban</p> <ul style="list-style-type: none">Community areas with urban-density residential development that do not have urban services, such as sewer, etc.	<p>Shoreline Residential</p> <ul style="list-style-type: none">Areas within an urban growth area, master planned community, or have high density single family or multi-family development.
<p>Urban</p> <ul style="list-style-type: none">Area of high intensity residential, commercial, or industrial development.	<p>High Intensity</p> <ul style="list-style-type: none">Areas within urban growth areas, rural commercial areas, or rural industrial areas.



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Comments on SMP classifications

- Most of Jefferson County's shorelines are zoned RR 1:5 (one residence for each minimum 5 acre parcel).
- Even though the parcels are already zoned, the SMP has added Low Density, Medium Density, and High Density classifications.
- These additional classifications add a new regulatory layer to the already-existing zoning and old subdivisions, many of which pre-date the adoption of Washington's Growth Management Act.



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What's Needed to Improve the Shoreline Master Program

The key points that OSF wants to have changed in the SMP on appeal are:

- Replace “no net loss” with “minimize environmental impact” as mandated by Revised Code of Washington (RCW) 90.58.020.
- Allow shoreline access for all shoreline designations.
- Allow shoreline protection (bulkheads including armoring) for all shoreline designations, as long as the bulkhead is located at or above the ordinary high water mark.
- Make all existing homes and improvements conforming uses.
- Remove the Department of Ecology from the conditional use permit process for common shoreline uses and developments.



Jefferson County Shoreline Master Program

What's Needed to Improve the Shoreline Master Program

- Do not change any shoreline designation to “Natural” until and unless a demonstrable problem with a previous designation is verified.
- Do not incorporate the Jefferson County Critical Areas Ordinance into the Shoreline Master Program, but instead regulate critical areas within the shoreline in accordance with the provisions of the Shoreline Management Act.
- Define a specific process to establish site specific buffers and vegetation conservation zones in lieu of the SMP update’s current generic prescriptions.
- Modify the term “adverse impacts” to read “significant documented adverse impacts”.
- Allow accessory structures, beach access structures, and boathouses for single family dwellings in the Conservancy Designation zone.



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Examples of Permitting Costs to Comply with SMP Requirements

Costs associated with a recent Site Plan Advance Approval Determination (SPAAD) to guarantee that the site can be developed at a future date:

Item	Cost (\$)
Detailed site plan	1,200.00
Existing well evaluation (Health Department requirement)	588.00
Septic system design plan	2,388.25
Health Department review fee	838.00
SPAD permit fee	532.00
Total	\$5,496.85



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Examples of Permitting Costs to Comply with SMP Requirements

Beach stairway repair:

Item	Cost (\$)
Geotechnical report	750.00
Mitigation and habitat plan	1,550.00
Engineered plan for repair	1,000.00
JARPA submittal to U.S. Army Corps of Engineers	160.00
Validation of mean high water mark	600.00
Cost of permit	705.65
Total	\$4,765.65



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Examples of Permitting Costs to Comply with SMP Requirements

Tree removal for view enhancement:

Item	Cost (\$)
Geotechnical report	750.00
Mitigation report	600.00
Department of Community Development fee	697.50
Total	\$2,047.50

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Attorney Comments Informational Meeting for Shoreline Property Owners

Sponsored by Olympic Stewardship Foundation

November 7, 2015, 10:00 am – 12:00 pm
Beach Club, 121 Marina Drive, Port Ludlow, Washington

By Dennis Reynolds

dR

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Jefferson County Shoreline Master Program

The Shoreline Management Act requires that local governments develop master programs for the regulation and use of their shorelines.

A master program is the “. . . Comprehensive use plan for a described area, and the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020.”

All master programs must be approved by the Washington State Department of Ecology (DoE).

Once approved, the master programs “. . . Constitute [the] use regulations for the various shoreline of the state.” RCW 90.58.100(1).

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The Washington State Legislature mandated that all cities and counties with shorelines of the state update their local shoreline plans (Shoreline Master Programs or SMPs) consistent with the Shoreline Management Act (SMA) and regulations adopted by the State Department of Ecology (the SMA Guidelines, WAC Chapter 173-27).

SMPs must contain use regulations governing all shorelines of the state, which include all saltwater shorelines and uplands within 200 feet of the ordinary high water mark (OWHM), associated wetlands, streams or rivers in excess of 20 cubic feet per second (CFS) average annual flow, and lakes of 20 acres or more.

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A local jurisdiction is required to make changes to its Master Program **only when** “. . . deemed necessary to reflect changing local circumstances, new information or improved data.”

WAC 173.26.090

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The Shoreline Management Act calls for “. . . coordinated planning . . . recognizing and protecting private property rights consistent with the public interest.”

RCW 90.58.020

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The State Guidelines provide substantial discretion to local governments to consider local circumstances, as does the Growth Management Act.

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The “no net loss of ecological functions” concept stated as one of the “Governing Principles” of the State Guidelines. However, this language is not found in the Shoreline Management Act until 2010.

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The “no net loss of ecological functions” standard applies to no net loss of existing conditions through sequencing applied to authorized new development to ensure that the end result maintains existing conditions – sequencing refers to “avoid”, “minimize”, and “mitigate”, in that order.

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The SMP must regulate new development and redevelopment to ensure “no net loss of ecological conditions.” but “no net loss” does not mean “no development” or “no impact.”

The SMA allows “alteration of the natural condition” for preferred uses.

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The State Legislature has provided that the shorelines of the state are not considered “critical areas” except to the extent that they qualify as critical areas pursuant to the definition found in the Growth Management Act provided by RCW 36.70A.060(2). But not all shorelines are critical areas. However, overworked staff can be pressured to simply suggest “wholesale integration” of the existing Critical Areas Ordinance (CAO) standards in order to move along an SMP update and then ask that the public agencies such as the Department of Ecology concur, and Ecology will do so.

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The State Guidelines specifically recognize that “no touch, no build” buffers cannot be applied to existing development: “Like other master program provisions, vegetation conservation standards do not apply retroactively to existing uses and structures.”

WAC 173.26.221(5)(a)

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The standard buffer widths presume the existence of a relatively intact native vegetation community in the buffer zone adequate to protect the wetland functions and values at the time of the proposed activity.

Department of Commerce,
Critical Areas Assistance Handbook, Appendix A

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	Sq. Ft.	Depth	Water Frontage	Buffer		
				<u>150</u>	<u>125</u>	<u>100</u>
Acre =	43,560	217.8	200	69%	57%	46%
Average	5000	100	50	100%	100%	100%
Lot	10000	200	50	75%	63%	50%
	20000	200	100	75%	63%	50%

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The State Guidelines also mandate preparation of a Cumulative Impacts Assessment (CIA) “. . . that **identifies, inventories,** and ensures meaningful understanding of the current and potential ecological functions provided by affected shorelines.”

WAC 173.26.186(8)(a)

A compliant CIA must be proposed before a new SMP can be adopted. The CIA must also consider and assess the benefits provided by existing regulations.

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For the past 30 years, local governments have achieved the balance between property rights and the environment largely through the permit process, where a proposal's consistency with the policies of the SMA can be determined on its own merits.

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Courts have held that a restriction of the use of property that is insufficiently supported by best available science violates constitutional nexus and proportionality standards.

The State Guidelines for SMP updates mandate protection of property rights.

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Be aware of over-designation
of restrictive shoreline environments
or critical areas

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Restoration
is not required

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A nonconforming use or development is one that would not be approved as a new development under existing laws, but was lawfully established or constructed. Included are developments, uses, and lots that were legally established prior to the effective date of the current SMP and do not conform to current lot size standards.

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WAC 173.27.080 provides a standard definition of a nonconforming use or development if a local government does not have one in its existing SMP:

Nonconforming use or development means a shoreline or development lawfully constructed or established prior to the effective date of the act or applicable master program . . . which does not conform to present regulations or standards.



Jefferson County Shoreline Master Program

The Department of Ecology has promulgated “default” standards that apply in the absence of local shoreline regulations set out in WAC 173.27.080. These provide:

- Nonconforming structures may be maintained, repaired, and enlarged as long as they do not extend further into areas where new construction would not be allowed.
- Nonconforming uses are generally allowed to continue but cannot be enlarged or expanded.
- Single-family residences can be expanded with a conditional use permit.
- A nonconforming development that is damaged to an extent not exceeding 75% of its replacement cost may be reconstructed.

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The courts have stated that local governments are free to preserve, limit, or **terminate** nonconforming uses and developments subject only to the broad limits of applicable enabling acts and the Washington State constitutional protections for private property rights.

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The Department of Ecology has stated in writing that the purpose of the SMA's nonconforming use provisions is to phase out nonconforming uses and structures, such to bring all development and use up to current standards.



Jefferson County Shoreline Master Program

RCW 90.58.620

New or amended master programs — Authorized provisions

- (1) New or amended master programs approved by the department on or after September 1, 2011 may include provisions authorizing:
 - (a) Residential structures and appurtenant structures that were legally established and are used for a conforming use, but that do not meet standards for the following to be considered a conforming structure: Setbacks, buffers, or yards; area; bulk; height; or density; and
 - (b) Redevelopment, expansion, change with the class of occupancy, or replacement of the residential structure if it is consistent with the master program, including requirements for no net loss of shoreline ecological functions.
- (2) For purposes of this section, “appurtenant structures” means garages, sheds, and other legally established structures. “Appurtenant structures” does not include bulkheads and other shoreline modifications or over-water structures.
- (3) Nothing in this section: (a) restricts the ability of a master program to limit redevelopment, expansion, or replacement of over-water structures located in hazardous areas, such as floodplains and geologically hazardous areas; or (b) affects the application of other federal, state, or local government requirements to residential structures.

[2011 c 323 § 2.]

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Jefferson County Shoreline Master Program

Review: SMP Update



Growth Management Hearings Board



Appeal to courts

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Standards for Review:
SMP Update

- Consistency with SMA Goals and State Guidelines
- Consistency with Comprehensive Plan
- Internal consistency
- Compliance with State Environmental Policy Act (SEPA)