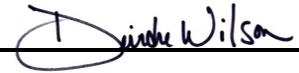


**Planning and Land Services Department
CURRENT PLANNING SECTION POLICY**



Policy Number:	CP2015-06
Title:	Shoreline Development – Legal Establishment
Date:	November 2, 2015
Management Approval:	Deirdre Wilson
Related Documents:	PCC Title 20, Shoreline Management Act

Purpose

To establish a guide for determining if development on a shoreline was legally established.

Discussion

The Shoreline Management Act (SMA) sets forth standards for development on shorelines. The Act was adopted by the State in 1971. Pierce County initiated review of shoreline substantial development later that year. It has been approximately 45 years since the adoption of the Act, and as time goes by, it becomes more difficult to find records of development that occurred in the 1970’s and before. It is clear from our records that we began reviewing Substantial Developments in 1971. It is less clear, from our records, when we began reviewing development exempt from a shoreline substantial development permit.

Conclusion

In lieu of prior permitting or authorization, PALS will accept reliable proof of development that was not considered substantial development by the 1971 Act, or by the 1976 local regulations, as being legally established if the proof is dated sometime in the 1970’s or prior. See also the Reliable Proof discussion on Page 3.

For development that would have been considered substantial development, proof of appropriate permitting or other authorization from Pierce County (such as a building permit) will be required. If proof of prior permitting or authorization is unavailable, the development shall be subject to current permitting requirements.

1971 Washington State Shoreline Management Act:

"Substantial Development" means any development of which the total cost, or fair market value, exceeds \$1,000, or any development which materially interferes with normal public use of the water or shorelines of the state except that the following shall not be considered substantial developments:

- (a) Normal Maintenances or repair of existing structures or developments, including damage by fire, accident, or elements;
- (b) Construction of the normal protective bulkhead, common to single-family residences;
- (c) Emergency construction necessary to protect property from damage by the elements;
- (d) Construction of a barn or similar agricultural structure on wetlands [shorelines];
- (e) Construction or modification of navigational aids, such as channel markers and anchor buoys;
- (f) Construction on wetlands [shorelines] by an owner, lessee, or contract purchaser, of a single family residence, for his own use or for the use of his family, which residence does not exceed a height of 35-feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof.

PCC 65.74.070, 1976 County Code:

The following shall not require Substantial Development permits for the purpose of the Shoreline Management Act:

- A. Any development which the total cost or fair market value does not exceed \$1,000.00, if such development does not materially interfere with the normal public use of the water or shorelines of the State.
- B. Normal maintenance or repair of existing structure or development, including damage by accident, fire or elements.
- C. Construction of the normal protective bulkhead common to single family residences.
- D. Emergency construction necessary to protect property from damage by the elements.
- E. Construct of a barn or similar agricultural structure on wetlands [shorelines].
- F. Construction or modification of navigational aids such as channel markers and anchor buoys.
- G. Construction on wetlands [shorelines] by an owner, lessee or contract purchaser of a single family residence for his own use or for the use of his family, which residence does not exceed a height of thirty-five (35) feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements pursuant to this chapter.
- H. Construction of a dock, designed for pleasure craft only, for the private, non-commercial use of the owners, lessee or contract purchaser of a single family residence, the cost of which does not exceed \$2,500.00.
- I. Any project with a certification for the Governor pursuant to Chapter 80.50 RCW.

Discussion on Reliable Proof

It is not possible to identify which forms of reliable proof will be available for each project site. The following is a sample list of options that may be available. Each may or may not be appropriate given the site specific circumstances.

1. Aerial photos. Resources such as: Pierce County GIS, Department of Ecology (Ecology) Coastal Atlas, Department of Natural Resources (DNR) Historical Aerial Photography, Washington State Department of Transportation (WSDOT) digital maps and data.
2. Scientific studies that identify the age of development materials. For example, it may be possible to identify the approximate age of concrete used in a concrete structure.
3. Staff may use inference when photographic evidence is unclear. For example, historic photos show a bulkhead that appears to continue for a couple hundred feet, but a section in the middle is not visible in one section due to vegetation. Staff could infer that the bulkhead continued the entire length.
4. Photographs of the development. It will be unlikely that undated photos are considered reliable, unless there are indicators in the photo that provide reliable clues.
5. Construction techniques used only during a specific era. For example, concrete sack bulkhead construction was common in the 1930s, but not after.
6. A substantial structure such as a residence on the site that predates the SMA which could not have survived the shoreline erosion without a bulkhead. It is unlikely this evidence would be able to stand on its own without other supporting evidence.
7. The presence of a prior existing bulkhead immediately behind the current bulkhead that would have predated the SMA and that would have been functional at the time the newer bulkhead was constructed. Again, it is unlikely this evidence would be able to stand on its own without other supporting evidence.

Historic Shoreline Dates

June 1, 1971	Shoreline Management Act (RCW 90.58.140). A shoreline substantial development permit was required for all “substantial developments”, unless exempt per RCW 90.58.140 (1).
October 1971	SD1-71. Pierce County processed the first Shoreline Substantial Development Permit. Submitted to the Planning Department, staff report prepared for the Shoreline Technical Advisory Committee who forwarded a recommendation to the Board of County Commissioners for County decision making, who then forwarded the decision to the Department of Ecology, for a comment and appeal period.
November 16, 1971	Resolution 15388 (Council expressed intent to adopt a SMP). Per Sections 4 & 5, Shoreline SD required for all “substantial developments” unless exempt.
March 4, 1974	Resolution 16990 (Goals and Policies of future SMP adopted) Goals and policies of Shoreline Master Program (SMP).
June 7, 1976	Resolution 18562-A (Local Shoreline Use Regulations adopted). Shoreline SD permits required for substantial development, unless exempt per PCC 65.74.070. Other shoreline permits may be required.