

4. Exemptions

The Shoreline Management Act (SMA) exempts certain development types from some or all SMA requirements. Although a proposed development may be exempt from substantial development permit requirements, it may still require a variance or conditional use permit and must comply with the local Shoreline Master Program (SMP). A local decision that proposed development is exempt cannot be appealed to the Shorelines Hearings Board.

Exemptions for specific activities

There are several specific use exemptions in the SMA. The terms vary – in some cases the SMA does not apply, while in other cases the uses or activities must be consistent with the SMA and Shoreline Master Program but shoreline permits are not required. Check the cited RCW section for particulars. Below are brief descriptions.

Agricultural activities

Under [RCW 90.58.065](#), the guidelines adopted by Ecology and master programs developed or amended by local governments under [RCW 90.58.080](#) shall not require modification of or limit agricultural activities occurring on agricultural lands.

Drought emergency projects

Expedited permits and exemptions exist for water supply, fish passage, and boat launch projects under certain drought emergency conditions [[RCW 43.83B.410\(1\)\(b\)](#), [RCW 90.58.370](#)].

Certain forest practices

Under [RCW 90.58.030\(2\)\(d\)\(ii\)](#), any city or county may also include in its master program land necessary for buffers for critical areas, provided that forest practices regulated under [RCW 76.09](#) (Forest Practices Act) are not subject to additional regulations under the SMA.



Figure 6: Some agriculture activities in shoreline jurisdiction are exempt from requirements for a shoreline substantial development permit.

Energy Facility Site Evaluation Council

Under [RCW 90.58.140\(9\)](#), a holder of an energy facility certificate under [RCW 80.50](#) shall not be required to obtain a permit.

Environmental excellence program

Under RCW 90.58.045, any legal requirement under the SMA is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement [RCW 43.21K].

Fish habitat enhancement projects

Local governments may not require permits or charge fees for fish habitat enhancement projects that meet the requirements of RCW 77.55.181.

Remedial action

SMA requirements for shoreline permits or letters of exemption do not apply to any person conducting remedial action at a facility pursuant to a consent decree, order or agreed order. Ecology must ensure compliance with the substantive requirements of the SMA through the consent decree, order or agreed order [RCW 90.58.355(1)].

Site improvements for storm water treatment

SMA requirements for shoreline permits or letters of exemption do not apply to any person installing site improvements for storm water treatment in an existing boyard facility to meet requirements of the NPDES stormwater general permit [RCW 90.58.355(2)].

Transportation maintenance, repair, and replacement

Washington State Department of Transportation projects for maintenance, repair, and replacement within the roadway prism of a state highway or other facilities and that meet the requirements of RCW 90.58.356 do not need shoreline permits or letters of exemption [RCW 90.58.356].

Exemptions from substantial development permit

The most common exemption is from substantial development permit (SDP) requirements [RCW 90.58.030(3)(e)]. The interpretation of these exemptions has created many questions. Exemptions are to be narrowly construed.

Most development exempt from the requirement to obtain an SDP must still comply with the applicable goals, policies, and regulations of the local SMP and the policies of the SMA. *Putnam v. Carroll*, 13 Wn. App. 201, 534 P.2d 132 (1975) affirms that developments must be consistent with other applicable regulations and the policy of the Shoreline Management Act of 1971 in order to qualify for a permit exemption.

WAC 173-27-140(1)(a):
“Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemption from the substantial development permit process.”

- A proposed development may be exempt from requirements for an SDP but may still require a variance and/or conditional use permit.
- The burden of proof that a proposed development is exempt from requirements for an SDP is on the applicant. Also, note that if any part of a proposed development is not eligible for exemption, a permit is required for the entire proposal.
- Local governments may attach conditions to approvals for exemptions. This is a common practice.

The follow types of development are exempt from requirements for a substantial development permit.

Agricultural activities

In addition to the general limitations on regulating agriculture mentioned above (RCW 90.58.065), the SMA addresses agricultural and irrigation activities in RCW 90.58.030(3)(e) (below). Ecology rules clarify that construction of a barn or similar agricultural structure is also exempt under WAC 173-27-040(2)(e).

(iv) Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels.

A feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;

(viii) Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored ground water for the irrigation of lands;

(x) Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed, or utilized primarily as a part of an agricultural drainage or diking system. [RCW 90.58.030

For more information:

RCW 90.58.030(3)(e)

RCW 90.58.065

WAC 173-27-040(2)(e) and (k)

Bulkheads



Figure 7: Normal protective bulkheads common to single-family residences, such as these in Island County, are exempt from requirements for a substantial development permit. (Washington State Coastal Atlas photo.)

The SMA exempts construction of the "normal protective bulkhead common to single-family residences" from SDP procedural requirements. Under state rules, a "normal protective" bulkhead is exempt only if the bulkhead would be:

- Installed at or near the ordinary high water mark, and
- Built for the sole purpose of protecting an existing single-family residence and/or appurtenant structures from loss or damage by erosion.

When a vertical or near-vertical wall is being constructed or reconstructed under this exemption, not more than one cubic yard of fill per one linear foot of wall may be used as backfill.

Bulkheads proposed for undeveloped property **are not covered** under this exemption and require a permit. Neither is a bulkhead exempt if it would be constructed for the purpose of creating dry land. For example, a proposal for a bulkhead that would extend waterward of the ordinary high water line and then be backfilled to create a recreation area would not be exempt.

When an existing bulkhead is being repaired by construction of a vertical wall waterward of the existing wall, it must be constructed no farther waterward of the existing bulkhead than is necessary for construction of new footings.

If a bulkhead has deteriorated to the point that it is not functioning and the OHWM has moved landward, the replacement needs to be located at or near OHWM. If it's still functioning, repair may be appropriate.

Note: Review both the maintenance and repair exemption and bulkhead exemption when considering whether a proposed bulkhead or bulkhead repair is exempt.

For more information:

- [RCW 90.58.030\(3\)\(e\)\(ii\)](#)
- [WAC 173-27-040\(2\)\(b\) and \(c\)](#)

Beach nourishment and bioengineered erosion control projects

Beach nourishment and bioengineered erosion control projects may be considered normal protective bulkheads when any structural elements are consistent with the above requirements and when the project has been approved by the state Department of Fish and Wildlife.

For more information:

- [WAC 173-27-040\(2\)\(c\)](#)
- [*Soft Shoreline Stabilization: Shoreline Master Program Planning and Implementation Guidance* \(2014\)](#)

Docks

This exemption refers to "construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single and multiple family residences" [WAC 173-27-040(2)(h)].

This exemption applies:

- A. In **salt waters**, if the fair market value of the dock does not exceed \$2,500.
- B. In **fresh waters**, if the fair market value of the dock does not exceed: (1) \$20,000 for docks that are constructed to replace existing docks, are of equal or lesser square footage than the existing dock being replaced, and are located in a county, city, or town that has updated its SMP consistent with the master program guidelines (173-26 WAC); or (2) \$10,000 for all other docks constructed in fresh waters.

However, if subsequent construction occurs within five years of completion of the prior construction, and the combined fair market value of the subsequent and prior construction exceeds the amount specified in either (A) or (B) above, the subsequent construction shall be considered a substantial development.

Docks, not decks! Docks are defined in state law specifically as places to tie up a boat. The exemption from SDP requirements does not extend to overwater recreation spaces such as decks. Decks are considered a residential appurtenance and must be located landward of the OHWM or the perimeter of a wetland in order to be exempt.

For more information

- [RCW 90.58.030\(3\)\(e\)\(vii\)](#)
- [WAC 173-27-040\(2\)\(h\)](#)

Environmental projects

The SMA exempts several classes of environmentally beneficial projects from SDP requirements. They include aquatic noxious weed control, fish or wildlife habitat improvement, shoreline and watershed restoration, and hazardous and toxic cleanup.

Aquatic noxious weed control

In RCW 90.58.030(3)(e)(xii), the SMA exempts the process of removing or controlling certain aquatic noxious weeds such as cordgrass, dwarf eelgrass, and purple loosestrife. The exemption applies to treatment of plants

defined as noxious in state law RCW 17.26.020. The control methods (whether herbicide or other treatment methods) must be those recommended by a final environmental impact statement published by the state Department of Agriculture under RCW 43.21C.

Fish or wildlife habitat improvement

A public or private project that is designed to improve fish or wildlife habitat or fish passage is exempt from the SDP requirements when the criteria in RCW 90.58.147 are met. For example, the Buckmire Slough restoration project (Figure 8) near Vancouver Lake in Clark County was determined to be exempt under this provision. The project included re-contouring a bank, removing fill across the slough and a culvert from the slough, and building a bridge over the slough for pedestrians and maintenance vehicles.

Shoreline and watershed restoration

Under RCW 90.58.580(3), an SDP is not required on land within urban growth areas (as defined in RCW 36.70A.030) that is brought under shoreline jurisdiction due to a shoreline restoration project creating a landward shift in the ordinary high water mark.

Under RCW 90.58.515, watershed restoration projects as defined in RCW 89.08.460 are exempt from the requirement to obtain an SDP.

Local governments are required to review the projects for consistency with the locally adopted Shoreline Master Program in an expeditious manner and issue their decision along with any conditions within 45 days of receiving a complete consolidated application form from the



Figure 8: The Buckmire Slough restoration project near Vancouver Lake in Clark County was exempt from requirements for a substantial development permit. (Photo: *The Columbian*.)

applicant. Local governments may not charge a fee for accepting and processing applications for watershed restoration projects.

Hazardous and toxic cleanup

A special kind of exemption applies to projects for which a consent decree, order, or agreed order has been issued pursuant to the Model Toxics Control Act [RCW 70.105D] and to Ecology remedial actions. Although these projects must comply with the substantive requirements of the SMA and the local SMP, they are exempt from all procedural requirements of the SMA [RCW 90.58.355].

For more information:

- [RCW 90.58.030\(3\)\(e\)\(xii\)](#)
- [RCW 90.58.147](#)
- [RCW 90.58.515](#)
- [RCW 90.58.580\(3\)](#)

Emergency construction

For the purposes of determining SDP exemptions, an emergency is "an unanticipated and imminent threat to public health, safety, or the environment which requires immediate actions within a time too short to allow full compliance" [WAC 173-27-040(2)(d)]. The exemption applies only if the construction is necessary to protect property from damage by the elements.

Emergency construction **does not include building new permanent protective structures** where none previously existed. If a local government determines that a new protective structure is the appropriate means to address the emergency situation, the applicant must obtain a permit to retain the structure after the emergency situation is over.

All emergency construction must be consistent with the policies of the SMA and the local master program.

If a project proponent has not obtained a permit due to lack of proper planning, it does not constitute an emergency. An example of an emergency is a ruptured oil or sewage line that needs to be repaired or removed immediately or emergency repair of a dike during a flood. As a general matter, flooding or other seasonal events that can be anticipated, but are not imminent, are not considered an emergency.

Ecology considers the extension of boat launches or removal of accumulated rocks and gravel at boat launches due to declared drought conditions to be emergency construction. Thus, this work is appropriately exempted from the requirement for a shoreline substantial development (SDP) permit.

For more information

- [RCW 90.58.030\(3\)\(e\)\(iii\)](#)
- [WAC 173-27-040\(2\)\(d\)](#)

Navigational aids and marking property lines

Construction or modification of navigational aids such as channel markers and anchor buoys, by or under the authority of the Coast Guard or a designated port management authority, are exempt from permit requirements. This exemption covers those lights, markers, buoys, etc. usually

placed in accordance with Coast Guard standards, if not actually placed by the Coast Guard, that provide directions and other information necessary for safe navigation.

Moorage structures such as buoys or dolphins are not considered "navigational aids" and would require a substantial development permit.

The marking of property lines or corners on state-owned lands, when such marking does not significantly interfere with normal public use of the surface of the water, is exempt from substantial development permit requirements. This is a limited exemption applicable only on state-owned lands, and then only when it does not materially interfere with normal public use of the water.

Subdivisions and short plats are not exempt under the exemption for marking of property lines, as they are not usually on state-owned lands. Further, narrow interpretation of this provision would mean that even on state-owned land, it would apply only to the marking of existing property lines, not to the establishment of new property lines, which occurs with subdividing and short platting.

For more information:

- WAC 173-27-040(2)(f) and (j)

Normal maintenance or repair

This exemption authorizes maintenance or repair of existing lawful structures and developments when they are subject to damage by accident, fire, or the 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 or structure to a state comparable to its original size, shape, configuration, and external appearance. This must be done within a reasonable period of time after the decay or partial destruction. Replacement of the development or structure (comparable to the original) may be exempted where that is the common method of repair. Neither repair nor replacement should be exempted where such action would cause substantial adverse effects to shoreline resources or the environment.

Beware of projects called "maintenance" that actually constitute an expansion in use. Following are some examples:

- Local road projects that are actually expansions (such as extra lanes) do not constitute normal maintenance. Note that "capital improvements" usually need permits.
- Flood-control projects should not be considered normal repair or maintenance if they raise the top or enlarge the footprint of a dike beyond where it was originally constructed. Installation or repair of tide gates, flap gates, and any other flood-control structures should be carefully scrutinized to assure that they simply restore a pre-existing lawful condition.

- Maintenance of agricultural drainage ditches may be exempt, but dumping the material dug out of the ditches in a shoreline area is filling and may require a permit.
- Dredging to restore pre-existing contours within a designated and authorized navigation channel or basin is considered normal maintenance. If operations expand the channel or basin, a permit is required even if the marina or similar project has been operating for years. Consider how the dredged material is to be disposed of--picking up mud may be maintenance but putting it down may be filling, requiring a permit. Dredging is maintenance only where there is a designated and authorized facility such as a federal navigation channel or a berth authorized by permit. The fact that a formerly navigable area has changed such that it is not now navigable is not sufficient.

Replacing piling and decking on docks is normal maintenance and repair, but adding deck area, floats, sheds, or other expansion is not. Some SMPs specify that replacing a certain percentage, such as up to 50 percent, of decking or pilings, qualifies as normal maintenance and repair. More than that would constitute new construction for these SMPs.

For more information:

- [WAC 173-27-040\(2\)\(b\)](#)

Single-family residences

The SMA creates an exemption for construction of single-family residences on shorelands. The construction must be by an owner, lessee, or contract purchaser for their own use or for the use of their family. Several court decisions have taken a strict view of the meaning of this provision. (For example, *Ecology v. Pacesetter* (89 Wn.2d 203 (1977)). Houses constructed on speculation ("spec houses") are not exempt.

To meet the exemption, the law requires that the residence:

- Not exceed a height of 35 feet above average grade level, and
- Meet all other state and local requirements.

State rules clarify that "single-family residence" means a detached dwelling designed for and occupied by one family including those structures and developments within a contiguous ownership which are a normal appurtenance.

Appurtenant structures

An appurtenance must be connected to the use and enjoyment of a single-family residence. To meet the exemption criteria, appurtenances must be located landward of the ordinary high water mark and the perimeter of associated wetlands. Overwater structures are not exempt from the



Figure 9: Construction of a single-family home by an owner, lessee, or contract purchaser for their own use or for the use of their family is exempt from the requirement for a substantial development permit. However, a variance or conditional use permit may be required. (Washington Coastal Atlas photo.)

requirement to obtain a substantial development permit. For example, applications for a gazebo or deck on a dock would not be exempt from shoreline permit requirements.

On a statewide basis, normal appurtenances include:

- A garage
- Deck
- Driveway
- Utilities
- Fences
- Installation of a septic tank and drainfield
- Grading that does not exceed two hundred fifty cubic yards and that does not involve placement of fill in any wetland or waterward of the ordinary high water mark. Grading is the moving of earth that exists on the site and does not include importing of fill.

Local SMPs may add interpretations of normal appurtenances to their Shoreline Master Program.

Grading

Grading is defined as movement or redistribution of the soil, sand, rock, gravel, sediment, or other material on a site in a manner that alters the natural contour of the land. Grading is included on the list of appurtenances for exempt single-family residences. To be exempt, grading must meet the following requirements:

- Not exceed 250 cubic yards

an SDP must still comply with all development standards (for example, setbacks and other regulations in the local SMP).

Exempt activities may require variances or conditional use permits. For example, construction of a single-family residence by an owner, lessee, or contract purchaser for their own use or for the use of their family is exempt from requirements for an SDP. However, a residence proposed to be built within the shoreline buffer or setback would require a variance.

- The burden of proof that a development or use is exempt from the permit process is on the applicant.
- Exemptions must be narrowly construed. Under state rules, “only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemption from the substantial development permit process” [WAC 173-27-040 (1)(a)]. If there is doubt whether a project meets the precise terms of a listed exemption, then a permit is required. Ecology's shoreline permit reviewer serving your town, city, or county can help with this.
- Exempt activities may be conditioned.
- If any part of a proposal requires a substantial development permit, an exemption should not be granted. An SDP would be required for the entire project.
- Activities exempt from SDP permit requirements may need other permits. One cannot legally begin to build a structure that is exempted from SDP requirements under the SMA until all other local, state, and federal permits have been obtained.
- Exemptions should be granted only after meaningful review under SEPA, unless the proposed project is categorically exempt under SEPA.

Be alert to incremental exemptions for activities that in sum would require a permit. Activities such as clearing, grading, and preloading that typically precede development should be included in the SEPA review and shoreline permit review for a development proposal. That's the case even if the individual activities are under the substantial development dollar threshold or, if conducted as a total project, would be otherwise exempt. The future intended use and associated design of a site should be authorized by a shoreline permit prior to any grading, filling, dredging, or other shoreline modification and prior to any subdivision of a site.

Letter of exemption

All proposals for activities that are exempt from the SDP process should be documented with an exemption letter that spells out what is included as part of the exemption. Site plans should be included. Local governments are encouraged to send all exemptions to Ecology.

Local governments are **required** to send exemption letters to Ecology and the applicant if one or both of the following federal permits are required:

- A U.S. Army Corps of Engineers **Section 10 permit** under the Rivers and Harbors Act (projects on or over navigable waters).
- A **Section 404 permit** under the Clean Water Act (projects involving discharge of dredge or fill material to water or wetlands).

Ecology reviews these exemptions and must concur that the exemption is appropriate prior to granting Coastal Zone Management consistency in the 15 Western Washington counties that fall under the Coastal Zone Management Act.

The letter must indicate the specific exemption provision from WAC 173-27-040(2) that is being applied to the development and provide a summary of the local government's analysis of the consistency of the project with the master program and the SMP.

For more information:

- [WAC 173-27-040\(2\)](#)
- [WAC 173-27-050](#)
- [Coastal zone management federal consistency review](#)

SEPA categorical exemptions

Categorical exemptions under the State Environmental Policy Act (SEPA, RCW 43.21C) are not identical to the substantial development permit exemptions of the SMA. Many small projects will be exempt from both SEPA and the SDP permit requirements, but this is not always true. For example, a residential structure of four dwelling units is usually categorically exempt under SEPA, but is a substantial development under the SMA. In such cases, the local government should demonstrate compliance with SEPA by attaching a statement of categorical exemption to the permit submittal package.

For more information:

- [RCW 43.21C](#)
- [WAC 197-11-305](#)
- [SEPA guidance on categorical exemptions](#)