

SNOHOMISH COUNTY COUNCIL



CO00029727

ORDINANCE NO. 80-117
ESTABLISHING PROCEDURES FOR THE ISSUANCE of
SHORELINE MANAGEMENT PERMITS FOR DEVELOPMENTS ON
SHORELINES OF THE STATE and REPEALING TITLE 21
SNOHOMISH COUNTY CODE

BE IT ORDAINED:

Section 1. Title 21 of the Snohomish County Code enacted November 22, 1971, is hereby repealed.

Section 2. The following Title 21 is enacted and added to the Snohomish County Code.

TITLE 21

SHORELINE MANAGEMENT PERMITS FOR
DEVELOPMENTS ON SHORELINES OF THE STATE

Chapters:

- 21.04 Preliminary
- 21.08 Definitions
- 21.12 Applicability
- 21.16 Permit Administration
- 21.20 Review Criteria for Substantial
Development, Conditional Use and
and Variance Permits
- 21.24 Enforcement
- 21.28 Severability

Chapter 21.04
PRELIMINARY

Sections:

- 21.04.010 Title.
- 21.04.020 Authority and Purpose.
- 21.04.030 Shoreline Management Act Guidelines
Adoption By Reference
- 21.04.040 Compliance With Other Laws.

21.04.010 Title. This title constitutes and may be cited as the Snohomish County Shoreline Management Permit Ordinance.

21.04.020 Authority and Purpose. The Snohomish County Shoreline Management Permit Ordinance is promulgated pursuant to the authority and mandate of RCW 90.58.140(3), for the purpose of establishing a procedure for the administration and enforcement of the permit system for shoreline management established therein. It is the intent of the Council that compliance with this ordinance shall constitute compliance with the Shoreline

Management Act (RCW 90.58) and its implementing guidelines for permits on shorelines of the state (WAC 173-14).

21.04.030 Shoreline Management Act Guidelines - Adoption By Reference. Certain sections of the Shoreline Management Act Guidelines (WAC 173-14) are specifically referenced in this title. Those sections, as now or hereafter amended, are adopted by such reference.

21.04.040 Compliance With Other Laws. Nothing in this title shall be construed as excusing a person from compliance with any other local, state, or federal statute, ordinance, or regulation applicable to a proposed development.

Chapter 21.08

DEFINITIONS.

Sections:

- 21.08.005 Generally.
- 21.08.010 Conditional Use Permit.
- 21.08.020 Council.
- 21.08.030 County.
- 21.08.040 Department of Community Affairs.
- 21.08.050 Development.
- 21.08.060 Floodplain.
- 21.08.070 Floodway.
- 21.08.080 Floodway Fringe.
- 21.08.090 Hearing Examiner
- 21.08.100 Master Program.
- 21.08.110 Office of Community Development.
- 21.08.120 Office of Community Planning.
- 21.08.130 Ordinary High Water Mark.
- 21.08.140 Person.
- 21.08.150 Shorelines.
- 21.08.160 Shorelines of the State.
- 21.08.170 Shorelines of Statewide Significance.
- 21.08.180 Substantial Development.
- 21.08.190 Substantial Development Undertaken on the Shorelines of the State Prior to the Effective Date of RCW 90.58.
- 21.08.200 Variance Permit.
- 21.08.210 Wetland or Associated Wetlands.

21.08.005 Generally. Definitions contained in the Washington State Shoreline Management Act of 1971 (RCW 90.58) and its implementing guidelines (WAC 173-14) shall apply to all terms and concepts used in this title; provided, that definitions contained in this title shall be applicable where not in conflict with RCW 90.58 and WAC 173-14.

21.08.010 Conditional Use Permit. Conditional Use Permit is a permit for those uses identified by the master program as conditional uses in certain shoreline environments. Conditional uses can be permitted only by meeting performance standards that make the use compatible with other permitted uses within that area.

21.08.020 Council. Council is the Snohomish County Council.

21.08.030 County. County is the unincorporated portion of Snohomish County, Washington.

21.08.040 Department of Community Affairs. Department of Community Affairs is the Snohomish County Department of Community Affairs.

21.08.050 Development. Development means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this title.

21.08.060 Floodplain. Floodplain means a land area adjoining a river, stream, watercourse, ocean, bay, or lake which is likely to be flooded. The extent of the floodplain may vary with the frequency of flooding being considered. The floodplain consists of the floodway and the floodway fringe.

21.08.070 Floodway. Floodway means the regular channel of a river, stream, or other watercourse, plus those portions of the adjacent floodplain area which are reasonably required to carry and discharge the floodwaters of any watercourse. The floodway is also that portion of the floodplain which could not be removed or obstructed without causing a greater than one foot rise in flood levels of the selected flood (100 year), including essential pondage or water retention areas.

21.08.080 Floodway Fringe. Floodway Fringe means that portion of a floodplain which is inundated by flood waters but is not within a defined floodway. Floodway fringes serve as temporary storage areas for flood waters.

21.08.090 Hearing Examiner. Hearing Examiner means the Snohomish County Land Use Hearing Examiner, created by Chapter 2.02 of the Snohomish County Code.

21.08.100 Master Program. Master Program means the Snohomish County Shoreline Management Master Program, together with maps, diagrams, charts, or other descriptive material and text, developed in accordance with the policies of RCW 90.58.

21.08.110 Office of Community Development. Office of Community Development is the Snohomish County Office of Community Development within the Department of Community Affairs.

21.08.120 Office of Community Planning. Office of Community Planning is the Snohomish County Office of Community Planning within the Department of Community Affairs.

21.08.130 Ordinary High Water Mark. Ordinary High Water Mark on all lakes, streams, and tidal water is that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation, as that condition exists on the effective date of the Shoreline Management Act or as it may naturally change thereafter; provided, that in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide, and the ordinary high water mark adjoining fresh water shall be the line of mean high water.

21.08.140 Person. Person means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or local governmental unit, however designated.

21.08.150 Shorelines. Shorelines are all of the water areas of the state, including reservoirs, and their associated wetlands, together with the lands underlying them; except 1) shorelines of statewide significance, 2) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less, and the wetlands associated with such upstream segments, and 3) shorelines on lakes less than twenty acres in size, and wetlands associated with such small lakes.

21.08.160 Shorelines of the State. Shorelines of the State are the total of all shorelines and shorelines of statewide significance within the state.

21.08.170 Shorelines of Statewide Significance. Shorelines of Statewide Significance partially or completely within Snohomish County are the following shorelines: 1) those areas of Puget Sound and adjacent salt waters and the Strait of Juan de Fuca between the ordinary high water mark and the line of extreme low tide, including Skagit Bay and adjacent area from Brown Point to Yokeko Point; 2) those areas of Puget Sound and the Strait of Juan de Fuca and adjacent salt waters north to the Canadian line, and lying seaward from the line of extreme low tide; 3) those lakes, whether natural, artificial, or a combination thereof, with a surface acreage of one thousand acres or more, measured at the ordinary high water mark; and 4) those natural rivers or segments thereof west of the crest of the Cascade Range, downstream of the point where the mean annual flow is measured at one thousand cubic feet per second or more.

21.08.180 Substantial Development. Substantial Development means any development of which the total cost, or fair market value, whichever is higher, exceeds one thousand dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state; except that the types of development defined in Section 21.12.020 shall not be considered substantial developments for the purpose of this title.

21.08.190 Substantial Development Undertaken on the Shorelines of the State Prior to the Effective Date of RCW 90.58. Substantial Development Undertaken on the Shorelines of the State Prior to the Effective Date of RCW 90.58 means actual construction begun upon the shoreline, as opposed to preliminary engineering or planning.

21.08.200 Variance Permit. Variance Permit is a permit for the limited purposes of granting relief to specific bulk, dimensional, or performance standards set forth in the master program, where there are extraordinary or unique circumstances relating to the property such that the strict implementation of the master program would impose unnecessary hardships on the applicant, or thwart the policies set forth in RCW 90.58.

21.08.210 Wetland or Associated Wetlands. Wetlands or Associated Wetlands are those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; and all marshes, bogs,

swamps, one hundred year floodplains, and river deltas associated with the streams, lakes, and tidal waters, which are subject to the provisions of this title.

Chapter 21.12

APPLICABILITY

Sections:

- 21.12.010 Applicability.
- 21.12.020 Development Exempted from the Shoreline Substantial Development Permit Requirement.
- 21.12.030 Requirements for Exempted Developments.
- 21.12.040 Application of the Permit System to Substantial Developments Undertaken Prior to the Act.
- 21.12.050 Letter of Exemption for Developments Subject to U.S. Corps of Engineers Permits.
- 21.12.060 Applicability of Permit System to Federal Agencies.

21.12.010 Applicability. The requirements of this title are applicable to all actions of Snohomish County and its departments, officers, boards, and commissions.

21.12.020 Development Exempted From the Shoreline Substantial Development Permit Requirement. The following types of development shall not be considered substantial developments for purposes of this title and shall not be required to obtain a substantial development permit:

- 1) Any development of which the total cost or fair market value, whichever is higher, does not exceed one thousand dollars, if such development does not materially interfere with the normal public use of the water or shorelines of the state;
- 2) Normal maintenance or repair of existing structures or developments, including damage by accident, fire, or elements;
- 3) Construction of the normal protective bulkhead common to single family residences;
- 4) Emergency construction necessary to protect property from damage by the elements;
- 5) Construction of a barn or similar agricultural structure on wetlands. Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on wetlands, and the construction and maintenance of irrigation structures including, but not limited to, head gates, pumping facilities, and irrigation channels. Provided, that a feedlot of any size, all processing plants, all other activities of a commercial nature, or alteration of the contour of the wetlands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary for 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;

6) Construction or modification of navigational aids, such as channel markers and anchor buoys;

7) Construction on wetlands 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 feet above average grade level, and which meets all requirements of the state and local agencies having jurisdiction thereof, other than requirements imposed pursuant to this title;

8) The holder of a certification from the governor pursuant to RCW 80.50 shall not be required to obtain a permit;

9) Construction of a dock, designed for pleasure craft only, for the private noncommercial use of the owners, lessee, or contract purchaser of a single family residence, for which the cost or fair market value, whichever is higher, does not exceed two thousand five hundred dollars;

10) 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 from the irrigation of lands;

11) 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;

12) Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on the effective date of the 1975 amendatory Shoreline Management Act which were created, developed, or utilized primarily as a part of an agricultural drainage or diking system. Provided, that any new development associated with said diking or drainage systems, which would 1) reclaim lands which are not being used for agricultural purposes at the time the development is proposed, 2) increase the level of protection provided, or 3) enlarge the land area for which protection is provided, shall not be considered operation and maintenance under this exemption.

21.12.030 Requirements for Exempted Developments. Any development or substantial development exempted from obtaining a substantial development permit by Section 21.12.020 shall be required to be consistent with the policy and intent of the Shoreline Management Act of 1971, this title, and the master program.

21.12.040 Application of the Permit System to Substantial Developments Undertaken Prior to the Act. Substantial development undertaken on shorelines of the state prior to the effective date of the Shoreline Management Act (June 1, 1971), and continuing thereafter, shall not require a permit, except under the following circumstances:

1) Where the activity was unlawful prior to the effective date of the Act;

2) Where there has been an unreasonable period of dormancy in the project between its inception and the effective date of the Act;

3) Where the development is not completed within two years of the effective date of the Act;

4) Where substantial development occurred prior to the effective date of the Act, and continued on to a different shoreline of the state after the effective date of the Act; and

5) Where a substantial development occurred prior to the effective date of the Act, and continued into other phases that were not part of the plan being followed at the time construction commenced.

The exemptions cited in this section shall not apply to any aspect of a substantial development occurring after the effective date of the Act, which the developer had not specifically contemplated and committed himself to prior to the effective date of the Shoreline Management Act.

21.12.050 Letter of Exemption for Developments Subject to U.S. Corps of Engineers Permits. Whenever a development falls within the exemptions stated in Section 21.12.020 or Section 21.12.040, and the development is subject to a U.S. Corps of Engineers section 10 permit under the Rivers and Harbors Act of 1899, or a section 404 permit under the Federal Water Pollution Control Act of 1972, the Office of Community Planning shall prepare a letter addressed to the applicant and the regional office of the Department of Ecology, exempting the development from the substantial development permit requirements of RCW 90.58. The letter of exemption shall be in the form described in WAC 173-14-115.

21.12.060 Applicability of Permit System to Federal Agencies. The permit system shall be applied in the following manner to federal agencies on shorelines of the state:

1) Federal agencies shall not be required to obtain permits for developments undertaken by the federal government on lands owned in fee by the federal government, unless the federal government grants or reserves to the state or Snohomish County, substantial jurisdiction over activities on those lands;

2) The permit system shall apply to nonfederal developments undertaken on lands subject to nonfederal ownership, lease, or easement, even though such lands may fall within the external boundaries of a federal ownership;

3) The permit system shall apply to developments undertaken on lands not federally owned, but under lease, easement, license, or other similar federal property rights short of fee simple ownership, to the federal government; and

4) The permit system shall apply to nonfederal developments undertaken on lands owned in fee by the federal government, but under lease, easement, license, or other usage agreement to nonfederal entities.

5) Federal agency actions shall be consistent with the approved Washington State Coastal Zone Management Program, subject to certain limitations set forth in the federal Coastal Zone Management Act, 16 U.S.C. 1451 et seq., and regulations adopted pursuant thereto.

CHAPTER 21.16

PERMIT ADMINISTRATION

Sections:

- 21.16.010 Administration.
- 21.16.020 Application for Substantial Development, Conditional Use, or Variance Permits.
- 21.16.030 Fees.
- 21.16.040 Notice Requirement.
- 21.16.050 Public Hearing Required, When.
- 21.16.060 County Action on Permit Applications Which Do Not Require Public Hearing.
- 21.16.070 County Action on Permit Applications Requiring Public Hearing.
- 21.16.080 Permit, Filing and Form.
- 21.16.090 Appeals to Shorelines Hearings Board.
- 21.16.100 Effective Date of Permit.
- 21.16.110 Limitations of Permit.
- 21.16.120 Time Requirements of Permit.
- 21.16.130 Revisions to Substantial Development, Conditional Use, and Variance Permits.
- 21.16.140 Reapplication.

21.16.010 Administration. The Office of Community Planning is vested with the duty of administering the rules and regulations relating to shoreline management in accordance with the provisions of this title, and may prepare and require the use of such forms as are essential to such administration.

21.16.020 Application for Substantial Development, Conditional Use, or Variance Permits. Any person desiring to apply for a substantial development, conditional use, or variance permit on any part of the shorelines of the state within Snohomish County, shall apply to the Office of Community Planning, using forms supplied by that office. The application shall not be considered complete until the following minimum information is provided:

- 1) Name, address, and telephone number of applicant;
- 2) Relation of applicant to property owner;
- 3) Name, address, and telephone number of property owner;
- 4) General location and legal description of the proposed development;
- 5) Current use of property;
- 6) Proposed use of property;
- 7) Name of water area and/or wetlands within which development is proposed;
- 8) Site plan map, showing a) site boundary, b) property dimensions in vicinity of project, c) ordinary high water mark, d) typical cross section or sections, showing existing ground elevations, proposed ground elevations, height of existing structures, and height of proposed structures, e) existing and proposed land contours using five foot intervals in water areas and ten foot intervals in areas landward of the ordinary high water mark, f) dimensions and locations of existing structures which will be maintained, and of proposed structures, g) source,

composition, and volume of fill material, h) composition and volume of any extracted materials, and proposed disposal areas, i) location of proposed utilities, such as water, sewer, electricity, gas, septic tanks and drainfields, j) shoreline designation according to the master program, and k) shorelines of statewide significance;

9) Vicinity map, showing a) site location using natural points of reference (roads, prominent landmarks, etc.), b) proposed disposal areas, and c) the general nature of land uses within one thousand feet in all directions from the development site (e.g. residential to south, commercial to north, etc.);

10) Total value of all construction and finishing work for which the permit will be issued, including all permanent equipment to be installed on the premises;

11) Approximate dates of construction initiation and completion;

12) Short statement explaining why this project needs a shoreline location, and how the proposed development is consistent with the policies of the Shoreline Management Act of 1971;

13) Listing of any other permits for the project from state, federal, or local governmental agencies for which the applicant has applied or will apply;

14) Any additional materials which are required to ascertain compliance with the applicable provisions of the master program and County Code.

21.16.030 Fees.

1) A fee in the amount of one hundred fifty dollars for each proposed substantial development, conditional use, or variance permit shall be paid to the Office of Community Planning, at the time an application is presented, to cover the cost of administration. Provided, that if applications for substantial development, conditional use, and variance permits are made concurrently as a master application, the total master application fee shall be one hundred fifty dollars.

2) An additional fee, in the amount of one hundred fifty dollars, shall be paid to the Office of Community Planning, to cover the cost of administration, for proposed substantial development, conditional use, and variance permits which require a public hearing. Provided, that the total additional fee for proposed substantial development, conditional use, and variance permits, which are processed concurrently as a master application, shall be one hundred fifty dollars. And provided further, that there shall be no additional fee for proposed variance permits which are not associated with substantial developments. The additional fee shall be paid prior to scheduling the proposed permit for public hearing.

21.16.040 Notice Requirement.

1) Upon receipt of a complete and proper application for a substantial development, conditional use, or variance permit, the Office of Community Planning shall instruct the applicant to:

a) publish notices thereof at least once a week on the same day of the week for two consecutive weeks in a newspaper of general circulation within Snohomish County; and

b) mail notice to the latest recorded real property owners, as shown by the records of the County Assessor, within three hundred feet of the boundary of the property upon which the substantial development, conditional use, or variance is proposed. At the discretion of the Office of Community Planning, posting of the notice in at least three conspicuous places in the area under consideration may be substituted for mailed notice.

Provided, that if the Office of Community Planning can determine, immediately upon receipt of a complete and proper application for a substantial development, conditional use, or variance permit, that a public hearing is required pursuant to Section 21.16.050, then the notice requirement of this section shall be waived, and notice shall be provided in accordance with the provisions of Section 21.16.070(3).

2) An affidavit that the notice has been properly published, and deposited in the U.S. mail or posted as applicable, shall be submitted by the applicant to the Office of Community Planning prior to county action on the permit application.

3) All notices of application for substantial development, conditional use, or variance permits shall be in the form described in WAC 173-14-070. Notice forms shall be supplied by the Office of Community Planning.

21.16.050 Public Hearing Required, When.

1) The approval or denial of certain applications, which involve significant economic, health, safety, environmental and land use issues, and/or conflicts with the county's adopted plans, policies or regulations, should be preceded by a public hearing before the Hearing Examiner in order to allow interested persons to present their views.

2) A public hearing shall be required prior to final county action on any substantial development, conditional use, or variance permit for which a declaration of significance, pursuant to the State Environmental Policy Act, has been issued.

3) A public hearing shall be required prior to the county's denial of a substantial development, conditional use, or variance permit.

4) In all other cases, the Office of Community Planning shall determine whether a public hearing is warranted. The determination of the Office of Community Planning shall be based on the review of a complete application with respect to compliance with the policies and regulations of the Shoreline Management Act, master program, comprehensive plan, and other adopted county regulations, policies, and ordinances (e.g. slope policy, Title 26B); the provisions of the State Environmental Policy Act (RCW 43.21C); and comments received from interested persons. If the Office of Community Planning finds that a public hearing would assist in implementing the county's adopted plans, policies, regulations, and ordinances, or that certain persons or the environment could be adversely affected by the proposed development, a public hearing shall be held. The determination

of the Office of Community Planning pursuant to this paragraph shall be final and not subject to appeal.

21.16.060 County Action on Permit Applications Which Do Not Require Public Hearing.

1) The Office of Community Planning is authorized to grant substantial development, conditional use, or variance permits for those applications which do not require a public hearing, pursuant to Section 21.16.050. The Office of Community Planning shall approve such permits no sooner than thirty days, nor later than forty five days, following the final date of publication of the notice described in Section 21.16.040, unless a longer period is agreed to, in writing, by the applicant.

2) The decision of the Office of Community Planning shall be based on information from the complete application, written comments from interested persons, and observations from a site inspection, and shall contain findings based upon the record and conclusions therefrom which support the decision. Such findings and conclusions shall also set forth the manner by which the decision would carry out and conform to the county's comprehensive plan, and other official policies, objectives, and land use regulatory enactments. The decision shall contain a statement that the decision will become the final county decision within fifteen calendar days unless appealed to the County Council, together with a description of the appeal procedure prescribed in Section 21.16.060(4)SCC. Said decision shall be mailed within five calendar days to the applicant and all persons who notified the Office of Community Planning of their desire to receive a copy of the final county decision.

3) In authorizing a substantial development, conditional use, or variance permit, the Office of Community Planning may impose special conditions to prevent undesirable effects of the proposed use. Such conditions shall be attached to the permit, and shall be binding upon the applicant and successors or assigns, appealable under Section 21.16.060(4)SCC, and enforceable under Section 21.24.SCC.

4) The decision of the Office of Community Planning shall be the final county decision on a substantial development, conditional use, or variance permit unless, within fifteen calendar days following the issuance of the decision, an appeal therefrom is filed with the Office of Community Planning by any interested person or agency.

a) Said appeal shall be in writing, shall contain a brief statement of the reason why error is assigned to the Office of Community Planning's decision, and shall be accompanied by a fee of \$25.00. Provided, that said appeal fee shall not be charged to a department of the county, or to other than the first appellant.

b) The timely filing of an appeal shall stay the effective date of the Office of Community Planning's decision until such time as the appeal is adjudicated by the County Council, or withdrawn.

c) The Office of Community Planning shall, within seven calendar days following the timely filing of an appeal, notify the applicant, and persons who notified the office of their desire to receive a copy of the county's action, of the date, time and

place for Council consideration. Said notice shall additionally indicate the deadline for submittal of written comments.

d) A decision of the Office of Community Planning which has been timely appealed pursuant to this Section shall come on for council consideration in open public meeting no sooner than fourteen nor longer than twenty eight calendar days from the date an appeal was filed. The council shall consider the matter based upon the written record before the Office of Community Planning, the Office of Community Planning's decision, the written appeal and any written comments received by the council before closure of the council's office on the next to last working day prior to the date set for council consideration; PROVIDED, that the council may publically request additional information of the applicant, the examiner, the county department or other interested parties.

e) The Council may concur with the findings and conclusions of the Office of Community Planning and decline to hear the appeal, or the council may determine to hear the appeal at public hearing, or the council may remand the decision to the Office of Community Planning for further consideration.

f) In those instances where the council decides to conduct a public hearing, notice thereof shall be given by the council pursuant to council rules. Notice shall also be given by the council to all persons who notified the Office of Community Planning of their desire to receive notice of the county's action. Any such hearing before the council shall be de novo. The decision of the council shall be supported by findings and conclusions.

g) The council's decision not to hear an appeal or the council's decision after public hearing on an appeal, shall be final unless appealed pursuant to Section 21.16.090 SCC.

21.16.070 County Action on Permit Applications Requiring Public Hearing.

1) The Office of Community Planning shall notify the applicant, in writing, of the requirement for a hearing as soon as possible following the receipt of a complete and proper application for a substantial development, conditional use, or variance permit and, in no case, later than thirty days following the publication of the second notice described in Section 21.16.040, unless a longer period is agreed to, in writing, by the applicant.

2) Within a reasonable time following the determination of the Office of Community Planning that a public hearing should precede the issuance or denial of a substantial development, conditional use, or variance permit, the Office of Community Planning shall schedule the application for public hearing before the Hearing Examiner. Said hearing shall not be scheduled until the requirements of the State Environmental Policy Act and Snohomish County Environmental Policy Ordinance have been fulfilled, and fees according to Section 21.16.030(2) have been paid.

3) The Office of Community Planning shall publish notice of the date, time, place, and purpose of the hearing in a newspaper of general circulation in the County, at least fifteen calendar days prior to the hearing. Provided, that if notice of the

proposed substantial development, conditional use, or variance permit was not published pursuant to Section 21.16.040, the Office of Community Planning shall publish notice once a week, on the same day of the week for two consecutive weeks, in a newspaper of general circulation in Snohomish County. The second publication of said notice shall occur at least fifteen calendar days prior to the hearing. In addition, the Office of Community Planning shall either mail notice of the hearing to property owners of record within three hundred feet of the property considered, or post the notice in at least three conspicuous places on the subject property. Said notice shall be in the following form:

NOTICE OF APPLICATION FOR SHORELINE MANAGEMENT
SUBSTANTIAL DEVELOPMENT, CONDITIONAL USE, OR VARIANCE PERMIT
(Use appropriate permit)

NOTICE IS HEREBY GIVEN that _____, who :
(state full name)

_____ (describe relationship to property, such as owner, lessee, etc.)

of the below described property, has filed an application for a

_____ permit for the
(Substantial development, conditional use, or variance)

development of _____

at _____
(street address, if known, or distance and direction to nearest town)

within the _____ quarter section of Section _____, Township
_____N, Range _____E, W.M., in the County of Snohomish,
Washington. Said development is proposed to be within

_____ (name of water area)
and/or its associated wetlands. There will be a public hearing
on the above described permit, conducted by the Snohomish County
Land Use Hearing Examiner on _____ at

_____, (date) (time)

in the _____,
Administration (place)

Building, Snohomish County Courthouse, Everett, Washington. Any
person desiring to express his views or to be notified of the
action taken on this application should submit oral or written
comments at the public hearing, or notify the Snohomish County
Planning Department, in writing, within 30 days of

_____ (last date of publication)

Publication dates of this notice are _____ and _____.

4) The Hearing Examiner shall consider the proposed
substantial development, conditional use, or variance permit
based on information from the application; observations from a

site inspection; written comments from interested persons; the advice of the various County departments; and views expressed during a public hearing. The Hearing Examiner may request that an applicant furnish information concerning a proposed substantial development, conditional use, or variance permit, in addition to information required in an application. The decision of the Hearing Examiner shall be the final county decision, unless appealed to the Council pursuant to Chapter 2.02 SCC.

21.16.080 Permit, Filing and Form.

1) Any ruling by the County on an application for substantial development, conditional use, or variance permit, whether it be by the Office of Community Planning, Hearing Examiner or the County Council, shall be filed with the Department of Ecology and Attorney General. Copies of the original application; affidavit of public notice; vicinity map; permit; final order and; where applicable, the environmental checklist, threshold determination and/or environmental impact statement pursuant to RCW 43.21C; shall be filed with the regional office of the Department of Ecology and Attorney General within eight days of the County's final decision.

2) Permits for substantial development, conditional use, or variance permits shall be substantially in the form described in WAC 173-14-120.

21.16.090 Appeals to Shorelines Hearings Board. Any person aggrieved by the granting or denying of a substantial development permit by the County may seek review by filing a request for review with the Shorelines Hearings Board, the Department of Ecology, and the Attorney General within thirty days of the receipt of the County's final order by the Department of Ecology. Any person aggrieved by the final action of the Department of Ecology on a conditional use or variance permit may seek review by filing a request for review with the Shorelines Hearings Board, the Department of Ecology, and the Attorney General within thirty days of the date that the Department of Ecology's final decision is transmitted to the County and the applicant. All requests for review of final permit decisions are governed by the procedures established in RCW 90.58.180, WAC 173-14-170, WAC 173-14-174, and WAC 461-08 (the rules of practice and procedure of the Shorelines Hearings Board.)

21.16.100 Effective Date of Permit.

1) Action on a substantial development permit shall not be considered final until thirty days from the date the required documents have been received by the regional offices of the Department of Ecology and Attorney General, or until properly initiated appeal proceedings have been terminated.

2) Action on a conditional use or variance permit shall not be considered final until thirty days from the date the Department of Ecology has acted on the permit in accordance with the provisions of WAC 173-14-130, or until properly initiated appeal proceedings have been terminated.

21.16.110 Limitations of Permit. Development undertaken pursuant to the issuance of a permit shall be limited to that specifically delineated on the site plan map submitted pursuant to Section 21.16.020, and shall be in compliance with any and all conditions imposed upon such permit at its issuance, and/or

impact mitigating measures identified in documents submitted in support of the application.

21.16.120 Time Requirements of Permit.

1) The following time requirements shall apply to all substantial development, conditional use, and variance permits:

a) Construction or substantial progress toward construction of a project for which a permit has been granted pursuant to the Shoreline Management Act must be undertaken within two years after the approval of the permit. Substantial progress towards construction shall include, but not be limited to the letting of bids, making of contracts, purchase of materials involved in development, but shall not include development or uses which are inconsistent with the policies and regulations of the Shoreline Management Act and master program. In determining the running of the two year period, there shall not be included the time during which a development was not actually pursued by construction and the pendency of litigation reasonably related thereto made it reasonable not to so pursue. Provided, that the County may, at its discretion, extend the two year time period for a reasonable time based on factors, including the inability to expeditiously obtain other governmental permits which are required prior to the commencement of construction. The Office of Community Planning is authorized to act upon requests for extension of the two year time period.

b) If a project for which a permit has been granted pursuant to the act has not been completed within five years after the approval of the permit by the County, the Office of Community Planning shall, at the expiration of the five year period, review the permit, and upon showing of good cause, either extend the permit for one year, or terminate the permit. The running of the five year period shall not include the time during which a development was not actually pursued by construction and the pendency of litigation reasonably related thereto made it reasonable not to so pursue. Nothing herein shall preclude the County from issuing permits with a fixed termination date of less than five years.

21.16.130 Revisions to Substantial Development, Conditional Use, and Variance Permits.

1) An applicant seeking to revise a substantial development, conditional use, or variance permit shall submit detailed plans and text describing the proposed changes in the permit to the Office of Community Planning. If the Office of Community Planning determines that the proposed changes are within the scope and intent of the original permit, the Office of Community Planning is authorized to approve a revision. "Within the scope and intent of the original permit" shall mean that a) no additional over water construction will be involved; b) lot coverage and height may be increased a maximum of ten percent from the provisions of the original permit (provided, that revisions involving new structures not shown on the original site plan shall require a new permit, and that any revisions authorized under this section shall not exceed height, lot coverage, setback, or any other requirements of the master program); c) the use authorized pursuant to the original permit is not changed; and d) no additional significant adverse environmental impact will be caused by the project revision. Landscaping may be added to a project without necessitating a new

permit if it is consistent with conditions attached to the original permit and the master program.

2) The revised permit shall become effective immediately. Within eight days of final County action, the revised site plan, text, and the approved revision shall be sent to the regional office of the Department of Ecology and the Attorney General to complete their files. In addition, the Office of Community Planning shall submit a notice of revision approval to persons who have notified the County of their desire to receive a copy of the action on a permit, pursuant to Section 21.16.040 or 21.16.070(3).

3) If the revision, or the sum of the revision and any previously approved revisions, is not determined to be within the "scope and intent of the original permit," the applicant must apply for a new substantial development, conditional use, or variance permit, as appropriate, in the manner provided for herein.

4) Appeals concerning decisions on revisions shall be accordance with RCW 90.58.180, and shall be filed within fifteen days from the date of receipt of the County's action by the Department of Ecology regional office. Appeals shall be based only upon contentions of noncompliance with one or more of the provisions of Section 21.16.130.(1). Construction undertaken pursuant to that portion of a revised permit not authorized under the original permit shall be at the applicant's own risk until the expiration of the appeal deadline. If an appeal is successful in proving that a revision was not "within the scope and intent of the original permit," the decision shall have no bearing on the original permit.

21.16.140 Reapplication. After the final action regarding the denial of a substantial development, conditional use, or variance permit, reapplication for a permit involving substantially the same development on the property shall not be accepted for consideration for a period of six months.

Chapter 21.20

REVIEW CRITERIA FOR SUBSTANTIAL DEVELOPMENT, CONDITIONAL USE, AND VARIANCE PERMITS.

Sections:

- 21.20.010 Substantial Development Permits.
- 21.20.020 Conditional Use Permits.
- 21.20.030 Variance Permits.

21.20.010 Substantial Development Permits. A substantial development permit shall be granted only when the development proposed is consistent with the policies and procedures of the Shoreline Management Act, the master program, the provisions of the State Environmental Policy Act, and other county plans, policies, objectives, and land use regulatory enactments.

21.20.020 Conditional Use Permits.

1) Uses which are identified in the master program as conditional uses may be authorized only when the applicant can demonstrate all of the following:

a) That the proposed use will be consistent with the policies of the Shoreline Management Act and the policies of the master program;

b) That the proposed use will not interfere with the normal public use of public shorelines;

c) That the proposed use of the site and design of the project will be compatible with other permitted uses within the area;

d) That the proposed use will cause no unreasonably adverse effects to the shoreline environment designation in which it is to be located;

e) That the public interest suffers no substantial detrimental effect.

2) In the granting of conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses should also remain consistent with the policies of the Shoreline Management Act, and should not produce substantial adverse effects to the shoreline environment.

21.20.030 Variance Permits.

1) The purpose of a variance permit is strictly limited to granting relief to specific bulk, dimensional or performance standards set forth in the master program where there are extraordinary or unique circumstances relating to the property such that the strict implementation of the master program would impose unnecessary hardships on the applicant or thwart the policies set forth in the Shoreline Management Act. Variance permits should be granted in a circumstance where denial of the permit would result in a thwarting of the policies of the Shoreline Management Act. In all instances extraordinary circumstances should be shown, and the public interest shall suffer no substantial detrimental effect. In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if variances were granted to other developments in the area where similar circumstances exist, the total of the variances should also remain consistent with the policies of the Shoreline Management Act, and should not produce substantial adverse effects to the shoreline environment.

2) Variance permits for development that will be located landward of the ordinary high water mark, except within those areas designated as marshes, bogs, or swamps, pursuant to WAC 173-22, shall be authorized only if the applicant can demonstrate all of the following:

a) That the strict application of the bulk, dimensional, or performance standards set forth in the master program precludes or significantly interferes with a reasonable permitted use of the property;

b) That the hardship described above is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features, and the

application of the master program, and not, for example, from deed restrictions or the applicant's own actions;

c) That the design of the project will be compatible with other permitted activities in the area, and will not cause adverse effects to adjacent properties or the shoreline environment designation;

d) That the variance authorized does not constitute a grant of special privilege not enjoyed by the other properties in the area, and will be the minimum necessary to afford relief;

e) That the public interest will suffer no substantial detrimental effect.

3) Variance permits for development that will be located either waterward of the ordinary high water mark, or within marshes, bogs, or swamps designated pursuant to WAC 173-22, shall be authorized only if the applicant can demonstrate all of the following:

a) That the strict application of the bulk, dimensional, or performance standards set forth in the master program precludes a reasonable permitted use of the property;

b) That the hardship described above is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features, and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions;

c) That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment designation;

d) That the requested variance will not constitute a grant of special privilege not enjoyed by the other properties in the area, and will be the minimum necessary to afford relief;

e) That the public rights of navigation and use of the shorelines will not be adversely affected by the granting of the variance;

f) That the public interest will suffer no substantial detrimental effect.

Chapter 21.24

ENFORCEMENT

Sections:

21.24.010 Responsibilities of County Departments.

21.24.020 Notice of Violation and Assessment of Penalty Fees.

21.24.030 Permit Recision.

21.24.010 Responsibilities of County Departments.

1) In the case of development subject to the permit requirements of this title, no county department shall issue any other permit for such development until such time as a permit has

been granted pursuant to this title. Any permit subsequently issued by a county department for such development shall be subject to the same terms and conditions which apply to the permit granted pursuant to this title.

2) It shall be the duty of the Office of Community Development to enforce the provisions of this title pertaining to all developments within the jurisdiction of this title (including substantial developments and developments which are exempt from permit requirements). Whenever any development or substantial development is found to be in violation of this title, the policies of the Shoreline Management Act, the master program, or a permit issued pursuant to this title, the director of the Office of Community Development, or his authorized representative, may order any work on such development or substantial development stopped by serving written notice as described in Section 21.24.020 on any persons engaged in the doing or causing such development or substantial development to be done. Any such persons shall forthwith stop such work until authorized by the Office of Community Development to proceed with the work.

3) The Snohomish County Prosecuting Attorney shall bring such criminal, injunctive, declaratory, or other actions as are necessary to insure that no uses are made of the shorelines of the state located within Snohomish County in conflict with provisions, policy, or intent of this title, the Shoreline Management Act of 1971, or the master program.

21.24.020 Notice of Violation and Assessment of Penalty Fees.

1) Whenever the director of the Department of Community Development or his authorized designee has determined that a development or substantial development is in violation of this title, the Shoreline Management Act, or the master program, he is authorized to issue a notice of violation to the record property owner and/or to such other persons as are causing or contributing to such violation; and assess a cumulative civil penalty in the amount of one hundred dollars per day from the date set for correction until the violation is corrected. Said notice shall contain:

a) The name and address of the record owner and other person(s) to whom the notice of violation is directed;

b) The street address when available or a legal description sufficient for identification of the building, structure, premises, or land upon or within which the violation is occurring;

c) A statement of the nature of such violation(s);

d) A statement of the action required to be taken as determined by the Office of Community Development, and a date for correction;

e) A statement that a cumulative civil penalty in the amount of one hundred (\$100.00) per day shall be assessed against the person to whom the notice of violation is directed for each and every day following the date set for correction on which the violation continues; and

f) A statement that the determination of violation may be appealed to the hearing examiner by filing written notice of appeal, in duplicate, with the hearing examiner's office within fifteen calendar days of service of the notice of violation, and that the per diem civil penalty shall not accrue during the pendency of such administrative appeal unless the violation is determined by the Office of Community Development to be hazardous and to require immediate corrective action.

2) The notice of violation shall be served upon the person(s) to whom it is directed by mailing a copy of the notice of violation by certified mail, postage prepaid, return receipt requested, to such person at his last known address.

3) For good cause shown, the Office of Community Development may extend the date set for correction in the notice of violation provided, that such an extension shall not affect or extend the time within which an administrative appeal must be commenced.

4) A notice of violation issued pursuant to this section constitutes a determination from which an administrative appeal may be taken to the hearing examiner, and shall be processed as an administrative appeal pursuant to Sections 2.02 SCC and 18.88 SCC. In the event the cumulative civil penalty is not staid during the appeal because the director of the Department of Community Development or his authorized designee has determined that the violation is hazardous and requires immediate corrective action, the applicant shall be entitled to have the appeal considered by the hearing examiner within two (2) working days following filing of the appeal.

5) The civil penalty shall constitute a personal obligation of the person(s) to whom the notice of violation is directed. The prosecuting attorney, on behalf of the county, is authorized to collect the civil penalty by use of appropriate legal remedies, the seeking or granting of which shall neither stay nor terminate the accrual of additional per diem penalties so long as the violation continues.

6) The director of the Office of Community Development or his authorized representative, and the Prosecuting Attorney, are authorized to enter into negotiations with the parties or their legal representatives named in a lawsuit for the collection of civil penalties to negotiate a settlement, compromise or otherwise dispose of a lawsuit when to do so will be in the best interests of the county.

21.24.030 Permit Recision. Whenever any development is in violation of a permit issued pursuant to this title, the Office of Community Development may initiate permit recision proceedings by scheduling a public hearing before the Hearing Examiner and serving the permittee with written notice. Said notice shall contain a general description of the alleged non-compliance and the date, time, and place of public hearing. It shall be served by registered mail at least fifteen calendar days prior to such hearing. In addition, the Office of Community Planning shall publish such notice in a newspaper of general circulation in the county, and mail such notice to property owners of record within three hundred feet of the property considered or post the notice in at least three conspicuous places on the subject property, at least fifteen calendar days prior to the hearing. The permit recision request shall be processed in accordance with the procedures established in Chapter 2.02 SCC. Any person aggrieved

by the action taken by the county on a recision request may seek review by filing a request for review with the Shorelines Hearings Board, pursuant to RCW 90.58.181(1) and WAC 461-08, within thirty days of the county's action.

Chapter 21.28

SEVERABILITY

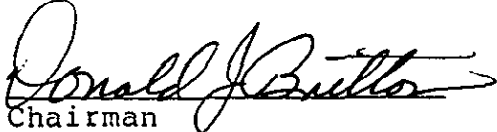
Sections:

21.28.010 Severability.

21.28.010 Severability. If any provision of this title or its application to any person or circumstance is held invalid, such decision shall not effect the validity of the remaining portions of the ordinance or its application to other persons or circumstances.

Ordinance No. 80-117 - Amending Snohomish County Code Title 21 Establishing Procedures for the Issuance of Shoreline Management Permits for Developments on Shorelines of the State and Repealing Title 21 Snohomish County Code.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington


Chairman

ATTEST:


Clerk of the Council

- () APPROVED
() EMERGENCY
() VETOED

DATE 12-30-80


County Executive

PUBLISHED December 19, 20, 1980 and
January 9, 1981