



Enforcing the Shoreline Management Act

Guidance for Local Governments

By

Carolyn Chase, Tess Cooper, and Margot Schwamb

For the

Shorelands and Environmental Assistance Program

Washington State Department of Ecology
Olympia, Washington

Revised August 2025, Publication 95-101

Publication Information

This is a third edition of Enforcing the Shoreline Management Act. The document was originally published in 1995 by Jim Anest and was later updated in 1998 by Huckell/Weinman Associates, Inc. This document is available on the Department of Ecology's website at:

<https://apps.ecology.wa.gov/publications/summarypages/95101.html>

Contact Information

Shorelands and Environmental Assistance Program

P.O. Box 47600

Olympia, WA 98504-7600

Phone: 360-407-6000

Website¹: [Washington State Department of Ecology](http://www.ecology.wa.gov)

ADA Accessibility

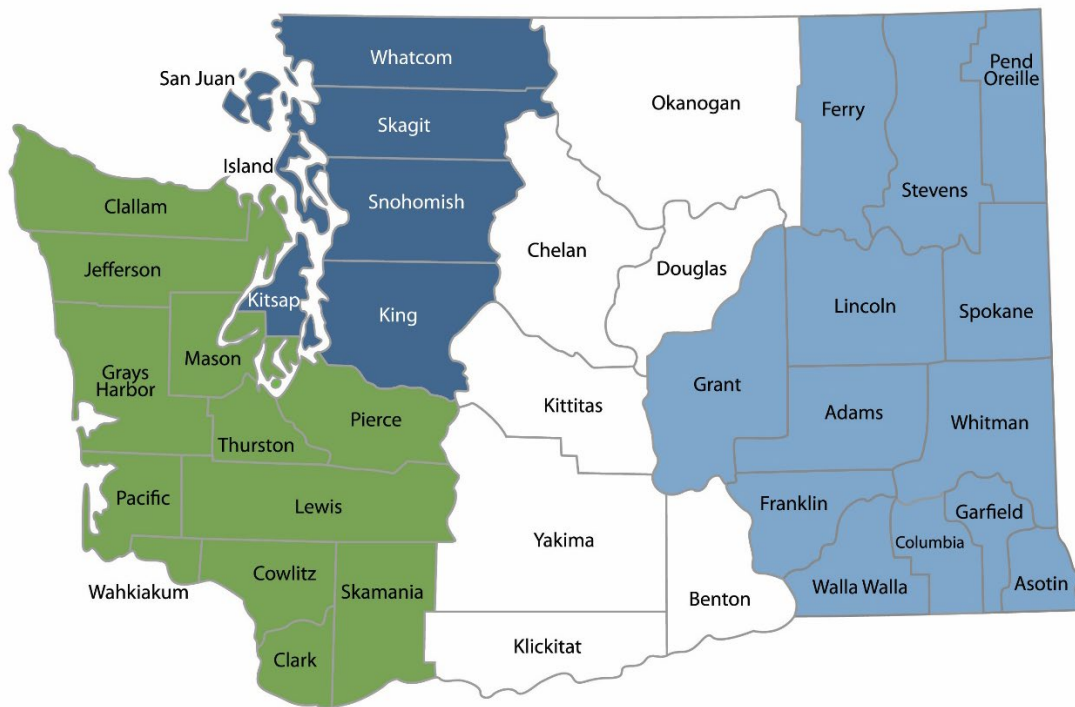
The Department of Ecology is committed to providing people with disabilities access to information and services by meeting or exceeding the requirements of the Americans with Disabilities Act (ADA), Section 504 and 508 of the Rehabilitation Act, and Washington State Policy #188.

To request an ADA accommodation, contact Ecology by phone at 360-407-7688. For Washington Relay Service or TTY call 711 or 877-833-6341. Visit Ecology's website for more information.

¹ www.ecology.wa.gov/contact

Department of Ecology's Regional Offices

Map of Counties Served



Southwest Region
360-407-6300

Northwest Region
206-594-0000

Central Region
509-575-2490

Eastern Region
509-329-3400

| Region | Counties served | Mailing Address | Phone |
|---------------------|--------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|--------------|
| Southwest | Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Mason, Lewis, Pacific, Pierce, Skamania, Thurston, Wahkiakum | P.O. Box 47775 Olympia, WA 98504 | 360-407-6300 |
| Northwest | Island, King, Kitsap, San Juan, Skagit, Snohomish, Whatcom | P.O. Box 330316 Shoreline, WA 98133 | 206-594-0000 |
| Central | Benton, Chelan, Douglas, Kittitas, Klickitat, Okanogan, Yakima | 1250 West Alder Street Union Gap, WA 98903 | 509-575-2490 |
| Eastern | Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman | 4601 North Monroe Spokane, WA 99205 | 509-329-3400 |
| Headquarters | Statewide | P.O. Box 46700 Olympia, WA 98504 | 360-407-6000 |

Enforcing the Shoreline Management Act

Guidance for Local Governments

Shorelands and Environmental Assistance Program
Washington State Department of Ecology
Olympia, WA

Revised August 2025 | Publication 95-101



DEPARTMENT OF
ECOLOGY
State of Washington

Table of Contents

| | |
|----------------------------------------------------------------|-----------|
| List of Figures and Tables | 7 |
| Figures..... | 7 |
| Tables | 7 |
| Acknowledgements | 8 |
| Purpose | 9 |
| Introduction..... | 10 |
| The Shoreline Management Act | 10 |
| Shoreline jurisdiction | 11 |
| Local and state roles under the SMA | 12 |
| Enforcement authority | 13 |
| What are SMA and SMP violations? | 13 |
| Who is responsible? | 14 |
| Initial Reports of a Violation | 15 |
| Intaking complaints..... | 15 |
| Complaint follow-up | 17 |
| Investigating a Violation | 19 |
| Importance of the investigation | 19 |
| Site inspection follow-up, reporting, and record keeping | 26 |
| Assessing the Violation | 28 |
| SMA policy guidance | 28 |
| Legal Tools and Options..... | 32 |
| Local government enforcement procedures | 32 |
| Considerations in selecting enforcement options | 32 |
| Enforcement tools | 32 |
| Voluntary compliance | 38 |
| Violation scenarios..... | 39 |
| Assistance from the Department of Ecology | 43 |
| Coordination with other agencies | 44 |
| References..... | 45 |
| Definitions | 46 |

| | |
|-------------------------------------------|-----------|
| Abbreviations and Initialisms..... | 48 |
| Appendix A: Interview Tips..... | 49 |

List of Figures and Tables

Figures

| | |
|--------------------------------------------------------------------------------------------------------|----|
| Figure 1. The importance of holding violators accountable | 10 |
| Figure 3. Shoreline jurisdiction | 11 |
| Figure 4. Most local governments have a GIS map layer showing shoreline environment designations. | 12 |
| Figure 6. Photographs are indispensable evidence. | 15 |
| Figure 7. When possible, include measurements or an item for scale in a photograph..... | 25 |
| Figure 8. With modifications, some unauthorized structures can be made consistent with the SMP. | 34 |
| Figure 10. Unpermitted structures in shoreline buffer | 39 |
| Figure 11. Trees removed to create a view corridor | 40 |
| Figure 12. A filled wetland | 41 |
| Figure 13. Conversion of a boathouse to living quarters | 42 |
| Figure 14. Remember, the purpose of the visit is fact finding. | 49 |
| Figure 15. Examples of neutral ways to talk with alleged violators | 50 |
| Figure 16. Calmly close an interview if things become confrontational. | 50 |

Tables

| | |
|------------------------------------------|----|
| Table 1. Example of an action log. | 18 |
| Table 2. Example of a code analysis..... | 29 |

Acknowledgements

Ecology first published Enforcing the Shoreline Management Act in 1995. That original publication was revised three years later in 1998. Authors of the 2025 revision would like to thank past authors for their contributions to this document:

- Jim Anest
- Huckell/Weinman Associates, Inc.

Purpose

The purpose of this guidance is to assist local government shoreline administrators, code enforcement staff, planners, and other personnel involved in the enforcement of shoreline master programs. This document takes a step-by-step approach through the enforcement process and describes techniques for investigating and determining appropriate enforcement action. It also provides practical information and approaches for setting up and implementing enforcement programs. This revised 2025 edition of Enforcing the Shoreline Management Act replaces previous versions.

Introduction

Enforcement plays a crucial role in the protection of shoreline environments, in preserving public use and enjoyment of shorelines, and in assuring the appropriate use and development of these areas. Enforcement includes all actions necessary to ensure that shoreline uses and activities comply with the SMA and the local SMP. Alongside permitting, enforcement is essential to achieving the goals of the Shoreline Management Act (SMA) and local shoreline master programs (SMPs) by correcting unauthorized uses, developments, and activities.

Local governments invest considerable time and public resources in developing and applying SMP policies and regulations. As in other areas of land use regulation, adopting SMPs provides no guarantee of public compliance. A strong local enforcement program is the insurance policy on this investment in planning and implementation.



Figure 1. The importance of holding violators accountable

The Shoreline Management Act

The SMA requires the coordinated planning of shorelines of the state to meet the goals of planning for preferred uses, protecting the environment, and promoting public access. The intent of the SMA is to prevent the inherent harm in the uncoordinated and piecemeal

development of the state's shorelines by planning for and fostering all reasonable and appropriate uses. The Act uses a local-state-partnership model in which local governments and the Department of Ecology (Ecology) work cooperatively toward achieving the goals established in the SMA.

Every local government engaged in shoreline management has a locally tailored SMP, a management plan that regulates new land uses, developments, and certain activities within shoreline jurisdiction. Approximately 260 towns, cities, and counties are involved in shoreline management. It is through permit system administration, outreach, education, compliance efforts, and enforcement actions that these local governments implement their SMP.

Shoreline jurisdiction

The policies and regulations of your SMP apply within a management area known as shoreline jurisdiction. Shoreline jurisdiction includes all shorelines of the state and their associated shorelands. Most local governments will have geographic information system (GIS) mapping that identifies shorelines of the state, and all SMPs include lists of these waters. Shorelines of the state include:

- All marine waters.
- Segments of streams where the mean annual flow is more than 20 cubic feet per second.
- Lakes and reservoirs 20 acres and greater in area.

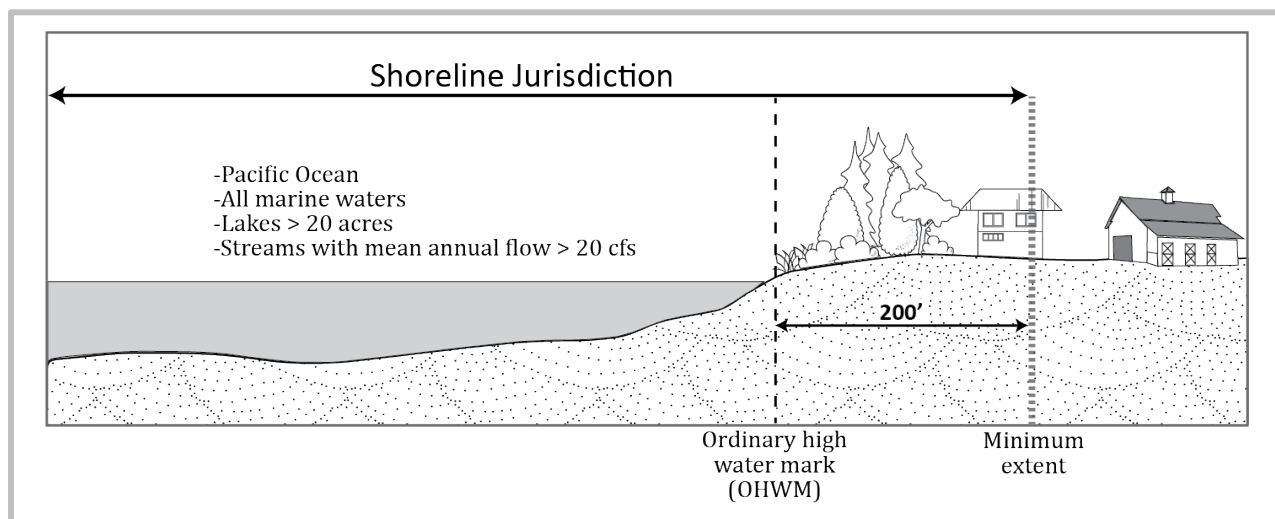


Figure 2. Shoreline jurisdiction

Shoreline jurisdiction includes all wetlands and river deltas associated with shorelines of the state, also known as “associated wetlands.”

Shoreline jurisdiction includes those shorelands extending 200 feet landward of the ordinary high water mark (OHWM) and, where a floodway exists, 200 feet landward of the floodway, measured as a straight-line distance.

There is local discretion in extending shoreline jurisdiction beyond these minimum requirements. Local governments can decide to extend shoreline jurisdiction to include all or part of the 100-year floodplain. Additionally, local governments may extend shoreline jurisdiction to include the land necessary for critical area buffers. Each SMP will specify whether a local government chose to extend shoreline jurisdiction.

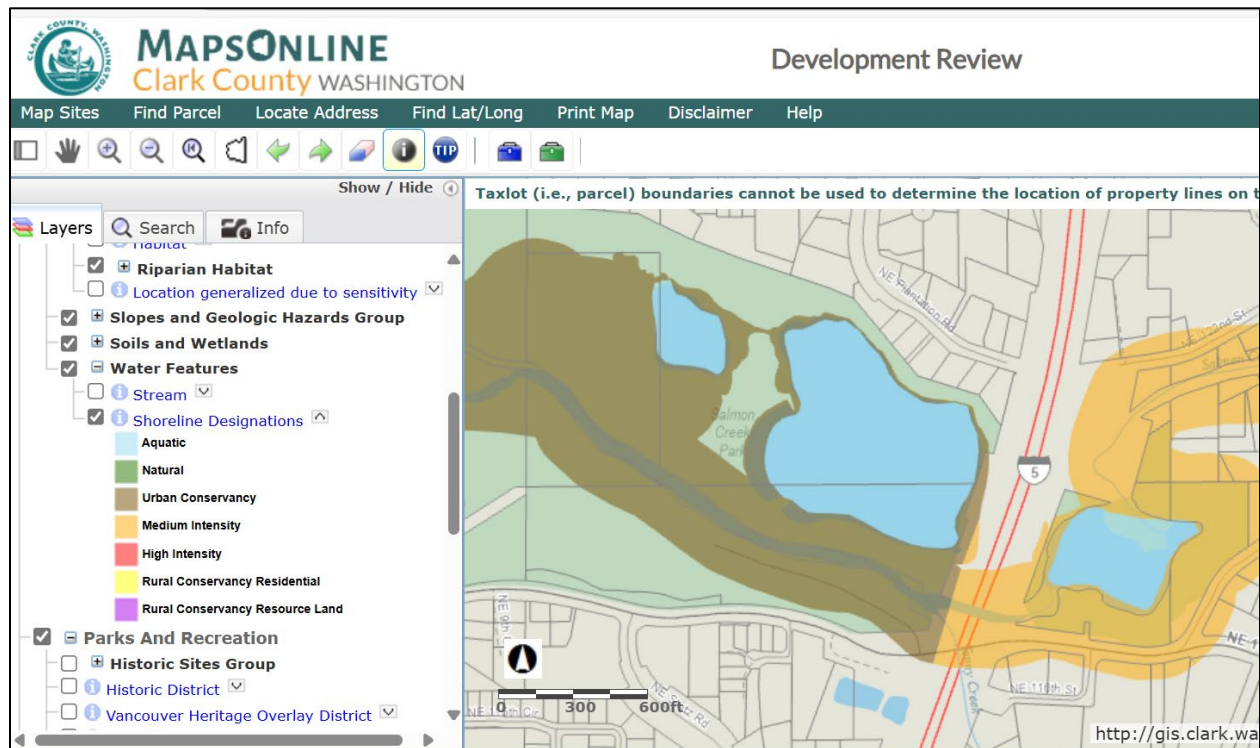


Figure 3. Most local governments have a GIS map layer showing shoreline environment designations.

Local and state roles under the SMA

The SMA establishes shoreline management as a cooperative effort between the state and local government, with specific roles for each. Under the SMA, local governments and Ecology both have enforcement authority. Primary responsibility for enforcement falls to cities and counties as part of local administration of the SMA. This means that local governments will typically take the lead in enforcement actions.

At times, Ecology may address a violation jointly with a local government or even take the lead if a local government is unable or unwilling to act. In all cases, Ecology informs local government of any enforcement action the department is considering concerning shoreline violations within that jurisdiction.

Enforcement authority

SMA enforcement authority is provided by [RCW 90.58.210](https://app.leg.wa.gov/RCW/default.aspx?cite=90.58.210)² and [Chapter 173-27 Part II WAC](https://app.leg.wa.gov/WAC/default.aspx?cite=173-27).³ SMA enforcement authority can be used independently or in combination with other state or local enforcement authority and procedures. A variety of tools—including civil and criminal penalties, cease and desist orders, corrective action orders, requiring after-the-fact permits, and permit rescission— may be available to local administrators. It also encompasses efforts to obtain voluntary compliance.

Public education should also play an important role in enforcement. Outreach programs targeting contractors, developers, realtors, and property owners can promote voluntary compliance and reduce misunderstandings about the existence and meaning of regulations. It has been established that an important factor influencing compliant behavior is the perceived legitimacy of regulations. Therefore, educating citizens about shoreline regulations is an important element in building community support for shoreline management.

What are SMA and SMP violations?

SMA and SMP violations have three qualities:

- The reported violation must be wholly or partially within shoreline jurisdiction.
- The use, development, or regulated activity has not been authorized by the local government or is proceeding in ways that violate the terms and conditions of a shoreline permit or authorization.
- The issue is within the authority of the SMA, which governs the establishment of new uses, new development, and certain activities, like vegetation removal.

SMA violations typically fall into one or more of these three categories:

- **Procedural violations:** Means the shoreline use, development, or activity occurs without an SMA permit or SMP exemption but is otherwise consistent with the policies and regulations of the SMP. Procedural violations are of concern because of the emphasis the SMA places on the public review process. Compliance strategies need to consider both substantive and procedural issues.
- **Substantive violations:** Means the shoreline use, development, or activity is inconsistent with policies and regulations of the SMP and has not been authorized. Examples of substantive violations could be clearing riparian vegetation within a shoreline buffer, filling a wetland, or constructing a dock that does not meet required dimensional standards.
- **Permit violation:** Means that shoreline authorizations have been obtained for the shoreline use, activity, or development, but work is being performed that is inconsistent with the terms or conditions of the approved project. Permit

² <https://app.leg.wa.gov/RCW/default.aspx?cite=90.58.210>

³ <https://app.leg.wa.gov/WAC/default.aspx?cite=173-27>

inspections and mitigation monitoring programs are the best way to identify and correct permit violations.

Complaints about permitted work

The SMA gives local governments the primary role in SMP administration, including the administration of a shoreline permitting system. It is through this permitting system that individual shoreline proposals are viewed for consistency with the SMP. Shoreline authorizations include substantial development permits (SDPs), shoreline conditional use permits (CUP), variance permits, and SDP exemptions.

It is not uncommon for locally approved projects to be reported as violations. When these complaints come in, review information about the approved project to understand if the complaint points to a possible permit violation that requires investigation. If, after such review, it appears that no permit violation has occurred, it will often be enough to let the reporting party know that work at a site has been authorized.

However, sometimes community members try to voice objections to an approved project through the enforcement complaint process. These complaints may span many topics, including procedural missteps, falsified permit information, or improper local review and approval. If a shoreline development, use, or activity is proceeding consistently with local government authorizations, as well as with Ecology approvals if a shoreline variance or CUP is involved, there is no pathway for taking enforcement action under the SMA. The proper way to contest a shoreline permit or SDP exemption is to appeal the decision. This highlights the importance of shoreline permit noticing and including appeal information in the notice.

Who is responsible?

Under the SMA, enforcement action can be taken against the person(s) responsible for the violation (RCW 90.58.210(2), WAC 173-27-260). You will run into situations where the actions of a tenant, former property owner, contractor, neighbor, or other individuals are directly linked to the violation. When multiple people are responsible, a local government will often take different enforcement approaches based on whether a particular party, or parties, is most responsible.

Property owners are ultimately responsible for all violations on their property. Generally, when someone buys a property with an SMA violation, that new property owner could be responsible and their cooperation to fix the violation is necessary. This does not mean that other individuals, like the previous property owner, cannot also be held responsible. One approach to a situation like this could be to take enforcement action against the previous property owner or other individual(s) responsible for the violation while gaining the cooperation of the new owner for the property access necessary to resolve the violation.

Initial Reports of a Violation

When a report of unpermitted shoreline work comes in, the investigator should acknowledge the report, record reported information, seek additional information if necessary, and verify whether a violation has occurred. Information will be used to make an initial assessment of whether a violation exists, if response is necessary, and to determine if there is an immediate or significant threat to the shoreline environment, public health or safety, public access, or water-dependent uses.



Figure 4. Photographs are indispensable evidence.

Intaking complaints

Local government staff usually hear about potential violations through citizen complaints or from local or resource agency inspectors. Your first priority is to determine if there is an immediate or serious threat to the shoreline environment or to public health or safety. Your second priority is to get answers to these basic questions: who, what, where, and when.

Most complaints are received electronically or by telephone. Your goal is to obtain as much detailed information as possible about the alleged problem. Using a standardized complaint form is the best way to ensure key information is collected from reporting parties.

Key information to collect will include:

- **Who** is reporting the potential violation and the best way to contact them. If possible, get their name, address, phone number, and email address.
- **What** work has been observed at the site?
- **Where** is the site located?
- **When** did they observe the activity?
- **Who** is believed to be responsible for the work? If the reporting party knows who is responsible, ask if they have contact information (phone number, address, email address).

Confidentiality

Confidentiality can be a major concern for individuals that report a violation or provide evidence that supports an enforcement case. Some people want to remain anonymous, particularly if a complaint involves neighbors. What assurances can you give the caller that complaints are confidential? Many local governments will accept anonymous reports, but others have policies against doing so. Discuss and define your policy with your city/county attorney so that you can clearly state what is and is not possible with individuals that report shoreline violations. Review the Washington State Public Records Act (RCW 42.56) to understand what types of records can be kept confidential and what must be disclosed.

Acknowledging the complaint

It's good practice and good public relations to follow up complaints with a telephone call or email to acknowledge receipt of the complaint. Many local governments have systems that allow people to file complaints digitally. These systems often automatically generate an email acknowledging the complaint was received.

During follow-up discussions with the individual reporting the violation, limit your comments to facts and observation. Expressing an opinion or conclusion at this time may raise unwarranted expectations in the complainant or prejudice your case if a party later pursues legal action.

Working with state agencies and Tribes

Take time to establish contacts with state and federal agencies and local Tribes. Depending on the violation, agencies can provide technical assistance and may take independent enforcement action. Tribal governments can support local government enforcement programs by providing credible accounts of violations, providing information on the impacts of unpermitted work, providing technical expertise, and recommendations for corrective actions.

Ecology has SMA enforcement authority, and local governments should contact Ecology when they need assistance with a shoreline violation. Many shoreline violations also violate Washington's Hydraulic Code, which is administered by the Washington State Department of Fish and Wildlife. Federal agencies, including the U.S. Army Corps of Engineers and the National Oceanic and Atmospheric Administration, may also have authority to act.

Working with building inspectors

Shoreline violations can result when an approved project is not constructed or maintained in compliance with what has been authorized. Building inspectors will often play a critical role in assuring that authorized shoreline development complies with the approved permits.

Establish a routine to meet with your inspectors to review projects after permit approval but prior to construction. Help your inspector by reviewing unusual or complicated shoreline permit conditions. Inspectors may be unfamiliar with issues that arose during earlier phases of the project and project permitting. Alert inspectors to special areas of concern.

Complaint follow-up

Evaluating complaint information

Following initial contact, review your information to see if you can fully answer the four basic questions: *Who? What? Where? When?*

While it is not necessary to know *why* a violation occurred, gaining this understanding can shed light on the circumstances that resulted in the violation and may inform your efforts to get voluntary compliance or your enforcement actions.

Determine what else you need to know to define follow-up action. Additional investigation—particularly a site visit—is typically required to fully respond to these questions. At this early stage, the basics you want to convey include:

- The type and nature of the alleged violation (for example, illegal fill or grading operation, habitat or water quality impact, setback or structural violation, public access or view problem, and so on).
- The magnitude of the problem (critical, significant, minor) or no problem.
- How quickly you need to respond.
- Preliminary recommendations for follow-up, including abatement or corrective action, staff assignment, and time frame.

Site inspections are generally essential to meaningful enforcement. However, since staff and resource constraints may delay or even preclude a site visit or follow-up, your primary concern at this stage is identifying and assuring response to situations that significantly threaten the shoreline environment, or that will likely be irreversible.

Situations likely requiring immediate action include wetland or shoreline fills, cutting established trees, illegal construction or construction of structures inconsistent with approved site plans or SMPs, in-water construction during fisheries spawning or out migration, or construction that is causing a water quality violation. This is particularly true if work is ongoing, and further damage can be prevented.

Setting up case files

Keeping good records of complaints and information is essential. After a violation is verified, set up a file to store all records associated with the violation, including the original complaint, photographs, field inspection forms, notes, letters, maps, special reports, etc. Your file should include an action log. Your action log should be a brief, chronological list of the communications and action steps taken in a case and the date they occurred.

Table 1. Example of an action log.

| Date | Action | Summary |
|-------------|------------------|--------------------------------------------------------------------------------------------------------------------------------------------|
| 1/15/2025 | Site visit | Met onsite with owner John Smith to discuss unauthorized tree removal. |
| 1/24/2025 | Letter issued | Voluntary compliance letter emailed and mailed to John Smith. |
| 1/29/2025 | Phone call | John Smith called in response to the 1/24 compliance letter. He said that he plans to voluntarily comply with the corrective steps listed. |
| 2/24/2025 | Restoration plan | John Smith emailed a restoration plan prepared by a qualified professional for review. |

Keeping the shoreline administrator up to date

To avoid delays and confusion, the shoreline administrator needs to be aware of complaints involving shoreline management issues. Make sure your system for handling complaints is set up to give the shoreline administrator the necessary information efficiently and accurately. Your shoreline administrator should be able to help you understand the likely impacts of violations and what corrective actions, or next steps may be most appropriate.

Investigating a Violation

Importance of the investigation

Your investigation will help you determine if a problem exists and how serious it is. Keep in mind that your investigation will need to provide legally defensible evidence should you pursue legal action against a violator or need to defend your enforcement on appeal. Although it takes time, early and thorough documentation is worthwhile. A well-documented case can provide considerable leverage in later negotiations and increase the likelihood of success if appealed or litigated.

Enforcement experts stress how difficult it is to anticipate which cases will be difficult. A small operation may have caused a significant fish kill; a home builder, cooperative at first, may later refuse to correct a problem; or other agencies may view the case more seriously than you did. Since you can't always foresee what might happen, a careful, systematic approach to investigation is always a good strategy.

Permit databases and assessor's records

Investigations typically start with a desktop assessment. Start by checking local permit records to understand whether the complaint is about a site with an active permit. If there is an active permit for the location, your role is to understand if the complaint suggests a potential permit violation that should be investigated further. If not, your investigation may end here. Of course, if no permit exists, your investigation will continue.

County assessor's records are available online and are the best source for information about property ownership and mailing address.

Remote imagery and GIS data

Your desktop assessment should include a review of available aerial imagery and GIS mapping. Together, imagery and mapped data will help you identify what natural features may exist at or near the site, how the site has changed over time, and what regulatory designations have been assigned to the site (zoning, shoreline environment designation, flood hazards, etc.). Together, imagery and GIS data can provide an understanding of:

- Whether the site is likely within shoreline jurisdiction and what the shoreline environment designation is.
- Whether wetlands; streams; steep slopes; and floodways, floodplains, or other special flood hazard areas are mapped at the site.
- Whether the site is mapped for association with a priority habitat or species (mapped by the Washington State Department of Fish and Wildlife's Priority Habitats and Species Program) or species protected under the Endangered Species Act (mapped by the U.S. Fish and Wildlife Service).
- How the site has changed over time as the result of human development and activity as well as natural processes.

Always save electronic copies of important maps and images to the case file. These images and files may help you communicate an issue to the property owner. They may also become important parts of a future enforcement case.

The site visit

Remember that your first site visit may be your best or only chance to document the violation and the impacts to shoreline resources.

Accessing private property

In all cases, follow local policies and procedures for accessing private property.

Understand that any partner agencies that you invite to the site may have their own requirements for ensuring that a property owner or lessee has authorized site access. Ecology must have explicit permission prior to entering private property to conduct a site visit. If you plan to have Ecology attend a site visit that you are coordinating, please ask the property owner or lessee whether Ecology has permission to attend for the purposes of investigating the potential violation. If possible, it is beneficial to obtain or verify with the property owner or lessee that Ecology has permission to attend in writing.

If you cannot obtain permission to enter private property, try other means of observing the violation. Neighbors may allow you to view the violation from their property, or you may be able to see the violation from the right-of-way or another public space. You may also be able to see the violation from the water.

Assemble your team

You may only get one chance to visit the site. It is important to make sure you have the technical experts needed to understand impacts to shoreline associated wetlands, shoreline water bodies, riparian and nearshore habitats, and other shoreline resources. For example, if determining the location of the ordinary high water mark is an important outcome of the site visit, you will want to ensure that someone in attendance can perform this function. In general, a team approach is best.

Violations of the SMA often violate other state and federal laws. Your team may include staff from Ecology, WDFW, DNR, and USACE. Tribes may be interested in attending site visits and can be a powerful partner in advocating for corrective actions and restoration.

During the site visit, avoid speculating about the ability for a violator to keep unauthorized structures by applying for permits. Violators commonly apply for permits to keep unauthorized structures. However, these applications must be denied if the use and development cannot meet the policies and regulations of the SMP.

Research and preparation prior to the site visit

- Check with other departments and review relevant files to learn what you can about the site and shoreline activity. Talk with other staff who have knowledge of the project, site, or vicinity.

- Is the shoreline activity occurring pursuant to a permit? If so, review site plans, structural drawings, and permit conditions. Evaluate site conditions and drainage relative to the affected waterbody.
- Review appropriate maps, aerial photographs, flood hazard maps, and other information that will help you understand site conditions and possible shoreline impacts.
- Identify and review SMP provisions relevant to potential substantive violations. Note any policies, regulations, and standards that have been violated.
- Review previous permit actions applicable to the site or vicinity.
- What other federal, state and local permits and approvals might be required? Check to see if other agencies or programs might already be involved or have an interest in the violation.
- Put together a list of questions you want to ask.
- If the site is much larger than several acres, is densely wooded, or your access might be obstructed by natural features or structures, use aerial photographs to identify your route and the areas you want and will be able to inspect.
- Fill out as much of your field inspection form as possible before entering the site.

Site visit checklist

- A means and method for taking field notes. This may be a field inspection form if the local government you work for has one. Remember to take paper and pencil backup if you're using a tablet, phone, or laptop to collect information.
- Site maps and aerial imagery.
- Original complaint and outcomes of your preliminary investigation.
- Copies of the plans and permits, if applicable.
- Digital or physical copy of the SMP and other pertinent regulations.
- Your list of questions, concerns, and information needs.
- Cell phone.
- A form of identification and business cards.
- Boots and appropriate weather gear.
- A measuring tape.
- A camera.

Pre-inspection reconnaissance

Drive by and check the site and vicinity before starting your inspection. The site is often not as you envisioned when you reviewed site information in the office. Think about safety issues, especially if you are alone.

Entering the site

Never enter a site unless you have followed all local policies and procedures for doing so. Remember that you are there as a government official. You are looking for something that is likely to make life more difficult for the owner, operator, or developer. Use your authority with tact and diplomacy.

If the owner or operator is on the site, identify yourself immediately and give the person your business card or contact information. Be friendly but professional.

Let the owner or person in charge know you are there, who you are, why you are making this site visit, what you plan to do, and how long you expect to be on the site. Explain how you plan to document your inspection. For example, you may say that you will be walking the site, taking notes and photographs, asking questions, and looking for wetland indicators.

Leave immediately if you are threatened or believe you are in danger. Local governments can work with their county/city attorneys to develop guidance for responding to threatening or dangerous behavior during site visits. Call emergency services for situations where you believe there is an ongoing and immediate threat to your safety or another person's safety. For non-emergent situations, consult with your local county/city attorneys to determine whether to contact the police after an interaction. If the investigation reveals an immediate public or environmental hazard, you may want to consult with the local county/city attorney or even contact emergency services. If you are denied entry or are physically threatened, make detailed notes of the circumstances after safely leaving the site.

Physical site assessment—what to do

It may be helpful to sketch your observations as you conduct your site inspection. Take time to complete field notes as you proceed, making notes as clear and complete as possible.

Observe and compare actual site conditions with those indicated on maps, plans, drawings, and aerial photographs.

Remember, good observation skills are critical to your field assessment. Take your time and look around carefully.

Physical site assessment—what to look for

On the following pages, you'll find checklists that provide general guidance for conducting a site inspection. The bulleted lists are things to consider.

General observations:

- The location of the OHWM.
- What parts of the site are within shoreline jurisdiction?
- Note site topography, drainage, and observable hydrology. Do you see steep slopes, wetlands, streams, seeps, or drainage not previously noted or located incorrectly? Where is the water coming from and where is it going? Is site drainage directed by human-made structures?
- Note weather conditions.
- If the violation is on marine waters, note the tidal elevation.
- Are there wetland indicators? If so, document the indicators.
- What specific shoreline habitat conditions do you observe? What plant communities are present (trees, shrubs, grass, native, invasive, none)?

Observations about site activity and development:

- What uses, development, and/or activities are occurring on the site? Which are within shoreline jurisdiction?
- How does development compare with proposed or approved plans and drawings? Review location, size, dimensions, and setbacks/buffers.
- Is the use, development, and activity observed consistent with what is allowed under the SMP and/or consistent with prior permit approvals??
- Are structures existing or under construction? What are they? What is their function? Where are they located?
- Do you see signs of illegal and/or recent construction within shoreline jurisdiction?
- If construction is underway, describe site grading, clearing, logging, or other site disturbance. Note the extent and location of cuts and fills, stockpiles of dirt, or presence of other construction materials. Are erosion and stormwater controls in place? Are they functioning?
- What are the limits of clearing? How does this compare with buffers, setbacks, and/or vegetation protection areas required by the SMP?
- If the owner or operator is on the site during your field assessment, discuss what you are observing with them. Request explanation or clarification of any of your observations. However, avoid expressing legal conclusions or site remediation strategies, as they are often premature at this stage and may establish expectations that are difficult to change as the investigation evolves.

Assessment of the alleged violation:

- Sketch, describe, and photograph your observations of the alleged violation. Describe the physical problem, including dimensions, distances, volumes, size, area of impact relative to the site boundaries, and description of affected shoreline areas.
- What environmental impacts do you observe? What functions are impacted?
- Are conditions temporary or permanent? What potential problems might occur if the use or activity continues? What resources might be harmed? Describe your observations and any visual evidence that might indicate when the violation happened or how long the problem has been going on.
- Is public access currently or potentially an issue? Is public access impeded in any way? Is view protection a consideration? Does the use or activity impair or block neighboring views? Document with sketches or photographs. View blockage is best illustrated from the perspective of the view to be protected.
- If new construction is the subject of the inspection, note what specific construction activity is involved.
- Compare the location, size, setbacks, and height of structures with what is shown on plans. If a fill or grading violation is involved, estimate the volume and extent of work. Sketch and photograph any differences from what was authorized. Indicate where measurements were taken.

- Do your observations or conversations suggest that the action may have been intentional or the result of negligence? Has the problem been caused or exacerbated by a natural event?
- If you speak with the owner or operator, ask what contacts he/she has had with government agencies regarding this project. Get specifics. When did discussions occur? What directions or comments were provided?

Interviewing

The information gained through interviews can greatly assist your investigation. Interviews can produce new information or help you fill in gaps in the record. If it is later determined that a violation occurred, your interviews with the owner or operator can be valuable in defining your enforcement strategy and in helping you assess intent or negligence on the part of the violator.

Keep in mind that interviews must be conducted systematically and documented carefully, or information may not be accepted as evidence. Remember that information you receive through an interview may be incomplete and may lack objectivity. Be sensitive to the possibility of bias on the part of the people you interview.

Certain interviewing techniques help put the person at ease and help elicit a more informative response. Being comfortable (and making others feel at ease) in an interview is usually a matter of experience. Experience also teaches you when to keep the discussion focused on specifics and when to let the other person talk in more general terms.

Ecology tips for conducting an interview are listed in Appendix A.

Photography as documentation

You may be asked to recall details of what you saw at the site some months or years after the site visit. Nothing will refresh your memory as well as a good photograph. Photographs provide excellent evidence and are one of the least-challenged tools used to document a case.

Take a lot of pictures. The most common problem is too few photographs. Photographs should be of high quality and should illustrate the facts of the site and potential violation as accurately as possible. Know what the issue is that you're trying to document. Photographic documentation should tell the story with as little need for narrative as possible. In addition to photographing the actual violation or site conditions, capture photographs of where measurements or other photographs were taken. Consider whether someone could find the violation on the property by only looking at the photographs you have captured.

Remember that the size and distance of objects in photographs can often be deceiving. Strive to include a reference point in your photographs. A person, notebook, pen, or ruler are examples of common objects that can give a sense of scale to other objects in the picture. Remember too that photographs can also distort or understate conditions. Try to be objective in making your visual record. It is helpful to take a series of photos from varying perspectives.



Figure 5. When possible, include measurements or an item for scale in a photograph.

Bringing a site visit to a close

If the owner or operator has been present during your site investigation, before you leave the site, take time to review and confirm your observations. Identify potential problems or questions that remain. Request any clarification that might offer a more complete or accurate picture of the event or subject. The fact that you made and documented this request may be important in later stages of enforcement actions.

If you ask the owner to provide specific information, state how long the owner has to get information to you and identify the person who should receive it.

Remember your role at this point is generally limited to fact finding (except as described below). Refer to your observations and the regulations without reaching specific regulatory conclusions. Don't make any statements that could be misleading, misinterpreted, or could prejudice your case.

If it's within your expertise and authority, and environmental damage is imminent, continuing, and/or severe, it may be appropriate to discuss steps for necessary corrective or restorative actions, or to stop work. You may give verbal warning to the owner or developer at this time. To the extent of your understanding, explain to the owner or operator what will happen next, and what their options will be.

Site inspection follow-up, reporting, and record keeping

Follow-up to the site inspection

If the owner or operator were not present during your site inspection, you will need to locate them and inform them immediately, and in detail, of the situation. Both telephone and written communication are recommended in this situation.

If you met with the owner, or other responsible party during your investigation, a follow-up letter may encourage cooperation and immediate attention to the problem. This letter may serve as a written warning and may reference any previous verbal warnings. The tone of the letter should reflect the character of the discussions.

Sending a certified letter to assure that the party is properly notified is good practice and gives you a record that they were informed. However, be aware that delivery of certified mail can be delayed if the party is not present to receive the certified letter. Sending an additional copy of your letter via email and normal mail service addresses this potential concern. You may want to send copies of follow-up letters or written warnings to other agencies with jurisdiction. Keep in mind that there may be instances where normal mail service is insufficient evidence of receipt. Consult with your county/city attorney to determine which method of delivery is appropriate in each circumstance.

Reporting

As you proceed with your site inspection and investigation, prepare detailed reports of your findings, observations, and interviews. A standardized outline can be helpful to organize your thoughts, save you time, and provide consistency among reports over time. If possible, prepare your reports immediately.

Reporting supports your investigation and is critical to case development. Good reports are a narrative of what happened at a specific time. Avoid unnecessary jargon and technical terms. Clear, direct writing that states the facts and issues in a straightforward manner helps readers understand the problem, draw conclusions, and make appropriate decisions.

The recommended approach is to write the report as you did the inspection or as the interview proceeded. For example, say, "I inspected the bulkhead," or "I measured the distance," and so on. Use the active voice, such as "I did," not the passive voice, such as "it was determined." The less translation between the report and possible future testimony, the better.

Avoid drawing conclusions, especially about subjective matters. Write the facts so that readers can reach their own conclusions. "Joe was hostile" is a conclusion. "Joe began swearing and punching holes in the wall" is a statement of events from which the reader can draw their own conclusions.

Poor choice of words can sometimes limit the choices open to the agency by appearing to pre-judge the issue or show bias. Avoid certain phrases when writing a report because they imply more knowledge than the inspector was likely to have, may be ambiguous, or cannot be substantiated.

Phrases to Avoid:

- “All,” “always,” “never”—these absolute terms can often be challenged if any exceptions exist. On the other hand, if you're sure of your facts, these terms can be appropriately used.
- “Violations,” as in “there were violations” or “that was a violation,” may be a premature conclusion. Your documentation may not be adequate to substantiate a violation.
- “No violations” is also reaching a conclusion. Be sure you know that all issues have been explored. Changes in interpretations of regulations and policies or the effect of some other regulations can affect whether a violation has occurred or not.
- “It was determined” is vague and doesn't say who made the decision. If you made the determination, say so. However, be sure you are qualified to make that determination and that there is a clear legal basis and relevance for making that judgment.
- “They said” is also vague. Who said? Be precise in attributing comments. Documentation about who said what can be critical to a case.

Record keeping

Careful record keeping is essential if you need to pursue formal enforcement action. Good records can serve as a strong incentive to voluntary compliance and are your best defense against later disputes.

Your records should include copies of the initial complaints or report (remember to protect anonymity, if requested and allowed), the site or project description, project or permit reference numbers, site plans, maps, photographs, a description of all telephone communication, and all written communication. Most important, your records should document the scope and timing of your investigation and indicate the thoroughness of your investigation procedures.

Assessing the Violation

Your SMP will be the starting point and basis for your assessment. SMPs regulate uses, much like a zoning code, and include policies and regulations related to developments, shoreline modifications, and certain activities, like vegetation clearing. Additionally, if there are questions about the nature of an activity or how a measurement should be made (i.e., height, setback, buffer, etc.), the definition section of your SMP may provide useful guidance.

Provisions of the SMA (RCW 90.58) and administrative rules in Chapter 173-27 WAC will also be relevant. The following provisions will almost always be applicable to an SMP/SMA violation:

RCW 90.58.140 - Development permits—Grounds for granting—Administration by local government, conditions—Applications—Notices—Rescission—Approval when permit for variance or conditional use.

(1) A development shall not be undertaken on the shorelines of the state unless it is consistent with the policy of this chapter and, after adoption or approval, as appropriate, the applicable guidelines, rules, or master program.

(2) A substantial development shall not be undertaken on shorelines of the state without first obtaining a permit from the government entity having administrative jurisdiction under this chapter.

WAC 173-27-030 – Definitions

"Development" means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any 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 the act at any stage of water level. "Development" does not include dismantling or removing structures if there is no other associated development or redevelopment.

"Structure" means a permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above, or below the surface of the ground or water, except for vessels.

SMA policy guidance

WAC 173-27-260 provides the following policy:

The choice of enforcement action and the severity of any penalty should be based on the nature of the violation and the damage or risk to the public or to public resources and/or the existence or degree of bad faith of the persons subject to the enforcement action.

This SMA enforcement policy provides a useful framework for evaluating the seriousness of the violation. It describes factors that should be considered. You will find that although certain

impacts can be quantified (for example, area of wetland filled), many factors require professional judgment and qualitative assessment.

Under the SMA, you can consider the intent and attitude of the violator as well as the impact or potential for harm. Bad faith refers to the intent and the attitude of the violator and generally refers to actions intended to deceive or that involve a knowing disregard of some responsibility. A willful, deliberate violation may warrant higher penalties or escalation of enforcement action. Because a finding of bad faith can give rise to severe penalties, exercise care in reaching such conclusions. In all instances, your finding of bad faith should cite specific evidence and should not rely on conjecture or logical leaps. Remember, actions can be open to different interpretations, and motives are not always clear. Differences in values or philosophy are not sufficient to determine that someone acted in bad faith.

Code analysis

Performing a code analysis can help your team understand what enforcement approach is appropriate.

Using terms from the SMP, list the different components of the violation. Alongside each component, list what provisions of the SMP, Washington Administrative Code, and/or SMA (RCW 90.58) have been violated. Your list of relevant code citations doesn't need to be exhaustive, but it should include the most pertinent provisions.

Next, determine whether components of the violation in your list are likely procedural violations or substantive violations. Remember, procedural violations are more likely to be good candidates for after-the-fact permits, whereas substantive violations will likely have to be removed and damages rectified.

Here is an example of what this analysis might look like:

Table 2. Example of a code analysis.

| Unpermitted work | Relevant Code Provisions | Finding |
|-----------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|
| Vegetation clearing in shoreline buffer | XX.35.060.G(2) Development Standards, Vegetation Management XX.35.060.B(3) Development Standards, General Provisions | Substantive violation. |
| Development of block retaining wall in buffer | XX.35.060.A(1) Development Standards, Shoreline Buffers XX.35.060.B(2) Development Standards, General Provisions RCW 90.58.140(1) and (2) | Substantive violation. Would have required a shoreline variance permit to be authorized. |
| Development of private shoreline access path | XX.35.060.G(5) Vegetation Management | Procedural violation. Work appears consistent with SMP standards. |
| New hard shoreline stabilization | XX.35.060.K Shoreline Stabilization Measures RCW 90.58.140(1) and (2) | Likely a substantive violation based on the distance between the OHWM and the nearest primary structure. |

Nature of violation and severity of risk

When trying to understand the nature of a violation and the severity of risk, consider the following questions:

- Has the action affected a shoreline of statewide significance?
- Is the use, development, or activity allowed by the SMP? Does the violation conflict with the purpose and policy of the shoreline environment designation, the use matrix, and/or development standards?
- Are there likely impacts to shoreline ecological functions? If so, is the impact temporary or permanent? What is the extent?
- Is public health threatened? If so, is the impact short or long term?
- Does the use or activity impact navigability?
- Are tribal fishing rights impacted?
- Does the use or activity impact hydrology, for example, impacts to a stream, river, or headwater, or impede flow within a flood plain or floodway?
- Is public access or public use of shorelines impacted by the violation? To what extent?
- Are there impacts to setbacks, buffers, or other development-limited areas?
- Is the violation substantive, procedural, or both?

Existence of bad faith

When trying to determine the existence of bad faith, consider the following questions:

- Is there a history of similar violations or a pattern of violations indicating a general disregard of environmental regulations? Have there been past efforts to acquaint the violator with the law?
- Did the violator know, or should they have known that their actions were a violation? How sophisticated is the violator regarding such matters (e.g., a commercial operator with access to environmental consultants versus a homeowner)? Is the violator able to repeat the violation? Has the violator indicated any intent to repeat the violation?
- Was the violation due to negligence? Were precautions taken to prevent the problem? Consider the degree of negligence, regardless of whether the violation may have also been intentional.
- Did the violator apply for or obtain a permit from you or agencies? Was a permit granted but conditions ignored?
- Was the violator ignorant of or unclear about requirements? Violations may result from incorrect, incomplete, or unclear information or advice from government officials.
- How cooperative is the violator? Are they proposing or willing to undertake corrective action? Are they taking initiative to abate or correct the problem on their own? How quickly is the violator responding?
- Was the violation willful and the environmental impacts so great that criminal prosecution ought to be considered?

Other considerations

Your response, or lack of response, to violations sends a message to the community. For enforcement to be effective, the community needs to be aware that rules will be applied consistently and equitably over time.

A team approach can be helpful when evaluating a violation. Meet with management, staff, and your attorney to jointly review the findings of your investigation and to determine the most appropriate course of action. Team reviews can help assure consistency in interpreting and applying the SMP. It may also be beneficial to invite agency representatives to hear their perspective and assessment of the violation.

If repeated violations of a specific regulation occur, target the appropriate audience for a concerted public education effort.

Legal Tools and Options

Local government enforcement procedures

Under state law, local government has been given the mandate to take all actions necessary to make sure no shoreline uses or activities conflict with the SMA and local SMP (RCW 90.58.210). At the same time, state regulations also give local government discretion and flexibility in determining the appropriate type and level of enforcement action.

Under the SMA, local government has the option of adopting separate rules to implement the SMA's enforcement provisions (WAC 173-27-260). As a first step, it's important to know the range of enforcement options and the legal support that may be available. Check with the city attorney or county prosecutor and discuss your objectives and concerns.

Considerations in selecting enforcement options

As shoreline administrator, your goal is to select or recommend specific enforcement measures that will resolve the problem in the most effective and efficient manner. The appropriateness of a particular action depends on the violation.

If you are uncertain about the best course of action, consult your legal counsel for advice on which tool is most appropriate.

You may find it helpful to phase your enforcement actions. In the first phase, abate the problem (prevent it from getting any worse). In the second phase, determine how best to restore the specific site or mitigate the damages. Keep in mind that the primary goal is compliance, and that enforcement is only one tool. Enforcement actions may be also phased to escalate the penalties as necessary to achieve compliance.

Enforcement tools

Warning notice (verbal)

A verbal warning made directly to the violator is an opportunity for you to communicate actions that may appropriately abate or correct a problem and for the violator to voluntarily comply.

A verbal warning is appropriately used for minor actions, to request more information, or as a step in preparing for further enforcement action.

Documentation of a verbal warning is highly recommended (date, problem, person contacted, content of warning).

Warning notice (written)

A written warning is a letter or other written notice sent to the violator identifying the violation, citing relevant sections of the SMP, explaining how to correct the problem, and setting a time for compliance. It gives the violator an opportunity to comply voluntarily and may help you determine how cooperative the individual will be. A written warning is recommended as follow-up to a verbal warning.

After-the-fact permitting

Requiring that a violator apply for a shoreline permit or SDP exemption after work has begun or has been completed is a process known as after-the-fact permitting. If the permit or authorization is approved, the process legalizes work performed without permits and inspections. In all cases, after-the-fact permits must be processed and reviewed consistent with the shoreline permit or authorization process that would have been required if work had not been undertaken without permits.

It is important that you clearly communicate to a violator how unpermitted work is, or is not, consistent with the SMP. Be transparent about permitting processes and the SMP policies, regulations, and standards that an application would be reviewed against. Encouraging after-the-fact permits for work that is inconsistent with the SMP can delay corrective actions and result in costly and fruitless permitting work.

Discussing what shoreline permit(s) would have been required to authorize the use or development is often a good way to frame conversations about after-the-fact permits. Determine whether the unpermitted work would have required an SDP or SDP exemption, variance permit, and/or CUP, or whether the use is prohibited, or the development cannot meet the SMP standards, and therefore no permitting pathway could have authorized the actions.

When an SDP or SDP exemption would be necessary

When a violation could have been approved with an SDP or an SDP exemption, violations can often be resolved by requiring the violator to go through the permitting process. Nevertheless, you should make property owners aware that the SDP application process includes public notification, public comment, and an appeal period. Approval cannot and should not be guaranteed.

If the unpermitted use or modification is allowed, but not all standards of the SMP are being met, consider whether there are realistic modifications that can be made to bring the unpermitted development into compliance with SMP standards. If so, the violation may be a good candidate for after-the-fact permits. Through the permitting process, the applicant must propose changes to the unpermitted work that will bring it into compliance.



Figure 6. With modifications, some unauthorized structures can be made consistent with the SMP.

A notable exception is when a violation includes the development of new hard shoreline stabilization, a modification that may only require an SDP exemption.⁴ To authorize hard shoreline stabilization, an applicant must demonstrate in a geotechnical study that a primary structure is at imminent risk from erosion and that softer approaches would be insufficient in addressing the risk. An applicant must also demonstrate that no net loss can be achieved. It is very unlikely that an unpermitted hard shoreline stabilization structure, built without engineering design and permitting reviews, would be able to meet SMP and SMA requirements.

When a variance permit would be necessary

When a violation would require a shoreline variance permit, it will often be unable to meet strict variance approval criteria, making an after-the-fact variance impossible.

Shoreline variance permits are a means for granting relief from specific bulk, dimensional, or performance standards set forth in the local master program where there are extraordinary circumstances relating to the physical character or configuration of property such that the strict implementation of the master program will impose an unnecessary hardship on the applicant or thwart the policies of the SMA (WAC 173-27-170). Decisions on variance permit applications must be made at two levels, first by the local government and, if the local government approves the variance, then by Ecology.

Ecology publishes guidance on reviewing shoreline variances that speaks directly to appeal decisions on after-the-fact permits and common challenges with approving shoreline variance permits after the fact (see [Variance Permit Reviews: Guidance for Local Governments](https://apps.ecology.wa.gov/publications/SummaryPages/2306010.html)⁵ pages 36 and 37).

⁴ Some SMPs require a CUP for shoreline stabilization.

⁵ <https://apps.ecology.wa.gov/publications/SummaryPages/2306010.html>

When a CUP would be necessary

A conditional use is a use, development, or substantial development that is classified as a conditional use in the SMP or is unclassified. When a violation would require a shoreline CUP, an after-the-fact permit application will be reviewed against the conditional use approval criteria in WAC 173-27-160.

CUPs are a pathway to effectively address unanticipated uses that are not classified in the SMP, to address cumulative impacts, and to provide the opportunity to require specially tailored environmental analysis or design criteria for uses or developments that may otherwise be inconsistent with a specific environment designation within an SMP or with SMP policies.

Ecology publishes guidance on reviewing shoreline conditional use permits that speaks directly to the challenge of after-the-fact CUPs (see [Conditional Use Permit Reviews: Guidance for Local Governments](https://apps.ecology.wa.gov/publications/SummaryPages/2406002.html)⁶ page 23).

Establishment of a prohibited use

There is no shoreline permitting pathway that will authorize a use that is prohibited by the SMP. An application for an after-the-fact permit that would authorize a prohibited use is properly denied. In these situations, property owners must cease the use, remove the development, and restore the shoreline.

Set a deadline

In all cases, set a deadline for violators to apply for after-the-fact permits. Extend the deadline only if you have indications that the applicant is making good-faith efforts toward completing an application. If the violator misses the deadline, decide what the next step in your enforcement case will be and move forward.

No net loss and after-the-fact permits

Property owners put themselves at a disadvantage when they proceed with work without permits. No net loss (NNL) of shoreline ecological functions is the environmental protection policy that underpins all comprehensively updated SMPs. The baseline for establishing NNL is the legally existing conditions at the time a development is proposed. When assessing after-the-fact permits, an applicant should be required to provide information about ecological conditions at the site prior to the violation such. Depending on the violation, providing this information after the violation can be more difficult and expensive.

Charging more for after-the-fact permits

Some Washington jurisdictions charge two or even three times the normal fee amount when an after-the-fact permit is associated with a code enforcement action. City of Moses Lake requires that anyone applying for after-the-fact permits pay for an inspection fee in addition to the permit fee. The inspection fee is equal to the cost of the permit needed and is an additional, punitive fee.

⁶ <https://apps.ecology.wa.gov/publications/SummaryPages/2406002.html>

Enforcement orders

RCW 90.58.210, WAC 173-27-240, and WAC 173-27-270 allow local governments and Ecology to issue enforcement orders to cease and desist (also known as stop work orders) and to take corrective action.

A cease-and-desist order prohibits construction work or other activities until compliance with regulations has been achieved. A cease-and-desist order can be issued directly by a site/building inspector or other administrative staff and do not require a hearing. When development is not ongoing, a cease-and-desist order may not be appropriate. Instead, the purpose of an enforcement order may be compelling property owner or violator to take corrective actions so that compliance can be achieved.

Orders must describe the specific nature, extent, damage (or potential damage) and time of the violation; a statement that the violation must stop (as appropriate); the specific corrective action to be taken; and state the time allowed for correcting the violation. Orders should describe the particular provision(s) of the SMP/SMA that is being violated.

Civil penalties

RCW 90.58.210 and WAC 173-27-280 allow local governments to impose fines of up to \$1,000 per day per violation for persons who fail to get necessary shoreline permits, who fail to conform to the terms of a permit, or who ignore a cease-and-desist order. A person who assists or helps in the commission of a violation can also be fined. Each day the violation continues is subject to the fine. Written notice must be given by either certified mail or delivering it to the individual in person. The notice must describe the violation and the date (approximate date is adequate) and order that the violation be stopped. Corrective action can also be requested. Appeal processes must be described. A civil penalty can be appealed within 30 days of notice.

Monetary penalties or fines can be an effective disincentive for disregarding shoreline regulations. Costs must be high enough to outweigh the potential benefits of violating the regulations. If not, some persons may find it economically beneficial to run the risk of the violation being discovered and paying the fine. The potential of fines can encourage settlement in many cases. Because local government or Ecology can cancel or reduce the penalty if the person involved can demonstrate extraordinary circumstances (including new information), imposition of penalties often provides a strong negotiating tool.

Abatement by a local government

While nuisance abatement authority is not part of the SMA, it is an authority some local governments may have (see, e.g., RCW 7.48, RCW 35.22.280, RCW 35.23.440, RCW 36.32.120, RCW 35A.21.405, RCW 35.21.955, RCW 35.27.410).

Nuisance abatement is a legal process. If attempts to achieve voluntary compliance are unsuccessful, or if the requirements of an enforcement order are not met, a local government could use its abatement authority to pursue legal action to correct the violation.

If your code does not include abatement provision, or existing abatement provisions would exclude the abatement of an SMP violation, you could discuss this gap with your city or county

attorney, long range planners, and management. Abatement by a city or county may be the only way to correct the situation when you're dealing with an intransigent violator.

Liability for restoration and corrective action

Under 90.58.230 RCW, a person who violates shoreline regulations is liable for all damages to public and private property and can be required to pay for the costs of restoration or other corrective action. This is a type of civil penalty that could be separate or in addition to fines or other penalties.

Shoreline permit rescission

Under RCW 90.58.140(8), a permit can be rescinded (revoked) if the terms of the permit are not being met. Documentation of the violation is needed to support a report to the city or county legislative body requesting rescission of the permit. A public hearing is required, with standard requirements for public notice. Written notice must be given to the holder of the permit as well as the public. The decision can be appealed to the Shorelines Hearings Board (SHB).

Rescinding a permit is both a consequence for the person who violated the terms of the permit and a technique to stop or remove harmful shoreline activities.

In general, there is often resistance to rescinding a properly issued permit except in cases of egregious or flagrant violations. Initiation of rescission proceedings can also be used as a negotiating tool. When considering such action, make sure that the initial permit was properly issued and that the conditions were clear and unambiguous.

Attorney fees/costs

Under RCW 90.58.230, local jurisdictions or the state can file a legal action for damages against a person who has violated shoreline regulations. In addition to other penalties, the court can award attorney's fees and costs of the litigation to the prevailing party.

The potential of paying costs and attorney fees of the other party if a violator were to lose in a legal battle can be a powerful incentive to resolve problems of shoreline violations through negotiated settlements.

Property lien

Nothing in the SMA precludes local government from placing a lien on a property. A lien is an encumbrance or charge against a property. If a person who has been fined for shoreline violations does not pay the fine, a lien can be placed upon the affected property. The lien is imposed by filing legal documents at the office of the County Assessor that establish the basis for the claim against the property. The lien is removed when the violator pays the fine. If the violator does not pay the fine, the amount of the lien is paid to the jurisdiction that filed the lien when the property is sold.

Liens can be a useful tool to encourage payment of penalties. Because liens encumber a property, they can be an impediment to sale of property or its use as collateral to borrow money and may give an owner incentive to pay the fine. Local jurisdictions may be reluctant to impose a lien unless it involves a serious offense, or the violation has resulted in costs that must

otherwise be borne by the public. Legal advice as to procedures and requirements is important if liens are to be part of your enforcement strategies.

Criminal or general penalties

In addition to civil liability under RCW 90.58.210, violators can also be held criminally responsible for willful violations of shoreline regulations (RCW 90.58.220 and WAC 173-27-300). Willful violations are defined as gross misdemeanors (penalties include fines and/or the possibility of imprisonment). Violators are subject to a fine of not less than \$25 or more than \$1,000 and/or time in the county jail for up to 90 days. Subsequent violations within five years increase the range of fines from \$500 to \$10,000.

Voluntary compliance

It is generally worthwhile to seek voluntary compliance before proceeding with other enforcement approaches.

Before speaking with a violator about coming into voluntary compliance, have a clear understanding of what would be required. This will require you to gather input and agreement from your team about how the violation should be resolved. Resolving violations is often a negotiation. As you consider what steps must be taken to resolve the violation, it's okay to accommodate reasonable and appropriate requests from the violator when doing so will not impact the case or the public interest in shoreline management and when the request does not conflict with the SMP.

Always follow up with a written compliance letter or email that outlines what steps the violator will need to take to come into compliance and avoid enforcement action. To the extent possible, list corrective steps in the order which they should occur. Be concise and specific to avoid confusion.

It is critical that you set deadlines so that you know whether efforts to obtain voluntary compliance are on track. Missed deadlines are a good indication that you may need to move forward with formal enforcement.

In your communication, include the contact details of the person the violator can go to with questions or to request a deadline extension. We also recommend that the violator confirm, in writing, that they want to voluntarily comply.

Remember that if the violator and the property owner are different people, you should include the property owner in all written communications.

Violation scenarios

The following violation scenarios are presented as examples and are used as a teaching technique. These scenarios highlight important considerations in addressing four hypothetical violations. Scenarios are written from the perspective of a local government staff person.

Unpermitted gazebo and paver patio in shoreline buffer

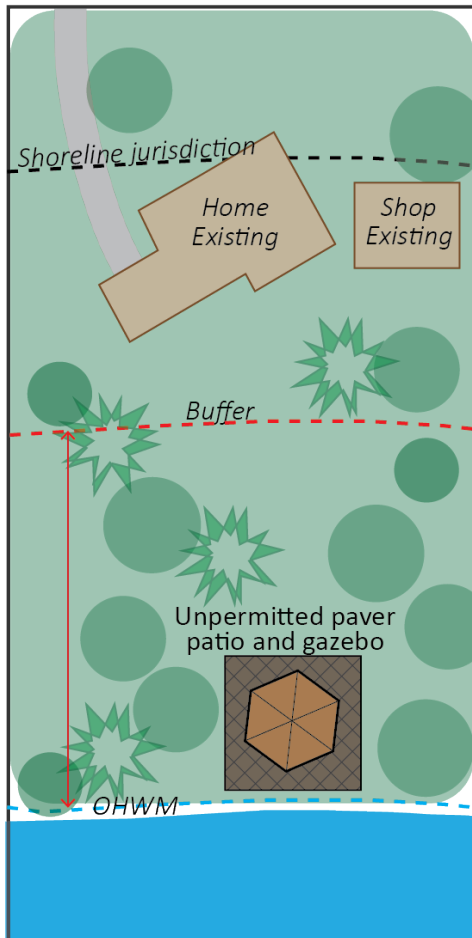


Figure 7. Unpermitted structures in shoreline buffer

After investigating a complaint, you verify that a property owner has built a paver patio and gazebo in the shoreline buffer without permits.

After reviewing the SMP and speaking with the planner who reviews all shoreline permits, you determine that neither structure is allowed within the shoreline buffer. A shoreline variance permit would be needed, and the applicants would be unable to meet the approval criteria. You conclude that the complete removal of the gazebo and patio and the restoration of the disturbed area is the only resolution that is consistent with the SMP.

Tip: During the site visit, avoid speculating about the ability for a violator to keep unauthorized structures by applying for permits.

What if the property owners want to move the structures to a location within shoreline jurisdiction outside of the shoreline buffer? Ecology recommends that you require the owners to go through the shoreline permitting process separate from the enforcement action. Separating the enforcement action from the process of authorizing new shoreline development is the most transparent way forward. Remember that permit approval cannot be guaranteed, and even approved permits can be appealed. In this situation, you don't want the resolution of a violation to be tied to the success of a permit.

Tree removal in shoreline buffer

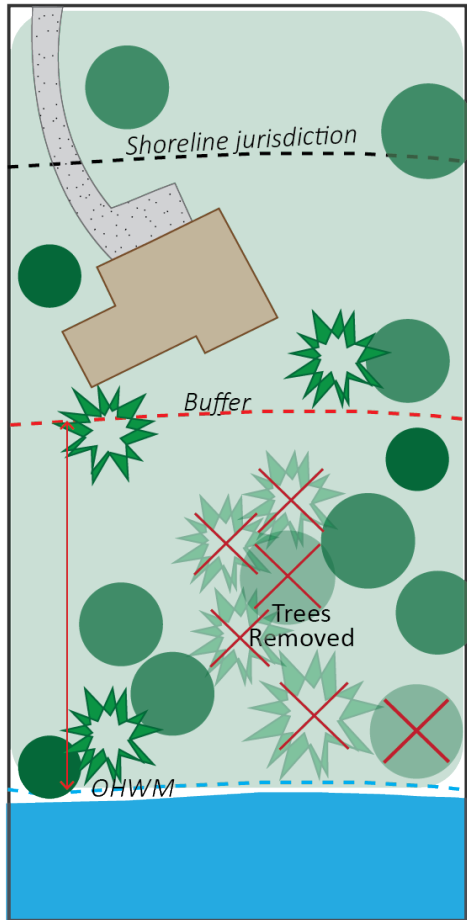


Figure 8. Trees removed to create a view corridor

A property owner has removed six established trees to create a view corridor between their home and the shoreline without local government approval. The SMP allows tree pruning and limbing for views but does not allow tree removal. After reviewing your SMP and discussing the site with your team, it is decided that you will require the property owner to replant eighteen trees throughout the area where the trees were cut and in other unvegetated portions of the buffer.

The property owners push back, requesting to plant shrubs instead of trees. However, you explain that the ecologic functions performed by the trees that were cut cannot be completely replaced by planting shrubs alone and that you are requiring three trees to be replanted for every tree cut to address temporal losses that are the result of the violation. You confirm that the county will be requiring that eighteen trees be planted.

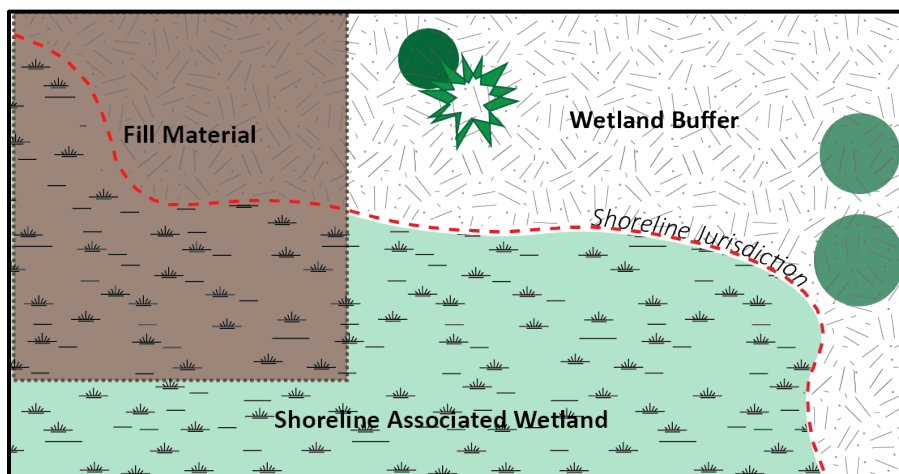
Tip: *It's okay to say no to a property owner's request! A property owner's personal desires cannot take precedence over the public interest in the management and protection of shorelines. It's okay to be flexible and negotiate outcomes sometimes, but only if the resolution will uphold the policies and regulations of the SMP.*

Filling a shoreline-associated wetland

Without permits, a property owner has placed a large amount of fill to create a development pad. The lot is small and completely encumbered by a shoreline-associated wetland and wetland buffer. Fill was placed within both the wetland (regulated by your SMP) and the buffer (regulated by your critical areas ordinance), which is outside of shoreline jurisdiction.⁷ When you attend the site visit, the property owner presses you for answers about likely outcomes of after-the-fact permits.

You don't directly work with SMPs, and you tell the owner that the purpose of your visit is to document information related to the potential violation. You say that it would be premature for you to speculate about keeping the unauthorized fill by applying for permits.

After the site visit, you set up a meeting with the community development director and the city attorney to discuss what enforcement tools will be used and what corrective actions will be required.

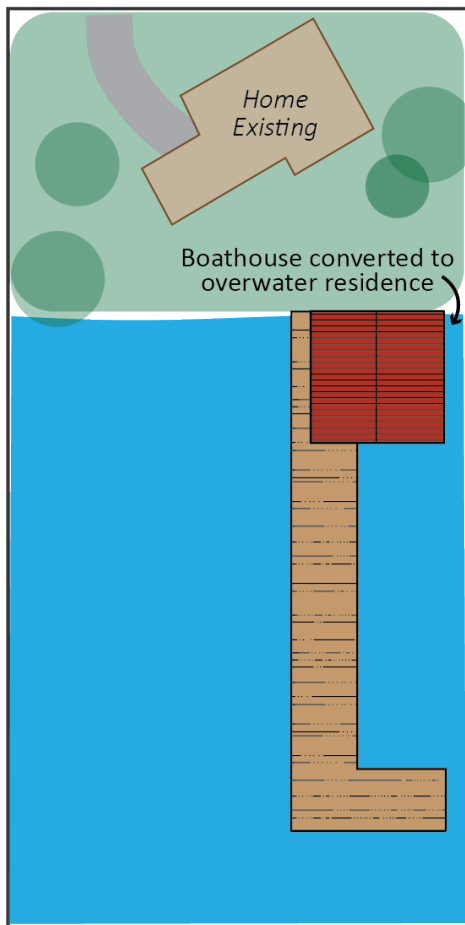


Tip: As mentioned before, it's best to avoid making any legal conclusions or discussing site remediation strategies during an initial site visit. Doing so may establish expectations that will be difficult to change as your case moves forward..

Figure 9. A filled wetland

⁷ While some SMPs extend shoreline jurisdiction to include critical area buffers, others do not. This example is for an SMP that does not extend shoreline jurisdiction to include the buffers of shoreline-associated wetlands that are otherwise outside of shoreline jurisdiction.

Conversion of an over-water boat house to a habitable structure



Without approval, a property owner has converted a legally established boathouse to living quarters and is now renting the overwater residence to vacationers.

The use of the structure has changed and your SMP, in fact all SMPs across the state, strictly prohibit the creation of new over-water residences.

The new use cannot be authorized by an after-the-fact permit, and the structure will have to be returned to its previous condition and prior use as covered moorage. Your SMP provides no approval pathway for authorizing a prohibited use.

You and your team discuss enforcement tools and decide to start with a cease-and-desist order that includes corrective actions.

Tip: *Your response, or lack of response, to violations sends a message to the community. If this conversion were to be allowed to persist, other property owners may follow suit.*

Figure 10. Conversion of a boathouse to living quarters

Assistance from the Department of Ecology

The SMA rules and regulations call for a cooperative program between local government and the Department of Ecology. Local governments have the primary responsibility for SMP enforcement and SMP enforcement has important benefits, including:

- **Building trust.** When a local government acts to address violations, they send a message that local laws are important, regulated fairly, and maintained consistently. This fosters trust in government and can deter future violations.
- **Compliance with all local codes.** SMA/SMP violations will often be violations of other local codes that state agencies do not and cannot regulate, like your flood development, building, tree retention/preservation, stormwater, and zoning codes. Your involvement is the best way to ensure that a violation is resolved in a way that is consistent with local regulations.
- **Local knowledge.** Local government staff will often have a better understanding of a site's history, the short- and long-term impacts of a violation, and available restoration or mitigation opportunities. You or others where you work may even have past experience dealing with the violator(s) and a better understanding of what enforcement approach will work.
- **Proximity.** Ecology staff that respond to violations cover large regions and will often be unable to quickly respond to a complaint or to regularly check on the progress of a violation.

Ecology can assist local governments in SMA enforcement with investigation, interagency coordination, and technical support during the enforcement action. Our work to support local government enforcement efforts includes attending site visits, clarifying SMA jurisdiction, providing technical assistance on wetlands, determining the OHWM, providing technical assistance on corrective actions, and writing compliance assistance letters. Ecology may also take enforcement action, either jointly with the local government or alone.

Ecology does not have the capacity to assist with all SMA violations. When prioritizing enforcement work, shoreline management staff at Ecology consider how impactful a violation is to the policy of the SMA, such as the degree of risk to shoreline ecological functions, public access and navigation, and the continuation of water-dependent uses.

Joint enforcement actions

Under the SMA, the Department of Ecology has the authority to pursue joint enforcement action with local governments. Joint enforcement could be a jointly issued notice of correction, cease-and-desist order, or penalty. By pursuing enforcement jointly, both entities must agree about how a violation will be resolved and be able to invest time in the coordinated review of enforcement documents. If a joint enforcement action is appealed, both Ecology and local government should be represented. Alternatively, local governments or Ecology have equal authority to enforce the SMA independently.

Coordination with other agencies

As discussed in previous chapters, many uses, developments, and activities in shoreline areas require permits and approvals from other state or federal agencies. Note that compliance with the local government shoreline master program does not preclude any requirements to obtain other permits, certificates, licenses, or approvals.

Depending on the nature of the violation, consider whether use of SMA enforcement authority will be as effective as use of other environmental regulations. Consider also whether local government should serve as lead agency on the enforcement action. A joint or coordinated enforcement action with other agencies may be appropriate in situations where:

- The violation is serious, and more-stringent penalties are available and warranted;
- The violation requires special expertise to investigate and or to develop an appropriate restoration or correction plan; or
- Other agencies are already involved and committed to pursuing enforcement.

For example, stronger sanctions exist within the Section 404 provisions of the federal Clean Water Act to address draining and fill of wetlands. The Washington State Pollution Control Act (Chapter 90.48 RCW) includes a number of very strong provisions for addressing water quality and fill violations, including use of administrative orders with fines of up to \$10,000 per day for violations of the Act.

Types of activities or situations with regulatory overlap with SMA authorities typically include:

- Any in-water construction in streams, rivers, lakes, or marine waters
- Dredging and dredge material disposal
- Use or construction involving fisheries and wetland habitat
- Contaminated sediments
- Water quality, including storm water, industrial discharges, and accidental release of pollutants or debris
- Handling or release of solid or hazardous waste or hazardous substances
- Critical or environmentally sensitive areas (for example: unstable slopes, erosion hazard areas, wetlands, or marine habitat)
- Natural resources damage from release of toxic substances

References

- Blair, Misty and Carolyn Chase. (2024). Conditional Use Permit Review: Guidance for Local Governments, Publication Number 24-06-002, <https://apps.ecology.wa.gov/publications/SummaryPages/2406002.html>
- Chase, Carolyn. (2023). Variance Permit Reviews: Guidance for Local Governments, Publication Number 23-06-010, <https://apps.ecology.wa.gov/publications/SummaryPages/2306010.html>
- Fiene, Richard. (2024). Importance of the Theory of Regulatory Compliance, Journal of Management Policy and Practice, Volume 25(1).
- Gunningham, Neil (2015). Compliance, Enforcement, and Regulatory Excellence; Penn Program on Regulation, <https://www.law.upenn.edu/live/files/4717-gunningham-ppr-bicregulatordiscussionpaper-06>

Definitions

Development means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any 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 the act at any stage of water level. "Development" does not include dismantling or removing structures if there is no other associated development or redevelopment. (RCW 90.58.030(3)) WAC 173-27-030.

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 June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department: 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. (RCW 90.58.030(2)(c))

Shorelands means those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter; the same to be designated as to location by the department of ecology. Any county or city may determine that portion of a one-hundred-year-flood plain to be included in its master program as long as such portion includes, as a minimum, the floodway and the adjacent land extending landward two hundred feet therefrom. Any city or county may also include in its master program land necessary for buffers for critical areas, as defined in chapter [36.70A](#) RCW, that occur within shorelines of the state, provided that forest practices regulated under chapter [76.09](#) RCW, except conversions to nonforestland use, on lands subject to the provisions of this subsection (2)(d)(ii) are not subject to additional regulations under this chapter. (RCW 90.58.030(2)(d))

Shorelines means all of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except (i) shorelines of statewide significance; (ii) 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 (iii) shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes. (RCW 90.58.030(2)(e))

Shorelines of statewide significance means the following shorelines of the state:

- (i) The area between the ordinary high water mark and the western boundary of the state from Cape Disappointment on the south to Cape Flattery on the north, including harbors, bays, estuaries, and inlets;

(ii) 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 as follows:

- (A) Nisqually Delta—from DeWolf Bight to Tatsolo Point,
- (B) Birch Bay—from Point Whitehorn to Birch Point,
- (C) Hood Canal—from Tala Point to Foulweather Bluff,
- (D) Skagit Bay and adjacent area—from Brown Point to Yokeko Point, and
- (E) Padilla Bay—from March Point to William Point;

(iii) 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;

(iv) 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;

(v) Those natural rivers or segments thereof as follows:

(A) Any west of the crest of the Cascade range downstream of a point where the mean annual flow is measured at one thousand cubic feet per second or more,

(B) Any east of the crest of the Cascade range downstream of a point where the annual flow is measured at two hundred cubic feet per second or more, or those portions of rivers east of the crest of the Cascade range downstream from the first three hundred square miles of drainage area, whichever is longer;

(vi) Those shorelands associated with (f)(i), (ii), (iv), and (v) of this subsection (2).

(RCW 90.58.030(2))

Shorelines of the state are the total of all "shorelines" and "shorelines of statewide significance" within the state. (RCW 90.58.030(2)(g))

Structure means a permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above, or below the surface of the ground or water, except for vessels. (WAC 173-27-030)

Abbreviations and Initialisms

CUP – Shoreline conditional use permit

Ecology – Washington State Department of Ecology

OHWM – Ordinary high water mark

NNL – No net loss of shoreline ecological functions

SDP – Shoreline substantial development permit

SMA – Shoreline Management Act

SMP – Shoreline master program

Appendix A: Interview Tips

Some Interview Tips

- Try to have privacy for the interview. Respect the other person's personal space. Be flexible to the situation and personality of the person being interviewed.
- Ask simple, direct, neutral questions. Avoid double negatives and other complex phrases. Avoid multiple subjects in your questions. Give the person time to answer.
- Listen. Make sure you understand the response. A restatement of the response can often help ensure that you understand the answer.
- Keep an open mind. The purpose of the visit is fact finding.
- Emphasize that you want the full truth, not just the bad stuff. Show that you are recording positive statements as well as those that may be at issue.
- Don't emphasize your note taking; it can be intimidating. Explain that you need to take notes to do your job well.
- Don't mix past, present, and future when interviewing. Work from the known to the unknown and from the general to the specific. Use standard references for time, distance, size, and volume. Avoid jargon and specialized technical terms. Don't try to sound like an attorney or a police officer.
- Avoid accusations. Don't be judgmental. Don't make promises of confidentiality or protection.
- If the interview gets tense or uncomfortable, take a break. Excuse yourself by saying you need to make a phone call or to confer with a colleague. If the discussion becomes confrontational or angry, calmly close the interview. If possible, leave options open to continue the discussion at some other time.
- Use the interview as an opportunity to explain why shoreline protection laws exist and why they are so important.



Figure 11. Remember, the purpose of the visit is fact finding.



Figure 12. Examples of neutral ways to talk with alleged violators

The team approach to interviewing

If you are part of a team, the following strategies may be helpful:

- One team member asks questions and another takes notes.
- One team member leads the questioning, and another injects questions only when they see a line of questioning that needs follow-up.
- Different topics are addressed by different team members depending on expertise.



Figure 13. Calmly close an interview if things become confrontational.