



JEFFERSON COUNTY

DEPARTMENT OF COMMUNITY DEVELOPMENT

621 Sheridan Street
Port Townsend, WA 98368
Al Scalf, Director

Unified Development Code Interpretation

This interpretation is made according to Article VI, Chapter 18.40 JCC. An interpretation of the provision of the Unified Development Code is intended to clarify conflicting or ambiguous wording, interpret proper classifications of a use, or interpret scope or intent. The "Factors for Consideration" listed in JCC 18.40.360(4) were considered in making this UDC interpretation, including applicable goals and policies of the Jefferson County Comprehensive Plan.

Date: December 18, 2007
Case: MLA07-00626 (ZON07-00093)
Applicant: William W. Lawrence
Representative: Stephen E. Oliver, Law Firm of Plat, Irwin, Taylor

SUBJECT: Are the rock-faced terraces as described in the request for Code Interpretation "structures" as defined in the Shoreline Management Master Program Chapter 18.25 JCC?

JCC 18.25.040 (19) states:

"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 on, above, or below the surface of the ground or water, except for vessels.

This definition closely parallels the definition of "structure" found in WAC 173-27-030 which states:

(15) "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;

JCC 18.25.060 states:

"As provided under RCW 90.58.900, the Shoreline Management Act is exempted from the rule of strict construction; the act and this master program shall, therefore, be liberally construed to give full effect to the purposes, goals, policies, and standards for which the

Building Permits/Inspections

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act and this master program were enacted. On the other hand, exemptions from the act or master program are to be narrowly construed.”

Interpretation:

The applicant states on page 3 of the “Ordinance Interpretation Request”, “. . . the terraces are approximately 50’ x 8’ x 36” high. The front of each terrace is faced with miscellaneous sizes of “half man rock” (roughly varying in size from that of a cantaloupe to a basketball or, at most, 1-1/2 times the size of a basketball). The rock facing is not mortared or tied together in any way.”

On page 4 of the “Ordinance Interpretation Request” states, “The rock faces at issue here are simply piles of rock less than 36 inches high which are not mortared or tied together in any fashion. They do not support the earth behind them.”

JCC 18.25.060 requires the SMMP to be liberally construed. Consequently, the definition of the word “structure” must be broad in what it encompasses. The “rock-faced terraces” or rock walls are not edifices nor are they buildings. However, the “rock-faced terraces” are not “simply piles of rocks”. They are “rock-faced terraces” each measuring approximately 50’ x 8’ x 36”. The rock facings were put together in a precise manner to retain the soil. The rock keeps the backfill from eroding. While the rocks are not mortared together they were placed in an exact manner to allow each wall to be held together by friction and the interlocking of the rocks.

Interpreting that the rock-faced terraces, rock walls or retaining walls are not “structures” as defined under the SMMP may lead to increased occasion when the SMMP would not apply to modifications of property within the shoreline jurisdiction. This could lead to harmful impacts to wildlife habitat and a degraded shoreline environment.

The administrator has determined that as described above and as constructed at 92 Cleveland St., Port Hadlock, the rock-faced terraces (rock walls) are structures.

Subject: Are rock walls (or rock-faced terraces) meeting the definition of a “structure” under the SMMP but which are exempt from a building permit, required to meet the Residential Performance Standards including residential setbacks?

In order to consider this fully we must take into consideration the applicable Jefferson County Comprehensive Plan Goals and Policies, the applicable provisions of the Unified Development Code (specifically the Shoreline Management Master Program, Chapter 18.25 JCC) and the implications to the county as a whole.

The following are applicable Comprehensive Plan Goals and Policies:

Comprehensive Plan Goal:

LNG 14.0 Preserve the functions and values of critical environmental areas and protect development from the risks of environmental hazards.

Policies:

LNP 14.1 Ensure that land use decisions are based on land use ordinances which are in compliance with the Critical Areas Ordinance and all applicable state and federal environmental laws.

LNP 14.4 Ensure that land use decisions along Jefferson County shorelines protect the shoreline environment, facilitate public access, recognize the needs of water-oriented activities and cooperate with regional plans for protection and management of shorelines. In areas of the County under the jurisdiction of the Shoreline Management Act (Chapter 90.58 RCW), activities which are water-oriented will be preferred over those activities which are not, all other factors being equal, consistent with the Shoreline Management Act and the land use designations, goals, and policies of this Comprehensive Plan.

Comprehensive Plan Goal:

ENG 4.0 Preserve the long-term benefits of shoreline resources.

Policies:

ENP 4.1 Shorelines of statewide significance shall be managed according to the following order of preferred uses as established in the Shoreline Management Act (RCW 90.58.020):

1. Recognize and protect state-wide over local interests;
2. Preserve the natural character of the shoreline;
3. Achieve long-term over short-term benefits;
4. Protect the resources and ecology of the shoreline;
5. Increase public access to publicly owned areas of the shoreline;
6. Increase recreational opportunities for the public on the shorelines; and,
7. Provide for any other element as defined in RCW 90.58.100 and deemed appropriate or necessary.

ENP 4.2 The County shall revise the Shoreline Master Program to establish and implement policies and regulations for land use that are consistent with the Shoreline Management Act, the Growth Management Act, and the Comprehensive Plan. The goals and policies of the revised Shoreline Master Program shall be incorporated as an element of the Comprehensive Plan, while the development regulations of the SMP shall be integrated with the critical areas protections and other standards in the Unified Development Code. Until the revised SMP is adopted, where a regulatory provision is inconsistent with other County ordinances, the more restrictive provision shall apply.

Comprehensive Plan Goal:

ENG 5.0 Allow development along shorelines which is compatible with the protection of natural processes, natural conditions, and natural functions of the shoreline environment.

Policies:

ENP 5.1 Regulate shoreline land use activities based on the best available scientific information.

ENP 5.2 Protect nearby properties and the shoreline environment from the individual or cumulative effects of development that may interfere with the functions of sediment transport systems along the shoreline.

ENP 5.3 Establish a preference for the use of non-structural rather than structural solutions in projects for shoreline stabilization, mitigation, rehabilitation, restoration, and enhancement.

ENP 5.4 Coordinate with Department of Ecology water resources management and comprehensive watershed plans in order to protect water resources along shorelines, and to prevent, minimize, and mitigate salt water intrusion of coastal aquifers.

ENP 5.5 Coordinate with the Department of Fish and Wildlife to protect and enhance fish and wildlife habitat and other marine resources.

The following are applicable provisions from the Unified Development Code (Chapter 18.25 JCC – Shoreline Management Master Program):

JCC 18.25.040 (4) D Definitions states:

“Development” means a use consisting of the construction or exterior alteration of structures; dredging, drilling, dumping, filling, and removal of any sand, gravel, or minerals; constructing bulkheads, driving piles, or placing of obstructions; or any project of a permanent or temporary nature that interferes with the normal public use of the surface of the waters overlying lands subject to the Shoreline Management Act and this master program at any state of water level.

JCC 18.25.040(18) R Definitions states:

“Residence” means a dwelling and those structures and developments within a continuous ownership that are normal appurtenances. An appurtenance is necessarily connected to the use and enjoyment of a residence and is located landward of the perimeter of a marsh, bog, or swamp and landward of the ordinary high water mark. A normal appurtenance includes a garage, deck, driveway, utilities, fences, and grading that does not exceed 250 cubic yards (except to construct a conventional drainfield).

and

“Residential development” means the development of land and/or construction or erection of dwelling units for the purpose of residential occupancy.

JCC 18.25.040(19) S Definitions states:

“Shore defense work” means structures or modifications for the purpose of retarding shore erosion from waves or current action, protecting channels and harbors from wave action, encouraging deposition of beach materials, preventing stream bank overflow, and

retaining uplands. They may consist of bulkheads, seawalls, dikes, revetments, breakwaters, jetties, groins, or gabions. Defense works are commonly constructed from quarry rock (rip-rap), treated wood, concrete, steel, and sand and gravel.

and

“Substantial development” means any development that:

- (i) The total cost or fair market value exceeds \$2,500*; or
- (ii) Materially interferes with the normal public use of the water or shorelines of the state (except as provided for in JCC 18.25.090).

JCC 18.25.090 (5) Permit Exemptions

Construction by an owner, lessee, or contract purchaser of a single-family residence for the owner’s or owner’s family’s use; provided the residence:

- (a) Does not exceed a height of 35 feet above average grade level;
- (b) Does not involve overwater construction and is located landward of the ordinary high water mark (OHWM);
- (c) Meets all other state and local requirements of this master program including residential setback requirements set forth in JCC 18.25.410.

“Single-family residence” means a detached dwelling designed for and occupied by one family including those structures and developments within a contiguous ownership that are a normal appurtenance. An appurtenance is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the perimeter of a wetland. Normal appurtenances include a garage, deck, driveway, utilities, fences, and grading that does not exceed 250 cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark.

JCC 18.25.090 (7) Permit Exemptions

Construction of the normal protective bulkhead common to a single-family residence, provided the bulkhead is constructed at or near, and parallel to, the ordinary high water mark. A normal protective bulkhead is constructed to protect land from erosion, not for the purpose of creating land. When a vertical or near vertical wall is being constructed or reconstructed, not more than one cubic yard of fill per one foot of wall may be used as backfill. Where an existing bulkhead is being replaced, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated such that an ordinary high water mark has been established by the presence and action of water landward of the bulkhead, then the replacement bulkhead must be located at or near the actual ordinary high water mark. Beach nourishment and bioengineered erosion control projects may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and when the project has been approved by the Washington Department of Fish and Wildlife.

JCC 18.25.410 Residential development.

- (1) Definition. The development of land and/or the construction or erection of a dwelling or dwelling units for the purpose of residential occupancy.
- (2) Prohibited Uses and Activities.

- (a) Residential structures located on or over marshes, bogs, swamps, lagoons, tidelands, ecologically sensitive areas or water areas subject to this master program.
- (b) Residential structures located upon geologically hazardous areas or in floodways.
- (3) Policies.
 - (a) Residential development should be designed at a level of density of site coverage and occupancy compatible with the physical capabilities of the shoreline area, and consistent with the density provisions of local plans, codes, and ordinances.
 - (b) Residential development should be designed to adequately protect the water and shoreline aesthetic characteristics.
 - (c) Residential developments should be encouraged to provide pedestrian access to public shorelines abutting the development.
 - (d) Overwater residential development, including floating home, should not be permitted.
 - (e) Residential developers and individual builders should be required to indicate how they plan to preserve shore vegetation and control erosion during construction.
 - (f) Sewage disposal facilities, as well as water supply facilities, should be provided in accordance with appropriate state and local health regulations. Storm drainage facilities should be separate, not combined with sewage disposal systems.
 - (g) Adequate water supplies should be available so the ground water quantity and quality will not be endangered by overpumping.
 - (h) Residential development in geologically hazardous areas or in areas subject to flooding should be discouraged.
 - (i) Residential development in shoreline areas should be designed to preserve natural drainage courses, aquifer recharge areas, and similar ecologically sensitive areas.
 - (j) Subdivisions should maintain usable waterfront areas for the common use of all property owners within the development.
 - (k) Residential structures should be designed and located to not significantly block the views of adjacent residences or properties.
- (l) Sewage disposal drainfields should not be located where subject to flooding.
- (4) Performance Standards.
 - (a) Subdivisions of land shall comply with local plans, codes, and ordinances and be designed to exemplify the definition and policy of the applicable shoreline designation as well as the environmental and physical capabilities of the subject site.
 - (b) Appurtenant structures such as decks, sheds, and stairways shall be located behind the ordinary high water mark as far as practical and shall meet applicable setbacks.
 - (c) Public access to publicly owned shorelines shall be maintained.
 - (d) Development shall assure that surface water runoff does not pollute adjacent waters or cause soil or beach erosion, either during or after the construction phase.
 - (e) Developments containing marshes, swamps, lagoons, portions of a floodplain, or similar wetlands shall use those areas only for the purpose of parks, open space, or recreational facilities.
 - (f) Developments shall be designed to include measures to prevent overflow usage of common areas upon adjacent privately owned shorelands and uplands.
 - (g) Amenities provided by development shall not be detrimental to the geohydraulic processes occurring within the shoreline corridor.
 - (h) Roads, utilities, and other improvements shall comply with the applicable policies and performance standards of this master program.
 - (i) Residential structures shall not be located in areas subject to flooding or tidal inundation unless complete floodproofing measures have been provided, and

then only when the location of such structures will not aggravate flooding possibilities of nearby properties.

(j) The standard setback for residential structures, including common appurtenant structures such as garages and workshops, shall be 30 feet or one foot for each foot of bank height, whichever is greater. This setback shall be measured from the bank's edge when the bank's height exceeds 10 feet. When the bank's height is less than 10 feet, the setback shall be measured from the ordinary high water mark. The setback shall not exceed 100 feet. (See Administrative Interpretation, attached to the ordinance codified in this chapter, pages 105-106.)

Exceptions from this standard include the following:

(i) Where there are existing dwellings within 300 feet on either side of the proposed building site, the setback shall be the average setback of those dwellings or as prescribed above, whichever is less (see Figure 4). In those instances where a single dwelling unit is within 300 feet of one side of the proposed building site, the setback shall be the difference (average) between the required setback and that of the existing structure (see Figure 5). In both cases, the existing dwellings are construed to be those that are currently occupied. The mere presence of shacks, sheds or dilapidated buildings does not constitute the existence of a dwelling unit.

(ii) Where a residential setback was established as part of the approval of a residential subdivision, the established subdivision setback shall take precedence.

All setbacks shall be measured from the waterward most edge of the structure, excluding decks, eaves, etc. Deviations from this standard shall be reviewed on an individual basis. A request for a deviation shall be considered an administrative variance following the procedures established under JCC 18.25.620 and will be subject to the variance review criteria established under JCC 18.25.590. Unless appealed, a setback deviation rendered by the county or city shall be considered final.

(k) Alteration of topography for building sites, access roads, and utilities shall be conducted in compliance with the applicable policies and performance standards of this master program.

(l) Sewage disposal systems shall not be located within the floodplain of marine and fresh water bodies unless in compliance with the Jefferson County floodplain management ordinance.

(m) Residential structures shall not exceed 35 feet in height.

JCC 18.25.430 Shore defense works.

(1) Definition. Structures or modifications for the purpose of retarding shore erosion from wave or current action, protecting channels and harbors from wave action, encouraging deposition of beach materials, preventing stream bank overflow and retaining uplands. They may consist of bulkheads, seawalls, dikes, revetments, breakwaters, jetties, or gabions. Defense works are commonly constructed from quarry rock (rip-rap), treated wood, concrete, steel, and sand and gravel.

(2) Prohibited Uses and Activities.

(a) Shore defense works on spits, hooks, bars, barrier beaches, or similar accretion terminals or accretion shore forms.

(3) Policies.

(a) Bulkheads and seawalls should be located and constructed in such a manner that will not result in adverse effects on nearby beaches and will minimize alterations of the natural shoreline.

- (b) Shore defense works should be constructed in such a way that would minimize damage to fish and shellfish habitats. Open poling construction is preferable in lieu of the solid type.
 - (c) The effect of a proposed bulkhead on public access to publicly owned shorelines should be considered.
 - (d) Shore defense works should be designed to blend with the surroundings and not to distract from the aesthetic qualities of the shorelines.
 - (e) The construction of bulkheads should be permitted only where they provide protection to upland areas or facilities, not for the indirect purpose of creating land by filling behind the bulkhead. Landfill operations should satisfy related performance standards.
 - (f) Floating breakwaters are preferred to solid landfill types in order to maintain sand movement and fish habitats.
 - (g) Solid breakwaters should be constructed only where design modifications can eliminate potentially detrimental effects on the movement of sand and circulation of water.
 - (h) The restriction of the public use of the water surface as a result of breakwater construction must be recognized and must be considered in granting shoreline permits for their construction.
 - (i) The effect proposed jetties or groins have on sand movement must be considered. Provisions should be made to compensate for the adverse effects of the structures either by artificially transporting sand to the downdrift side on an inlet with jetties, or by artificially feeding the beaches in the case of groins.
 - (j) Special attention should be given to the effect these structures will have on wildlife propagation and movement, and to the effects these structures will have on the aesthetic quality of the shoreline.
 - (k) Rip-rapping and other bank stabilization measures should be located, designed, and constructed to avoid the need for channelization and to protect the natural character of the stream.
 - (l) Where flood protection measures such as dikes are planned, they should be placed landward of the stream, including associated swamps and marshes and other wetlands directly interrelated and interdependent with the stream proper.
 - (m) Flood protection measures that result in channelization should be avoided.
- (4) Performance Standards.
- (a) Shore defense works shall be designed and constructed in a manner that causes an absolute minimum of interruption to naturally occurring shoreline processes.
 - (b) Shore defense works shall be designed and constructed to minimize interruption of fish movements as well as marine and wildlife habitats.
 - (c) Shore defense works shall not be used for the indirect purpose of creating landfills, unless such landfill is specifically permitted in compliance with landfill performance standards of this master program.
 - (d) Shore defense works shall be designed and constructed to harmonize insofar as practicable with the aesthetic characteristics of the area where they are located.
 - (e) Shore defense works such as dikes shall be located landward of the stream and associated swamps, backwaters, marshes, floodway and other wetlands directly interrelated and interdependent with the stream proper.
 - (f) Substantial development permit applications shall provide competent technical evidence that the proposed shore defense structure will perform as designed.
 - (g) Shore defense works along rivers and streams shall not include groins or jetties or otherwise divert the direction of stream flow, unless said works have been professionally engineered and analyzed to ensure the diversion will not cause cross-stream or downstream impacts nor adversely alter the characteristic of the river or stream.

Interpretation:

It is clear throughout the Comprehensive Plan Goals and Policies that protecting and preserving the shoreline environment is a priority. The Comprehensive Plan Goals and Policies allow for development along the shoreline which is compatible with the protection of natural processes, natural conditions, and natural functions of the shoreline environment. Under Shore Defense Works the Shoreline Management Master Program (SMMP – Chapter 18.25, JCC) allows for structures to protect the shoreline from eroding through wave action or currents.

The definitions in the SMMP do not mention “rock-faced terraces”, retaining walls or rock walls specifically. However, the definition for “residence” and the definition for “single-family residence” discuss normal appurtenances including fences and grading that does not exceed 250 cubic yards. The definition of shore defense works mentions bulkheads, seawalls, dikes, revetments, breakwaters, jetties, groins, or gabions for the purpose of protecting the shoreline from eroding.

The “Ordinance Interpretation Request” does not describe these rock walls or “rock-faced terraces” as necessary for protection from wave action or currents. They are described as landscaping. Accordingly, they would not be considered nor reviewed under the Policies and Performance Standards for shore defense works.

On page 3 of the “Ordinance Interpretation Request” the applicant states, “The County building inspector has also determined the rock faces do not constitute “structures” requiring a building permit pursuant to the Uniform Building Code(see §105.2 of the UDC).”

Residential construction in Jefferson County is under the 2006 International Residential Code. Section R105.2 “Work exempt from permit.” lists work which is exempt from a building permit. Some items on the list are:

- “1. One-story detached accessory structures used as tool and storage sheds, playhouses and similar uses, provided the floor area does not exceed 120 square feet(11.15m2).”
- “2. Fences not over 6 feet (1829 high).”
- “3. Retaining walls that are not over 4 feet (1219 mm) in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge.”

When work is exempt from a building permit under the International Residential Code, it does not follow that it is exempt from all permits. A small tool shed, for instance, is a structure. It may be exempt from a building permit but would not be exempt from standards found in the SMMP.

The same with fences. Fences not over 6 ft. do not require a building permit. However, they would require review under the SMMP. The definition of “Single-family residence” (JCC 18.25.090(5)) includes fences. The same section requires a “single-family residence” meet all other state and local requirements of the master program including residential setback requirements.

Consequently, when the building department found the rock-faced terraces are 36” in height and do not support a surcharge, all they are determining is that the rock-faced terraces do not need building permits. They are not saying they are not structures. They are also not saying that they do not need review under the SMMP.

Since JCC 18.25.060 requires the department to analyze/interpret the master program broadly we conclude “rock-faced terraces”, retaining walls and rock walls that do not qualify as shore defense works are appurtenant residential structures. As such, they are required to meet all performance standards for Residential Development including setbacks. This is stated clearly in both the Shoreline Exemption language in JCC 18.25.090 (5) and in the Policies and Performance Standards found in JCC 18.25.410 (4)(b).

Therefore, no matter the review process, Shoreline Substantial Development Permit or Shoreline Exemption, a “rock-faced terrace”, retaining wall or rock wall would be required to meet the appropriate residential shoreline setback. If they were proposed within the residential setback area, a shoreline variance would be required.

The code allows bulkheads and other structures for shore defense. Interpreting that rock walls, which are not for shore defense purposes, are not subject to the Residential Performance Standards may lead to harmful impacts to wildlife habitat and a degraded shoreline environment.

Therefore, Jefferson County has determined that as described above and as constructed at 92 Cleveland St., Port Hadlock, the rock walls or “rock-faced terraces” are appurtenant residential structures subject to the Performance Standards for Residential Development (see JCC 18.25.410).

Subject: Are single-family residences exempt by state law from the Shoreline Management Act?

Interpretation: The applicant is asking for an interpretation of a statute (specifically RCW 90.58.030(3)(e)(vi) and not an interpretation of the Unified Development Code. Therefore, it will not be covered in this document.

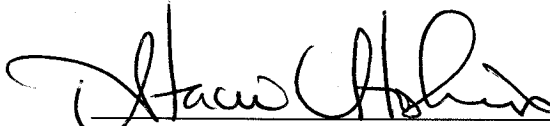
However, the SMA section listed above and referred to on page 6 of your Code Interpretation Request does nothing more than state that residential development does not rise to the level of “substantial development” (as defined in the SMA) which would require a Shoreline Substantial Development Permit. It does not resolve the question of whether the SMA and the local SMMP would apply to what your client is proposing. Look to RCW 90.58.030(3)(d), stated in full below, which defines “development” and includes in that definition “the construction of structures” such as the rock-walls or rock-faced terraces now in dispute:

"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 this chapter at any state of water level;

So even if a single-family residence were not considered “Substantial Development” under RCW 90.58.030(3)(e), it would still considered “Development”.

Appeal: As outlined in JCC 18.40.390, the applicant requesting a code interpretation may appeal the decision to the Hearing Examiner within fourteen (14) calendar days of the decision using the process for appeals of Type II permit decisions as set forth in JCC 18.40.330.

Dated this 18th day of December 2007.

 12/18/2007
Stacie Hoskins, Planning Manager