

CONTACT

jpd@vnf.com
206.623.9372

PRACTICE AREAS

Land Use
NEPA & State Equivalents
Real Estate & Land Use Litigation

EDUCATION

University of California at
Berkeley, Boalt Hall School of Law
Michigan State University

BAR AND COURT ADMISSIONS

Alaska State Bar
Washington State Bar

JAY P. DERR
PARTNER



Professional Background

Having practiced real estate, land use, and environmental law in the Pacific Northwest for over thirty years, Jay Derr enjoys and excels in applying his experience to help clients identify options, create opportunities, and develop and implement planning and permitting strategies to achieve successful and sustainable use and development of natural resource and real estate assets.

Working for both public and private sector clients, Jay's comprehensive understanding of market, economic, and public interests and environmental protection allows him to guide clients and their projects through to completion. Increasingly, Jay's practice has focused on land use and environmental representation with regard to the development and operation of energy export infrastructure at marine terminals and West Coast ports.

Jay balances various factors and considerations to successfully negotiate the appropriate scope of SEPA and NEPA environmental review and mitigation; to present concise, complete, and convincing records for state and local agency decision makers; to prepare complete and enforceable development mitigation agreements implementing those decisions; and, when necessary, to aggressively defend his client's interests and decisions before state environmental administrative tribunals, superior courts, and the Washington Court of Appeals and Supreme Court.

As a veteran navigator of SEPA, the Shoreline Management Act, and Growth Management Act issues, Jay regularly lectures and teaches across the state on a variety of land use, environmental, and policy issues that continue to shape the Pacific Northwest. He is periodically invited to provide historical perspective, input, and occasionally mediation or expert witness services on these issues.

Jay is managing partner of the Seattle office of Van Ness Feldman and previously served as a member of the firm's Executive Committee.

Representative Experience

Public Ports, Marine Terminals, Energy Infrastructure and Industrial Development

- Represents Tesoro Savage Petroleum Terminal, LLC, a joint Venture between Tesoro Refining and Marketing Company LLC and Savage Companies overseeing all aspects of the company's Vancouver Energy crude oil terminal and marine transfer facility at the Port of Vancouver, WA, including managing a team of experts preparing an environmental impact statement to obtain all federal, state and local industrial facility permits, and representing the project in the permit adjudication hearings before the Washington State Energy Facility Site Evaluation Council, a multi-agency council with exclusive jurisdiction over all major energy infrastructure projects in the State of Washington.
- Represents the Port of Kalama, co-applicant with Northwest Innovation Works, in the development of a methanol manufacturing plant, new dock and marine transfer facility, and other associated process elements including a Ranney well proposed on port property. Work includes overseeing the environmental review and all aspects of federal, state and local air, water and land use permitting including Section 10 and 404 permits, and Endangered Species Act and NEPA compliance, State Environmental Policy Act (SEPA), Environmental Impact Statement (EIS), local air permits and shoreline permits for the new dock and the methanol processing facility. A partner pipeline company will be building a lateral pipeline extension that will bring natural gas from the existing natural gas

transmission line to the new facility for methanol production, loading and transport to China for use as a feedstock in plastics production.

- Represents Tesoro Refining and Marketing, LLC with SEPA/NEPA review and US Army Corps of Engineers permitting for Clean Products Upgrade project at Tesoro Refinery in Anacortes, WA.
- Represented Imperium Renewables, owner and operator of the nation's largest BQ-9000 certified biofuels processing facility, in obtaining and defending SEPA and Shoreline Management Act approvals for expansion of its rail-marine vessel terminal and transfer facility at the Port of Grays Harbor, Washington. Negotiated SEPA mitigation and shoreline substantial development permits, and defended the project in appeals before the Washington State Shoreline Hearings Board.

Private Sector Residential Land Development

- Represents Pacific NW divisions of some of the nation's premier residential homebuilders in site acquisition, due diligence, subdivision, and SEPA environmental review of residential development projects ranging from a few to several hundred lots. Jay's work on these projects often includes negotiating development agreements addressing project impacts on traffic, stormwater, wetlands, parks, and public infrastructure and public services to ensure predictable project conditions for the life of the development.
- Periodically advises national corporations on regional and nationwide expansion programs, including acquisitions, feasibility studies, and state and local permitting.

City and County Representation

- Has served as Special Deputy Prosecutor for Skagit and Whatcom Counties, advising the counties on Growth Management Act (GMA) and SEPA compliance, developing and defending critical areas and wetland regulations, urban growth area designations, concurrency and impact fee programs, urban and rural development density provisions, surface water and groundwater quantity and quality programs and related land use and environmental regulations. Defended County comprehensive plan and development regulations before the Growth Management Hearings Board and the Washington State Supreme Court.
- Defended the City of Tacoma, Washington against a multi-million dollar damage claim arising out of the City's SEPA, rezone, planned unit development, and preliminary plat decisions for the Northshore Golf Course in northeast Tacoma. After the damage claim was filed against the City, Jay was retained to oversee the City's SEPA and land use review processes. He filed and successfully argued a declaratory judgment action upholding property openspace agreements and defended Land Use Petition Act (LUPA) appeals of the City's decisions in Pierce County Superior Court and the Washington State Court of Appeals.
- Previously served as Special Deputy Prosecuting Attorney for Columbia and Garfield Counties for SEPA review and permitting efforts for the Lower Snake River Wind Farm.
- Represented the Cities of Cle Elum, Snoqualmie and Tacoma, advising them on all aspects of the local SEPA review and permitting process for complex, master-planned development projects.
- Represents a wide variety of municipal and private sector clients with Growth Management Act appeals before the Washington Growth Management Hearings Board and the courts.

Awards and Honors

"Best Lawyers in America" by *U.S. News & World Report*

Environmental Law

Land Use & Zoning Law

Litigation-Environmental

Litigation-Land Use & Zoning

Real Estate Law

"Best Lawyers in America" by *Best Lawyers*

Environmental Law, 2006-2018
Land Use & Zoning Law, 2007-2018
Litigation-Environmental, 2011-2018
Litigation-Land Use & Zoning, 2011-2018
Real Estate Law, 2006-2018

Chambers USA

Real Estate: Zoning/Land Use, 2010-2018

Super Lawyers

Washington State, 2001-2017; 2019
Listed among the "Top 100 Super Lawyers," 2012-2013"

Named *Seattle Best Lawyers* "Lawyer of the Year"

Litigation-Land Use & Zoning, 2013

Environmental Law, 2011

Articles and Presentations

- Presenter, "Consideration of Climate Change Under SEPA: An Overview of SEPA Authority" - 15th Annual SEPA & NEPA Seminar, Law Seminars International, Seattle WA, 01/10/2018
- Presenter, "Energy on the Columbia River" - The Mighty Columbia Conference, Seattle WA, 10/28/2016
- Panelist, "Transportation of Oil by Rail" - Energy Exports in the Pacific Northwest, Law Seminars International, Seattle WA, 08/17/2015
- Rethinking Washington's State Environmental Policy Act, NW Lawyer, Vol. 68 Issue 3 pp. 50-52, 04/30/2014
- Chapter 13: Growth Management Hearings Board, Washington Real Property Desk Book, Washington State Bar Association (4th ed. 2012), Vol. 5, 10/01/2012

Alerts

- Climate Change Policy Developments in Washington State, 03/23/2017
- OUTLOOK 2014: KEY POLICY DEVELOPMENTS, 01/23/2014