
ENGROSSED HOUSE BILL 1653

State of Washington

61st Legislature

2010 Regular Session

By Representative Simpson; by request of Department of Ecology and Department of Community, Trade, and Economic Development

Read first time 01/27/09. Referred to Committee on Local Government & Housing.

1 AN ACT Relating to clarifying the integration of shoreline
2 management act policies with the growth management act; amending RCW
3 36.70A.480 and 90.58.030; adding a new section to chapter 90.58 RCW;
4 creating new sections; and declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** (1) The legislature recognizes that
7 Engrossed Substitute House Bill No. 1933, enacted as chapter 321, Laws
8 of 2003, modified the relationship between the shoreline management act
9 and the growth management act. The legislature recognizes also that
10 its 2003 efforts, while intended to create greater operational clarity
11 between these significant shoreline and land use acts, have been the
12 subject of differing, and occasionally contrary, legal interpretations.
13 This act is intended to affirm and clarify the legislature's intent
14 relating to the provisions of chapter 321, Laws of 2003.

15 (2) The legislature affirms that development regulations adopted
16 under the growth management act to protect critical areas apply within
17 shorelines of the state as provided in section 2 of this act.

18 (3) The legislature affirms that the adoption or update of critical

1 area regulations under the growth management act is not automatically
2 an update to the shoreline master program.

3 (4) The legislature intends for this act to be remedial and
4 curative in nature, and to apply retroactively to July 27, 2003.

5 **Sec. 2.** RCW 36.70A.480 and 2003 c 321 s 5 are each amended to read
6 as follows:

7 (1) For shorelines of the state, the goals and policies of the
8 shoreline management act as set forth in RCW 90.58.020 are added as one
9 of the goals of this chapter as set forth in RCW 36.70A.020 without
10 creating an order of priority among the fourteen goals. The goals and
11 policies of a shoreline master program for a county or city approved
12 under chapter 90.58 RCW shall be considered an element of the county or
13 city's comprehensive plan. All other portions of the shoreline master
14 program for a county or city adopted under chapter 90.58 RCW, including
15 use regulations, shall be considered a part of the county or city's
16 development regulations.

17 (2) The shoreline master program shall be adopted pursuant to the
18 procedures of chapter 90.58 RCW rather than the goals, policies, and
19 procedures set forth in this chapter for the adoption of a
20 comprehensive plan or development regulations.

21 (3)(a) The policies, goals, and provisions of chapter 90.58 RCW and
22 applicable guidelines shall be the sole basis for determining
23 compliance of a shoreline master program with this chapter except as
24 the shoreline master program is required to comply with the internal
25 consistency provisions of RCW 36.70A.070, 36.70A.040(4), 35.63.125, and
26 35A.63.105.

27 ~~((a) As of the date the department of ecology approves a local
28 government's shoreline master program adopted under applicable
29 shoreline guidelines, the protection of critical areas as defined by
30 RCW 36.70A.030(5) within shorelines of the state shall be accomplished
31 only through the local government's shoreline master program and shall
32 not be subject to the procedural and substantive requirements of this
33 chapter, except as provided in subsection (6) of this section.))~~

34 (b) Except as otherwise provided in (c) of this subsection,
35 development regulations adopted under this chapter to protect critical
36 areas within shorelines of the state apply within shorelines of the
37 state until the department of ecology approves one of the following:

1 A comprehensive master program update, as defined in RCW 90.58.030; a
2 segment of a master program relating to critical areas, as provided in
3 RCW 90.58.090; or a new or amended master program approved by the
4 department of ecology on or after March 1, 2002, as provided in RCW
5 90.58.080. The adoption or update of development regulations to
6 protect critical areas under this chapter prior to department of
7 ecology approval of a master program update as provided in this
8 subsection is not a comprehensive or segment update to the master
9 program.

10 (c)(i) Until the department of ecology approves a master program or
11 segment of a master program as provided in (b) of this subsection, a
12 use or structure legally located within shorelines of the state that
13 was established or vested on or before the effective date of the local
14 government's development regulations to protect critical areas may
15 continue as a conforming use and may be redeveloped or modified if:
16 (A) The redevelopment or modification is consistent with the local
17 government's master program; and (B) the local government determines
18 that the proposed redevelopment or modification will result in no net
19 loss of shoreline ecological functions. The local government may waive
20 this requirement if the redevelopment or modification is consistent
21 with the master program and the local government's development
22 regulations to protect critical areas.

23 (ii) For purposes of this subsection (3)(c), an agricultural
24 activity that does not expand the area being used for the agricultural
25 activity is not a redevelopment or modification. "Agricultural
26 activity," as used in this subsection (3)(c), has the same meaning as
27 defined in RCW 90.58.065.

28 (d) Upon department of ecology approval of a shoreline master
29 program or critical area segment of a shoreline master program,
30 critical areas within shorelines of the state (~~that have been~~
31 identified as meeting the definition of critical areas as defined by
32 RCW 36.70A.030(5), and that are subject to a shoreline master program
33 adopted under applicable shoreline guidelines shall not be)) are
34 protected under chapter 90.58 RCW and are not subject to the procedural
35 and substantive requirements of this chapter, except as provided in
36 subsection (6) of this section. Nothing in chapter 321, Laws of 2003
37 or this act is intended to affect whether or to what extent

1 agricultural activities, as defined in RCW 90.58.065, are subject to
2 chapter 36.70A RCW.

3 ~~((e))~~ (e) The provisions of RCW 36.70A.172 shall not apply to the
4 adoption or subsequent amendment of a local government's shoreline
5 master program and shall not be used to determine compliance of a local
6 government's shoreline master program with chapter 90.58 RCW and
7 applicable guidelines. Nothing in this section, however, is intended
8 to limit or change the quality of information to be applied in
9 protecting critical areas within shorelines of the state, as required
10 by chapter 90.58 RCW and applicable guidelines.

11 (4) Shoreline master programs shall provide a level of protection
12 to critical areas located within shorelines of the state that ~~((is at
13 least equal to the level of protection provided to critical areas by
14 the local government's critical area ordinances adopted and thereafter
15 amended pursuant to RCW 36.70A.060(2)))~~ assures no net loss of
16 shoreline ecological functions necessary to sustain shoreline natural
17 resources as defined by department of ecology guidelines adopted
18 pursuant to RCW 90.58.060.

19 (5) Shorelines of the state shall not be considered critical areas
20 under this chapter except to the extent that specific areas located
21 within shorelines of the state qualify for critical area designation
22 based on the definition of critical areas provided by RCW 36.70A.030(5)
23 and have been designated as such by a local government pursuant to RCW
24 36.70A.060(2).

25 (6) If a local jurisdiction's master program does not include land
26 necessary for buffers for critical areas that occur within shorelines
27 of the state, as authorized by RCW 90.58.030(2)(f), then the local
28 jurisdiction shall continue to regulate those critical areas and their
29 required buffers pursuant to RCW 36.70A.060(2).

30 **Sec. 3.** RCW 90.58.030 and 2007 c 328 s 1 are each amended to read
31 as follows:

32 As used in this chapter, unless the context otherwise requires, the
33 following definitions and concepts apply:

- 34 (1) Administration:
 - 35 (a) "Department" means the department of ecology;
 - 36 (b) "Director" means the director of the department of ecology;

1 (c) "Local government" means any county, incorporated city, or town
2 which contains within its boundaries any lands or waters subject to
3 this chapter;

4 (d) "Person" means an individual, partnership, corporation,
5 association, organization, cooperative, public or municipal
6 corporation, or agency of the state or local governmental unit however
7 designated;

8 (e) "~~((Hearing[s]))~~ Hearings board" means the ~~((shoreline[s]))~~
9 shorelines hearings board established by this chapter.

10 (2) Geographical:

11 (a) "Extreme low tide" means the lowest line on the land reached by
12 a receding tide;

13 (b) "Ordinary high water mark" on all lakes, streams, and tidal
14 water is that mark that will be found by examining the bed and banks
15 and ascertaining where the presence and action of waters are so common
16 and usual, and so long continued in all ordinary years, as to mark upon
17 the soil a character distinct from that of the abutting upland, in
18 respect to vegetation as that condition exists on June 1, 1971, as it
19 may naturally change thereafter, or as it may change thereafter in
20 accordance with permits issued by a local government or the department:
21 PROVIDED, That in any area where the ordinary high water mark cannot be
22 found, the ordinary high water mark adjoining salt water shall be the
23 line of mean higher high tide and the ordinary high water mark
24 adjoining fresh water shall be the line of mean high water;

25 (c) "Shorelines of the state" are the total of all "shorelines" and
26 "shorelines of statewide significance" within the state;

27 (d) "Shorelines" means all of the water areas of the state,
28 including reservoirs, and their associated shorelands, together with
29 the lands underlying them; except (i) shorelines of statewide
30 significance; (ii) shorelines on segments of streams upstream of a
31 point where the mean annual flow is twenty cubic feet per second or
32 less and the wetlands associated with such upstream segments; and (iii)
33 shorelines on lakes less than twenty acres in size and wetlands
34 associated with such small lakes;

35 (e) "Shorelines of statewide significance" means the following
36 shorelines of the state:

37 (i) The area between the ordinary high water mark and the western

1 boundary of the state from Cape Disappointment on the south to Cape
2 Flattery on the north, including harbors, bays, estuaries, and inlets;
3 (ii) Those areas of Puget Sound and adjacent salt waters and the
4 Strait of Juan de Fuca between the ordinary high water mark and the
5 line of extreme low tide as follows:
6 (A) Nisqually Delta--from DeWolf Bight to Tatsolo Point,
7 (B) Birch Bay--from Point Whitehorn to Birch Point,
8 (C) Hood Canal--from Tala Point to Foulweather Bluff,
9 (D) Skagit Bay and adjacent area--from Brown Point to Yokeko Point,
10 and
11 (E) Padilla Bay--from March Point to William Point;
12 (iii) Those areas of Puget Sound and the Strait of Juan de Fuca and
13 adjacent salt waters north to the Canadian line and lying seaward from
14 the line of extreme low tide;
15 (iv) Those lakes, whether natural, artificial, or a combination
16 thereof, with a surface acreage of one thousand acres or more measured
17 at the ordinary high water mark;
18 (v) Those natural rivers or segments thereof as follows:
19 (A) Any west of the crest of the Cascade range downstream of a
20 point where the mean annual flow is measured at one thousand cubic feet
21 per second or more,
22 (B) Any east of the crest of the Cascade range downstream of a
23 point where the annual flow is measured at two hundred cubic feet per
24 second or more, or those portions of rivers east of the crest of the
25 Cascade range downstream from the first three hundred square miles of
26 drainage area, whichever is longer;
27 (vi) Those shorelands associated with (i), (ii), (iv), and (v) of
28 this subsection (2)(e);
29 (f) "Shorelands" or "shoreland areas" means those lands extending
30 landward for two hundred feet in all directions as measured on a
31 horizontal plane from the ordinary high water mark; floodways and
32 contiguous floodplain areas landward two hundred feet from such
33 floodways; and all wetlands and river deltas associated with the
34 streams, lakes, and tidal waters which are subject to the provisions of
35 this chapter; the same to be designated as to location by the
36 department of ecology.
37 (i) Any county or city may determine that portion of a one-hundred-

1 year-flood plain to be included in its master program as long as such
2 portion includes, as a minimum, the floodway and the adjacent land
3 extending landward two hundred feet therefrom.

4 (ii) Any city or county may also include in its master program land
5 necessary for buffers for critical areas, as defined in chapter 36.70A
6 RCW, that occur within shorelines of the state, provided that forest
7 practices regulated under chapter 76.09 RCW, except conversions to
8 nonforest land use, on lands subject to the provisions of this
9 subsection (2)(f)(ii) are not subject to additional regulations under
10 this chapter;

11 (g) "Floodway" means the area, as identified in a master program,
12 that either: (i) Has been established in federal emergency management
13 agency flood insurance rate maps or floodway maps; or (ii) consists of
14 those portions of a river valley lying streamward from the outer limits
15 of a watercourse upon which flood waters are carried during periods of
16 flooding that occur with reasonable regularity, although not
17 necessarily annually, said floodway being identified, under normal
18 condition, by changes in surface soil conditions or changes in types or
19 quality of vegetative ground cover condition, topography, or other
20 indicators of flooding that occurs with reasonable regularity, although
21 not necessarily annually. Regardless of the method used to identify
22 the floodway, the floodway shall not include those lands that can
23 reasonably be expected to be protected from flood waters by flood
24 control devices maintained by or maintained under license from the
25 federal government, the state, or a political subdivision of the state;

26 (h) "Wetlands" means areas that are inundated or saturated by
27 surface water or groundwater at a frequency and duration sufficient to
28 support, and that under normal circumstances do support, a prevalence
29 of vegetation typically adapted for life in saturated soil conditions.
30 Wetlands generally include swamps, marshes, bogs, and similar areas.
31 Wetlands do not include those artificial wetlands intentionally created
32 from nonwetland sites, including, but not limited to, irrigation and
33 drainage ditches, grass-lined swales, canals, detention facilities,
34 wastewater treatment facilities, farm ponds, and landscape amenities,
35 or those wetlands created after July 1, 1990, that were unintentionally
36 created as a result of the construction of a road, street, or highway.
37 Wetlands may include those artificial wetlands intentionally created
38 from nonwetland areas to mitigate the conversion of wetlands.

1 (3) Procedural terms:

2 (a) "Guidelines" means those standards adopted to implement the
3 policy of this chapter for regulation of use of the shorelines of the
4 state prior to adoption of master programs. Such standards shall also
5 provide criteria to local governments and the department in developing
6 master programs;

7 (b) "Master program" shall mean the comprehensive use plan for a
8 described area, and the use regulations together with maps, diagrams,
9 charts, or other descriptive material and text, a statement of desired
10 goals, and standards developed in accordance with the policies
11 enunciated in RCW 90.58.020. "Comprehensive master program update"
12 means a master program that fully achieves the procedural and
13 substantive requirements of the department guidelines effective January
14 17, 2004, as now or hereafter amended;

15 (c) "State master program" is the cumulative total of all master
16 programs approved or adopted by the department of ecology;

17 (d) "Development" means a use consisting of the construction or
18 exterior alteration of structures; dredging; drilling; dumping;
19 filling; removal of any sand, gravel, or minerals; bulkheading; driving
20 of piling; placing of obstructions; or any project of a permanent or
21 temporary nature which interferes with the normal public use of the
22 surface of the waters overlying lands subject to this chapter at any
23 state of water level;

24 (e) "Substantial development" shall mean any development of which
25 the total cost or fair market value exceeds five thousand dollars, or
26 any development which materially interferes with the normal public use
27 of the water or shorelines of the state. The dollar threshold
28 established in this subsection (3)(e) must be adjusted for inflation by
29 the office of financial management every five years, beginning July 1,
30 2007, based upon changes in the consumer price index during that time
31 period. "Consumer price index" means, for any calendar year, that
32 year's annual average consumer price index, Seattle, Washington area,
33 for urban wage earners and clerical workers, all items, compiled by the
34 bureau of labor and statistics, United States department of labor. The
35 office of financial management must calculate the new dollar threshold
36 and transmit it to the office of the code reviser for publication in
37 the Washington State Register at least one month before the new dollar

1 threshold is to take effect. The following shall not be considered
2 substantial developments for the purpose of this chapter:

3 (i) Normal maintenance or repair of existing structures or
4 developments, including damage by accident, fire, or elements;

5 (ii) Construction of the normal protective bulkhead common to
6 single family residences;

7 (iii) Emergency construction necessary to protect property from
8 damage by the elements;

9 (iv) Construction and practices normal or necessary for farming,
10 irrigation, and ranching activities, including agricultural service
11 roads and utilities on shorelands, and the construction and maintenance
12 of irrigation structures including but not limited to head gates,
13 pumping facilities, and irrigation channels. A feedlot of any size,
14 all processing plants, other activities of a commercial nature,
15 alteration of the contour of the shorelands by leveling or filling
16 other than that which results from normal cultivation, shall not be
17 considered normal or necessary farming or ranching activities. A
18 feedlot shall be an enclosure or facility used or capable of being used
19 for feeding livestock hay, grain, silage, or other livestock feed, but
20 shall not include land for growing crops or vegetation for livestock
21 feeding and/or grazing, nor shall it include normal livestock wintering
22 operations;

23 (v) Construction or modification of navigational aids such as
24 channel markers and anchor buoys;

25 (vi) Construction on shorelands by an owner, lessee, or contract
26 purchaser of a single family residence for his own use or for the use
27 of his or her family, which residence does not exceed a height of
28 thirty-five feet above average grade level and which meets all
29 requirements of the state agency or local government having
30 jurisdiction thereof, other than requirements imposed pursuant to this
31 chapter;

32 (vii) Construction of a dock, including a community dock, designed
33 for pleasure craft only, for the private noncommercial use of the
34 owner, lessee, or contract purchaser of single and multiple family
35 residences. This exception applies if either: (A) In salt waters, the
36 fair market value of the dock does not exceed two thousand five hundred
37 dollars; or (B) in fresh waters, the fair market value of the dock does
38 not exceed ten thousand dollars, but if subsequent construction having

1 a fair market value exceeding two thousand five hundred dollars occurs
2 within five years of completion of the prior construction, the
3 subsequent construction shall be considered a substantial development
4 for the purpose of this chapter;

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

11 (ix) The marking of property lines or corners on state owned lands,
12 when such marking does not significantly interfere with normal public
13 use of the surface of the water;

14 (x) Operation and maintenance of any system of dikes, ditches,
15 drains, or other facilities existing on September 8, 1975, which were
16 created, developed, or utilized primarily as a part of an agricultural
17 drainage or diking system;

18 (xi) Site exploration and investigation activities that are
19 prerequisite to preparation of an application for development
20 authorization under this chapter, if:

21 (A) The activity does not interfere with the normal public use of
22 the surface waters;

23 (B) The activity will have no significant adverse impact on the
24 environment including, but not limited to, fish, wildlife, fish or
25 wildlife habitat, water quality, and aesthetic values;

26 (C) The activity does not involve the installation of a structure,
27 and upon completion of the activity the vegetation and land
28 configuration of the site are restored to conditions existing before
29 the activity;

30 (D) A private entity seeking development authorization under this
31 section first posts a performance bond or provides other evidence of
32 financial responsibility to the local jurisdiction to ensure that the
33 site is restored to preexisting conditions; and

34 (E) The activity is not subject to the permit requirements of RCW
35 90.58.550;

36 (xii) The process of removing or controlling an aquatic noxious
37 weed, as defined in RCW 17.26.020, through the use of an herbicide or
38 other treatment methods applicable to weed control that are recommended

1 by a final environmental impact statement published by the department
2 of agriculture or the department jointly with other state agencies
3 under chapter 43.21C RCW.

4 NEW SECTION. **Sec. 4.** A new section is added to chapter 90.58 RCW
5 to read as follows:

6 RCW 36.70A.480 governs the relationship between shoreline master
7 programs and development regulations to protect critical areas that are
8 adopted under chapter 36.70A RCW.

9 NEW SECTION. **Sec. 5.** This act is remedial and curative in nature
10 and applies retroactively to July 27, 2003.

11 NEW SECTION. **Sec. 6.** This act is necessary for the immediate
12 preservation of the public peace, health, or safety, or support of the
13 state government and its existing public institutions, and takes effect
14 immediately.

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