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## Local Government Committee

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### HB 2212

**Brief Description:** Addressing the application of the growth management act to certain agricultural activities occurring on agricultural lands.

**Sponsors:** Representatives Blake, B. Sullivan and Newhouse.

#### Brief Summary of Bill

- Modifies regulatory and adjudicatory provisions of the Growth Management Act pertaining to the application of critical areas requirements to agricultural activities on qualifying agricultural lands.
- Requires the Department of Community, Trade, and Economic Development to provide mediation services relating to the application of development regulations that protect critical areas to agricultural activities on agricultural lands.
- Establishes a Joint Legislative Task Force on Development Regulations and Agricultural Lands (Task Force).
- Specifies duties and responsibilities of the Task Force that must be met before its June 30, 2009 expiration.

**Hearing Date:** 2/22/07

**Staff:** Ethan Moreno (786-7386).

#### **Background:**

##### *Growth Management Act/Introduction and General Requirements*

The Growth Management Act (GMA or Act) is the comprehensive land use planning framework for county and city governments in Washington. Enacted in 1990 and 1991, the GMA establishes numerous requirements for local governments obligated by mandate or choice to fully plan under the Act (planning jurisdictions) and a reduced number of directives for all other counties and

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cities. Twenty-nine of Washington's 39 counties, and the cities within those counties, are planning jurisdictions.

The GMA requires all jurisdictions to satisfy specific designation and protection mandates. All local governments, for example, must designate and protect critical areas. These protection requirements obligate all local governments to adopt development regulations meeting specified criteria. As defined by statute, critical areas include wetlands, aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas.

All planning jurisdictions must adopt internally consistent comprehensive land use plans, which are generalized, coordinated land use policy statements of the governing body. Comprehensive plans must address specified planning elements, each of which is a subset of a comprehensive plan. Planning jurisdictions must also adopt development regulations that implement and conform with the comprehensive plan.

#### State Agency Assistance and Services

The Department of Community, Trade, and Economic Development (DCTED) is charged with providing technical and financial assistance to jurisdictions implementing the GMA. The DCTED must also provide mediation services to resolve disputes between counties and cities regarding, in part, coordination of regional issues and the designation of urban growth areas.

#### Growth Management Hearings Boards

The GMA establishes three regional Growth Management Hearings Boards (Boards). Each Board consists of three members satisfying residency requirements and qualified by experience or training in matters pertaining to land use planning. Boards have limited jurisdiction and may only hear and determine petitions alleging:

- That a state agency or planning jurisdiction is noncompliant with the GMA, specific provisions of the Shoreline Management Act, or certain mandates of the State Environmental Policy Act relating to qualifying plans, regulations, or amendments; or
- That 20-year planning populations adopted by the Office of Financial Management should be adjusted.

A petition with a Board may be filed only by:

- The state or a planning jurisdiction;
- A person satisfying legal standing requirements of the GMA who has participated before the county or city regarding the matter on which a review is being requested;
- A person who is certified by the Governor within 60 days of filing the request with the Board; or
- A person that meets specific standing requirements of Washington's Administrative Procedure Act.

For the purposes of filing a petition with a Board, "person" is defined as any individual, partnership, corporation, association, state agency, governmental subdivision or unit thereof, or public or private organization or entity of any character.

Final decisions of the Boards may be appealed to the superior court. Additionally, if all parties agree, the superior court may directly review a petition filed with a Board.

### Conservation Districts

Conservation districts (Districts) may be organized in conformity with statutory requirements as governmental subdivisions of the state in incorporated or unincorporated areas. The 47 Districts existing in Washington are governed by five-member boards of supervisors and are granted specific powers prescribed in statute, including the authority to:

- Conduct surveys, investigations, and research relating to the conservation of renewable natural resources, a term defined in statute to include land, air, water, vegetation, wildlife, and other natural resources;
- Implement preventative and control measures and works of improvement for the conservation of renewable natural resources on lands within the District; and
- Prepare and keep current comprehensive long-range programs (programs) recommending the conservation of the renewable natural resources of the District.

Districts must prepare annual work plans describing the action programs, services, facilities, materials, working arrangements and estimated funds needed to implement the parts of the long-range programs that are of the highest priorities. Districts must hold public hearings in connection with the preparation of work plans and programs.

Districts also prepare farm plans, a term defined by statute to mean, in part, a plan prepared in cooperation with a landowner or operator for the purpose of conserving, monitoring, or enhancing renewable natural resources. These farm plans, however, are exempt from public disclosure requirements unless permission to release the plan has been granted by the landowner or operator requesting the plan, or unless the plan is used for applications or permit issuances.

### **Summary of Bill:**

#### Regulatory and Adjudicatory Provisions/Critical Areas Protections, Agricultural Activities

Development regulations adopted to protect critical areas on or before January 1, 2007, may not prohibit or otherwise limit agricultural activities occurring on agricultural lands if the following requirements are met:

- The agricultural activities occurring on agricultural land are consistent with a farm plan for the parcels on which the agricultural activities are occurring;
- The applicable farm plan has been filed with and approved by the county in which the agricultural land is located;
- The applicable farm plan provides a level of protection to critical areas that is at least equal to the level of protection the jurisdiction otherwise requires through its development regulations adopted to protect critical areas located on agricultural lands; and
- The landowner or operator waives a statutory disclosure exemption for the applicable farm plan.

A Board may only hear and determine a petition alleging noncompliance with development regulations that protect critical areas as they relate to agricultural activities occurring on agricultural lands if:

- The agricultural activities occurring on agricultural lands are not in compliance with the previously listed requirements; and
- The parties have participated in mediation services provided by the DCTED.

A Board may not hear or determine such a petition if the agricultural activities occurring on agricultural lands are in compliance with the previously listed requirements.

For the purposes of the previously mentioned regulatory and adjudicatory provisions, "agricultural land" is not defined using the general definition established for the term in the GMA, but rather is defined to mean those specific land areas on which qualifying agricultural activities are conducted.

Regarding the broader authority of Boards, a Board may only hear and determine a petition related to agricultural activities occurring on agricultural land (as that term is generally defined in the GMA) if the parties have participated in mediation services provided by the DCTED.

#### Establishment of Additional Definitions within the GMA

Three new definitions are established within the general definitions provision of the GMA.

"*Agricultural activities*" is defined, in part, to mean agricultural uses and practices including, but not limited to:

- Producing, breeding, or increasing agricultural products;
- Allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded;
- Conducting agricultural operations;
- Maintaining, repairing, and replacing agricultural equipment; and
- Maintaining agricultural lands under production or cultivation.

"*Farm plan*" means a plan prepared by a conservation district in cooperation with a landowner or operator for the purpose of conserving, monitoring, or enhancing renewable natural resources.

Farm plans include, but are not limited to, site-specific provisions pertaining to:

- Developing and prioritizing conservation objectives;
- Taking an inventory of soil, water, vegetation, livestock, and wildlife;
- Implementing conservation measures, including technical assistance provided by the district;
- Developing and implementing livestock nutrient management measures;
- Developing and implementing plans pursuant to business and financial objectives; and
- Recording, or records of, decisions.

"*Mediation*" means a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.

#### Mediation Services - DCTED

New mediation service requirements are established for the DCTED. The DCTED must provide mediation services to resolve disputes between counties, cities, and other persons regarding the application of development regulations that protect critical areas to agricultural activities occurring on agricultural lands.

The DCTED must also provide mediation services to resolve disputes between counties, cities, and other persons regarding alleged noncompliance with the requirements of the following as they relate to agricultural activities occurring on agricultural lands:

- The GMA;

- The Shoreline Management Act (SMA) as it relates to the adoption of shoreline master programs or amendments, or
- The State Environmental Policy Act as it relates to plans, development regulations, or amendments adopted under the GMA or SMA.

Joint Legislative Task Force

A Joint Legislative Task Force on Development Regulations and Agricultural Lands (Task Force) is established with an expiration date of June 30, 2009. The membership of the Task Force must be established as follows:

- The President of the Senate and the Speaker of the House of Representatives must each appoint two members from each of the two largest caucuses of the Senate and House; and
- The Office of Financial Management and the DCTED must each maintain a liaison representative who shall be a nonvoting member. These agencies must cooperate with the Task Force and provide such information as the co-chairs may reasonably request.

Beginning July 1, 2007, the Task Force must work with the Ruckelshaus Center (Center) to design and carry out a process to identify issues that cause conflicts between agricultural activities occurring on agricultural land and development regulations that protect critical areas. These issues may include, but are not limited to, an assessment of:

- The degree to which local critical areas ordinances limit or modify currently existing agricultural activities on agricultural land;
- Issues that have driven the legal challenges that have come before Boards and the courts;
- Performance-based methods for reaching environmental goals of critical areas ordinances while allowing agricultural activities on agricultural land to continue;
- Technical assistance available to local governments in resolving land use disputes involving agricultural activities on agricultural land; and
- Recommendations for statutory changes to help resolve disputes.

The Task Force and the Center must involve stakeholders from diverse perspectives in the process, including but not limited to representatives of counties, cities, the agriculture industry, the environmental community, Native American tribes, and state agencies.

Reporting requirements are specified. By January 1, 2008, the Task Force must submit a progress report to the Governor and the appropriate committees of the Legislature that identifies issues, initial recommendations, and a plan for remaining work. Similarly, by October 1, 2008, the Task Force and the Center must report to the Governor and the appropriate committees of the Legislature its findings and recommendations for resolving or reducing these conflicts, including statutory changes for consideration during the 2009 Legislative session.

Governance and expense reimbursement provisions pertaining to the Task Force are specified. Additionally, subject to certain requirements and an appropriation, the Task Force may contract with additional persons to carry out its work. Staff support for the Task Force must be provided by the Senate Committee Services and the House of Representatives Office of Program Research.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.