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**SUBSTITUTE HOUSE BILL 1195**

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**State of Washington**

**54th Legislature**

**1995 Regular Session**

**By** House Committee on Transportation (originally sponsored by Representatives Buck, R. Fisher, K. Schmidt, Benton, Mitchell, Elliot, Stevens, Mulliken and Hickel; by request of Department of Transportation)

Read first time 01/27/95.

1 AN ACT Relating to the exclusion of site exploration as a  
2 substantial shoreline development; and amending RCW 90.58.030.

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

4 **Sec. 1.** RCW 90.58.030 and 1987 c 474 s 1 are each amended to read  
5 as follows:

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

8 (1) Administration:

9 (a) "Department" means the department of ecology;

10 (b) "Director" means the director of the department of ecology;

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

14 (d) "Person" means an individual, partnership, corporation,  
15 association, organization, cooperative, public or municipal  
16 corporation, or agency of the state or local governmental unit however  
17 designated;

18 (e) "Hearing board" means the shoreline hearings board established  
19 by this chapter.

1 (2) Geographical:

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

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

16 (c) "Shorelines of the state" are the total of all "shorelines" and  
17 "shorelines of state-wide significance" within the state;

18 (d) "Shorelines" means all of the water areas of the state,  
19 including reservoirs, and their associated wetlands, together with the  
20 lands underlying them; except (i) shorelines of state-wide  
21 significance; (ii) shorelines on segments of streams upstream of a  
22 point where the mean annual flow is twenty cubic feet per second or  
23 less and the wetlands associated with such upstream segments; and (iii)  
24 shorelines on lakes less than twenty acres in size and wetlands  
25 associated with such small lakes;

26 (e) "Shorelines of state-wide significance" means the following  
27 shorelines of the state:

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

31 (ii) Those areas of Puget Sound and adjacent salt waters and the  
32 Strait of Juan de Fuca between the ordinary high water mark and the  
33 line of extreme low tide as follows:

34 (A) Nisqually Delta--from DeWolf Bight to Tatsolo Point,

35 (B) Birch Bay--from Point Whitehorn to Birch Point,

36 (C) Hood Canal--from Tala Point to Foulweather Bluff,

37 (D) Skagit Bay and adjacent area--from Brown Point to Yokeko Point,

38 and

39 (E) Padilla Bay--from March Point to William Point;

1 (iii) Those areas of Puget Sound and the Strait of Juan de Fuca and  
2 adjacent salt waters north to the Canadian line and lying seaward from  
3 the line of extreme low tide;

4 (iv) Those lakes, whether natural, artificial, or a combination  
5 thereof, with a surface acreage of one thousand acres or more measured  
6 at the ordinary high water mark;

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

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

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

16 (vi) Those wetlands associated with (i), (ii), (iv), and (v) of  
17 this subsection (2)(e);

18 (f) "Wetlands" or "wetland areas" means those lands extending  
19 landward for two hundred feet in all directions as measured on a  
20 horizontal plane from the ordinary high water mark; floodways and  
21 contiguous floodplain areas landward two hundred feet from such  
22 floodways; and all marshes, bogs, swamps, and river deltas associated  
23 with the streams, lakes, and tidal waters which are subject to the  
24 provisions of this chapter; the same to be designated as to location by  
25 the department of ecology: PROVIDED, That any county or city may  
26 determine that portion of a one-hundred-year-flood plain to be included  
27 in its master program as long as such portion includes, as a minimum,  
28 the floodway and the adjacent land extending landward two hundred feet  
29 therefrom;

30 (g) "Floodway" means those portions of the area of a river valley  
31 lying streamward from the outer limits of a watercourse upon which  
32 flood waters are carried during periods of flooding that occur with  
33 reasonable regularity, although not necessarily annually, said floodway  
34 being identified, under normal condition, by changes in surface soil  
35 conditions or changes in types or quality of vegetative ground cover  
36 condition. The floodway shall not include those lands that can  
37 reasonably be expected to be protected from flood waters by flood  
38 control devices maintained by or maintained under license from the  
39 federal government, the state, or a political subdivision of the state.

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;

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

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

21 (e) "Substantial development" shall mean any development of which  
22 the total cost or fair market value exceeds two thousand five hundred  
23 dollars, or any development which materially interferes with the normal  
24 public use of the water or shorelines of the state; except that the  
25 following shall not be considered substantial developments for the  
26 purpose of this chapter:

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

29 (ii) Construction of the normal protective bulkhead common to  
30 single family residences;

31 (iii) Emergency construction necessary to protect property from  
32 damage by the elements;

33 (iv) Construction and practices normal or necessary for farming,  
34 irrigation, and ranching activities, including agricultural service  
35 roads and utilities on wetlands, and the construction and maintenance  
36 of irrigation structures including but not limited to head gates,  
37 pumping facilities, and irrigation channels: PROVIDED, That a feedlot  
38 of any size, all processing plants, other activities of a commercial  
39 nature, alteration of the contour of the wetlands by leveling or

1 filling other than that which results from normal cultivation, shall  
2 not be considered normal or necessary farming or ranching activities.  
3 A feedlot shall be an enclosure or facility used or capable of being  
4 used for feeding livestock hay, grain, silage, or other livestock feed,  
5 but shall not include land for growing crops or vegetation for  
6 livestock feeding and/or grazing, nor shall it include normal livestock  
7 wintering operations;

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

10 (vi) Construction on wetlands by an owner, lessee, or contract  
11 purchaser of a single family residence for his own use or for the use  
12 of his family, which residence does not exceed a height of thirty-five  
13 feet above average grade level and which meets all requirements of the  
14 state agency or local government having jurisdiction thereof, other  
15 than requirements imposed pursuant to this chapter;

16 (vii) Construction of a dock, including a community dock, designed  
17 for pleasure craft only, for the private noncommercial use of the  
18 owner, lessee, or contract purchaser of single and multiple family  
19 residences, the cost of which does not exceed two thousand five hundred  
20 dollars;

21 (viii) Operation, maintenance, or construction of canals,  
22 waterways, drains, reservoirs, or other facilities that now exist or  
23 are hereafter created or developed as a part of an irrigation system  
24 for the primary purpose of making use of system waters, including  
25 return flow and artificially stored ground water for the irrigation of  
26 lands;

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

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

34 (xi) Any action commenced prior to December 31, 1982, pertaining to  
35 (A) the restoration of interim transportation services as may be  
36 necessary as a consequence of the destruction of the Hood Canal bridge,  
37 including, but not limited to, improvements to highways, development of  
38 park and ride facilities, and development of ferry terminal facilities  
39 until a new or reconstructed Hood Canal bridge is open to traffic; and

1 (B) the reconstruction of a permanent bridge at the site of the  
2 original Hood Canal bridge;

3 (xii) Site exploration and investigation activities that are  
4 prerequisite to preparation of an application for development  
5 authorization under this chapter, if:

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

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

11 (C) The activity does not involve the installation of a structure,  
12 and upon completion of the activity the vegetation and land  
13 configuration of the site are restored to conditions existing before  
14 the activity;

15 (D) A private entity seeking development authorization under this  
16 section first posts a performance bond to the local jurisdiction; and

17 (E) The activity is not subject to the permit requirements of RCW  
18 90.58.550.

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