
HOUSE BILL 1963

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By Representatives Cooper, Hunt and Keiser

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1 AN ACT Relating to the role of critical areas ordinances adopted
2 under the growth management act in protecting shorelines of the state;
3 amending RCW 36.70A.030, 36.70A.050, 36.70A.060, 36.70A.106,
4 36.70A.170, 36.70A.172, 36.70A.480, 90.58.030, and 90.58.100; adding a
5 new section to chapter 36.70A RCW; adding a new section to chapter
6 77.12 RCW; and adding a new section to chapter 90.58 RCW.

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

8 **Sec. 1.** RCW 36.70A.030 and 1997 c 429 s 3 are each amended to read
9 as follows:

10 Unless the context clearly requires otherwise, the definitions in
11 this section apply throughout this chapter.

12 (1) "Adopt a comprehensive land use plan" means to enact a new
13 comprehensive land use plan or to update an existing comprehensive land
14 use plan.

15 (2) "Agricultural land" means land primarily devoted to the
16 commercial production of horticultural, viticultural, floricultural,
17 dairy, apiary, vegetable, or animal products or of berries, grain, hay,
18 straw, turf, seed, Christmas trees not subject to the excise tax
19 imposed by RCW 84.33.100 through 84.33.140, finfish in upland

1 hatcheries, or livestock, and that has long-term commercial
2 significance for agricultural production.

3 (3) "City" means any city or town, including a code city.

4 (4) "Comprehensive land use plan," "comprehensive plan," or "plan"
5 means a generalized coordinated land use policy statement of the
6 governing body of a county or city that is adopted pursuant to this
7 chapter.

8 (5) "Critical areas" include the following areas and ecosystems:

9 (a) Wetlands; (b) areas with a critical recharging effect on aquifers
10 used for potable water; (c) fish and wildlife habitat conservation
11 areas; (d) frequently flooded areas; (~~and~~) (e) geologically hazardous
12 areas; and (f) shorelines of the state as defined in RCW 90.58.030.

13 (6) "Department" means the department of community, trade, and
14 economic development.

15 (7) "Development regulations" or "regulation" means the controls
16 placed on development or land use activities by a county or city,
17 including, but not limited to, zoning ordinances, critical areas
18 ordinances, shoreline master programs, official controls, planned unit
19 development ordinances, subdivision ordinances, and binding site plan
20 ordinances together with any amendments thereto. A development
21 regulation does not include a decision to approve a project permit
22 application, as defined in RCW 36.70B.020, even though the decision may
23 be expressed in a resolution or ordinance of the legislative body of
24 the county or city.

25 (8) "Forest land" means land primarily devoted to growing trees for
26 long-term commercial timber production on land that can be economically
27 and practically managed for such production, including Christmas trees
28 subject to the excise tax imposed under RCW 84.33.100 through
29 84.33.140, and that has long-term commercial significance. In
30 determining whether forest land is primarily devoted to growing trees
31 for long-term commercial timber production on land that can be
32 economically and practically managed for such production, the following
33 factors shall be considered: (a) The proximity of the land to urban,
34 suburban, and rural settlements; (b) surrounding parcel size and the
35 compatibility and intensity of adjacent and nearby land uses; (c) long-
36 term local economic conditions that affect the ability to manage for
37 timber production; and (d) the availability of public facilities and
38 services conducive to conversion of forest land to other uses.

1 (9) "Geologically hazardous areas" means areas that because of
2 their susceptibility to erosion, sliding, earthquake, or other
3 geological events, are not suited to the siting of commercial,
4 residential, or industrial development consistent with public health or
5 safety concerns.

6 (10) "Long-term commercial significance" includes the growing
7 capacity, productivity, and soil composition of the land for long-term
8 commercial production, in consideration with the land's proximity to
9 population areas, and the possibility of more intense uses of the land.

10 (11) "Minerals" include gravel, sand, and valuable metallic
11 substances.

12 (12) "Public facilities" include streets, roads, highways,
13 sidewalks, street and road lighting systems, traffic signals, domestic
14 water systems, storm and sanitary sewer systems, parks and recreational
15 facilities, and schools.

16 (13) "Public services" include fire protection and suppression, law
17 enforcement, public health, education, recreation, environmental
18 protection, and other governmental services.

19 (14) "Rural character" refers to the patterns of land use and
20 development established by a county in the rural element of its
21 comprehensive plan:

22 (a) In which open space, the natural landscape, and vegetation
23 predominate over the built environment;

24 (b) That foster traditional rural lifestyles, rural-based
25 economies, and opportunities to both live and work in rural areas;

26 (c) That provide visual landscapes that are traditionally found in
27 rural areas and communities;

28 (d) That are compatible with the use of the land by wildlife and
29 for fish and wildlife habitat;

30 (e) That reduce the inappropriate conversion of undeveloped land
31 into sprawling, low-density development;

32 (f) That generally do not require the extension of urban
33 governmental services; and

34 (g) That are consistent with the protection of natural surface
35 water flows and ground water and surface water recharge and discharge
36 areas.

37 (15) "Rural development" refers to development outside the urban
38 growth area and outside agricultural, forest, and mineral resource
39 lands designated pursuant to RCW 36.70A.170. Rural development can

1 consist of a variety of uses and residential densities, including
2 clustered residential development, at levels that are consistent with
3 the preservation of rural character and the requirements of the rural
4 element. Rural development does not refer to agriculture or forestry
5 activities that may be conducted in rural areas.

6 (16) "Rural governmental services" or "rural services" include
7 those public services and public facilities historically and typically
8 delivered at an intensity usually found in rural areas, and may include
9 domestic water systems, fire and police protection services,
10 transportation and public transit services, and other public utilities
11 associated with rural development and normally not associated with
12 urban areas. Rural services do not include storm or sanitary sewers,
13 except as otherwise authorized by RCW 36.70A.110(4).

14 (17) "Urban growth" refers to growth that makes intensive use of
15 land for the location of buildings, structures, and impermeable
16 surfaces to such a degree as to be incompatible with the primary use of
17 land for the production of food, other agricultural products, or fiber,
18 or the extraction of mineral resources, rural uses, rural development,
19 and natural resource lands designated pursuant to RCW 36.70A.170. A
20 pattern of more intensive rural development, as provided in RCW
21 36.70A.070(5)(d), is not urban growth. When allowed to spread over
22 wide areas, urban growth typically requires urban governmental
23 services. "Characterized by urban growth" refers to land having urban
24 growth located on it, or to land located in relationship to an area
25 with urban growth on it as to be appropriate for urban growth.

26 (18) "Urban growth areas" means those areas designated by a county
27 pursuant to RCW 36.70A.110.

28 (19) "Urban governmental services" or "urban services" include
29 those public services and public facilities at an intensity
30 historically and typically provided in cities, specifically including
31 storm and sanitary sewer systems, domestic water systems, street
32 cleaning services, fire and police protection services, public transit
33 services, and other public utilities associated with urban areas and
34 normally not associated with rural areas.

35 (20) "Wetland" or "wetlands" means areas that are inundated or
36 saturated by surface water or ground water at a frequency and duration
37 sufficient to support, and that under normal circumstances do support,
38 a prevalence of vegetation typically adapted for life in saturated soil
39 conditions. Wetlands generally include swamps, marshes, bogs, and

1 similar areas. Wetlands do not include those artificial wetlands
2 intentionally created from nonwetland sites, including, but not limited
3 to, irrigation and drainage ditches, grass-lined swales, canals,
4 detention facilities, wastewater treatment facilities, farm ponds, and
5 landscape amenities, or those wetlands created after July 1, 1990, that
6 were unintentionally created as a result of the construction of a road,
7 street, or highway. Wetlands may include those artificial wetlands
8 intentionally created from nonwetland areas created to mitigate
9 conversion of wetlands.

10 **Sec. 2.** RCW 36.70A.050 and 1990 1st ex.s. c 17 s 5 are each
11 amended to read as follows:

12 (1) Subject to the definitions provided in RCW 36.70A.030, the
13 department shall adopt guidelines, under chapter 34.05 RCW, no later
14 than September 1, 1990, to guide the classification of: (a)
15 Agricultural lands; (b) forest lands; (c) mineral resource lands; and
16 (d) critical areas. The department shall consult with the department
17 of agriculture regarding guidelines for agricultural lands(~~(7)~~) and the
18 department of natural resources regarding forest lands and mineral
19 resource lands(~~(7—and)~~). The department shall adopt guidelines
20 regarding critical areas in cooperation with the department of ecology
21 (~~regarding critical areas~~) and the department of fish and wildlife.

22 (2) In carrying out its duties under this section, the department
23 shall consult with interested parties, including but not limited to:
24 (a) Representatives of cities; (b) representatives of counties; (c)
25 representatives of developers; (d) representatives of builders; (e)
26 representatives of owners of agricultural lands, forest lands, and
27 mining lands; (f) representatives of local economic development
28 officials; (g) representatives of environmental organizations; (h)
29 representatives of special districts; (i) representatives of the
30 governor's office and federal and state agencies; and (j)
31 representatives of Indian tribes. In addition to the consultation
32 required under this subsection, the department shall conduct public
33 hearings in the various regions of the state. The department shall
34 consider the public input obtained at such public hearings when
35 adopting the guidelines.

36 (3) The guidelines under subsection (1) of this section shall be
37 minimum guidelines that apply to all jurisdictions, but also shall
38 allow for regional differences that exist in Washington state. The

1 intent of these guidelines is to assist counties and cities in
2 designating the classification of agricultural lands, forest lands,
3 mineral resource lands, and critical areas under RCW 36.70A.170.

4 (4) The guidelines established by the department under this section
5 regarding classification of forest lands shall not be inconsistent with
6 guidelines adopted by the department of natural resources.

7 **Sec. 3.** RCW 36.70A.060 and 1998 c 286 s 5 are each amended to read
8 as follows:

9 (1) Each county (~~((that is required or chooses to plan))~~) planning
10 under RCW 36.70A.040, and each city within such county, shall adopt
11 development regulations on or before September 1, 1991, to assure the
12 conservation of agricultural, forest, and mineral resource lands
13 designated under RCW 36.70A.170. Regulations adopted under this
14 subsection may not prohibit uses legally existing on any parcel prior
15 to their adoption and shall remain in effect until the county or city
16 adopts development regulations pursuant to RCW 36.70A.040. Such
17 regulations shall assure that the use of lands adjacent to
18 agricultural, forest, or mineral resource lands shall not interfere
19 with the continued use, in the accustomed manner and in accordance with
20 best management practices, of these designated lands for the production
21 of food, agricultural products, or timber, or for the extraction of
22 minerals. Counties and cities shall require that all plats, short
23 plats, development permits, and building permits issued for development
24 activities on, or within five hundred feet of, lands designated as
25 agricultural lands, forest lands, or mineral resource lands, contain a
26 notice that the subject property is within or near designated
27 agricultural lands, forest lands, or mineral resource lands on which a
28 variety of commercial activities may occur that are not compatible with
29 residential development for certain periods of limited duration. The
30 notice for mineral resource lands shall also inform that an application
31 might be made for mining-related activities, including mining,
32 extraction, washing, crushing, stockpiling, blasting, transporting, and
33 recycling of minerals.

34 (2) Each county and city shall adopt development regulations
35 (~~((that))~~) to protect critical areas that are required to be designated
36 under RCW 36.70A.170. For counties and cities (~~((that are required or~~
37 ~~choose to plan))~~) planning under RCW 36.70A.040, such development
38 regulations shall be adopted on or before September 1, 1991. For the

1 remainder of the counties and cities, such development regulations
2 shall be adopted on or before March 1, 1992. Counties and cities shall
3 use the guidelines adopted pursuant to RCW 36.70A.050 and 90.58.060
4 when adopting development regulations to protect critical areas.
5 Development regulations to protect critical areas are subject to review
6 and approval by the department of ecology and the department of fish
7 and wildlife after adoption as required by section 5 of this act.

8 (3) Such counties and cities shall review these designations and
9 development regulations when adopting their comprehensive plans under
10 RCW 36.70A.040 and implementing development regulations under RCW
11 36.70A.120 and may alter such designations and development regulations
12 to insure consistency.

13 (4) Forest land and agricultural land located within urban growth
14 areas shall not be designated by a county or city as forest land or
15 agricultural land of long-term commercial significance under RCW
16 36.70A.170 unless the city or county has enacted a program authorizing
17 transfer or purchase of development rights.

18 **Sec. 4.** RCW 36.70A.106 and 1991 sp.s. c 32 s 8 are each amended to
19 read as follows:

20 (1) Each county and city proposing adoption of a comprehensive plan
21 or development regulations under this chapter shall notify the
22 department of its intent to adopt such plan or regulations at least
23 sixty days prior to final adoption. State agencies including the
24 department may provide comments to the county or city on the proposed
25 comprehensive plan, or proposed development regulations, during the
26 public review process prior to adoption.

27 (2) Each county and city planning under this chapter shall transmit
28 a complete and accurate copy of its comprehensive plan or development
29 regulations to the department within ten days after final adoption.

30 (3) Any amendments for permanent changes to a comprehensive plan or
31 development regulation that are proposed by a county or city to its
32 adopted plan or regulations shall be submitted to the department in the
33 same manner as initial plans and development regulations under this
34 section. Any amendments to a comprehensive plan or development
35 regulations that are adopted by a county or city shall be transmitted
36 to the department in the same manner as the initial plans and
37 regulations under this section.

1 (4) Development regulations to protect critical areas and any
2 amendments to such development regulations shall be submitted to the
3 department of ecology and the department of fish and wildlife for
4 review and approval after adoption as required by section 5 of this
5 act.

6 NEW SECTION. Sec. 5. A new section is added to chapter 36.70A RCW
7 to read as follows:

8 (1) Development regulations to protect critical areas or amendments
9 to such development regulations become effective when approved by the
10 department of fish and wildlife and the department of ecology. At
11 least sixty days before final adoption, each county or city shall
12 submit these development regulations to the department of ecology and
13 the department of fish and wildlife for review and approval.

14 (2) The department of ecology and the department of fish and
15 wildlife shall develop a joint program for public review of and comment
16 on proposed development regulations to protect critical areas. Upon
17 receipt of proposed development regulations to protect critical areas,
18 the department of ecology and the department of fish and wildlife
19 shall:

20 (a) Provide notice to and opportunity for written comment by all
21 interested parties of record as a part of the local government review
22 process for the proposed development regulations and to all persons,
23 groups, and agencies that have requested in writing notice of proposed
24 development regulations to protect critical areas generally or for a
25 specific area, subject matter, or issue. The comment period shall be
26 at least thirty days, unless the department of ecology and the
27 department of fish and wildlife determine that the level of complexity
28 or controversy involved supports a shorter period;

29 (b) In the discretion of the department of ecology and the
30 department of fish and wildlife, conduct a public hearing during the
31 thirty-day comment period in the jurisdiction proposing the development
32 regulations to protect critical areas;

33 (c) Within fifteen days after the close of public comment, request
34 the county or city to review the issues identified by the public,
35 interested parties, groups, and agencies and provide a written response
36 as to how the proposed development regulations address the identified
37 issues; and

1 (d) Within thirty days after receipt of the county's or city's
2 response pursuant to (c) of this subsection, make written findings and
3 conclusions regarding the consistency of the proposal with the policies
4 of this chapter and chapters 77.12 and 90.58 RCW, and the applicable
5 guidelines adopted pursuant to this chapter and chapter 90.58 RCW;
6 provide a response to the issues identified in (c) of this subsection;
7 and either approve the proposed development regulations as submitted,
8 recommend specific changes necessary to make the proposed development
9 regulations approvable, or deny approval of the proposed development
10 regulations in those instances where no alteration of the proposed
11 development regulations appears likely to be consistent with the
12 policies of this chapter and chapters 77.12 and 90.58 RCW and the
13 applicable guidelines adopted pursuant to this chapter and chapter
14 90.58 RCW. The written findings and conclusions shall be provided to
15 the local government, all interested persons, parties, groups, and
16 agencies of record on the proposed development regulations.

17 (3) If either the department of ecology or the department of fish
18 and wildlife recommends changes to the proposed development regulations
19 to protect critical areas, the local government may agree to the
20 proposed changes or submit alternative proposed development
21 regulations. The proposed development regulations to protect critical
22 areas take effect when and in such form as approved or adopted by both
23 the department of ecology and the department of fish and wildlife.

24 **Sec. 6.** RCW 36.70A.170 and 1990 1st ex.s. c 17 s 17 are each
25 amended to read as follows:

26 (1) On or before September 1, 1991, each county, and each city,
27 shall designate where appropriate:

28 (a) Agricultural lands that are not already characterized by urban
29 growth and that have long-term significance for the commercial
30 production of food or other agricultural products;

31 (b) Forest lands that are not already characterized by urban growth
32 and that have long-term significance for the commercial production of
33 timber;

34 (c) Mineral resource lands that are not already characterized by
35 urban growth and that have long-term significance for the extraction of
36 minerals; and

37 (d) Critical areas.

1 (2) In making the designations required by this section, counties
2 and cities shall consider the guidelines established pursuant to RCW
3 36.70A.050 and chapter 90.58 RCW as related to critical areas and shall
4 submit development regulations regarding critical areas to the
5 department of ecology and the department of fish and wildlife for
6 review and approval.

7 **Sec. 7.** RCW 36.70A.172 and 1995 c 347 s 105 are each amended to
8 read as follows:

9 (1) In designating and protecting critical areas under this
10 chapter, counties and cities shall include the best available science
11 in developing policies and development regulations to protect the
12 functions and values of critical areas. In addition, counties and
13 cities shall give special consideration to conservation or protection
14 measures necessary to preserve or enhance anadromous fisheries.

15 (2) In reviewing development regulations to protect critical areas,
16 the department of ecology and the department of fish and wildlife shall
17 consider and shall make findings regarding whether counties and cities
18 have included the best available science in their decisions related to
19 policies and regulations to protect the functions and values of
20 critical areas.

21 (3) If it determines that advice from scientific or other experts
22 is necessary or will be of substantial assistance in reaching its
23 decision, a growth management hearings board may retain scientific or
24 other expert advice to assist in reviewing a petition under RCW
25 36.70A.290 that involves critical areas.

26 **Sec. 8.** RCW 36.70A.480 and 1995 c 347 s 104 are each amended to
27 read as follows:

28 (1) For shorelines of the state, the goals and policies of the
29 shoreline management act as set forth in RCW 90.58.020 are added as one
30 of the goals of this chapter as set forth in RCW 36.70A.020. The goals
31 and policies of a shoreline master program for a county or city
32 approved under chapter 90.58 RCW shall be considered an element of the
33 county or city's comprehensive plan. Shorelines of the state are
34 critical areas as defined in this chapter and shall be included in
35 development regulations to protect critical areas adopted according to
36 this chapter. All other portions of the shoreline master program for
37 a county or city adopted under chapter 90.58 RCW, including use

1 regulations, shall be considered a part of the county or city's
2 development regulations.

3 (2) The shoreline master program shall be adopted pursuant to the
4 procedures of chapter 90.58 RCW rather than the procedures set forth in
5 this chapter for the adoption of a comprehensive plan or development
6 regulations.

7 NEW SECTION. **Sec. 9.** A new section is added to chapter 77.12 RCW
8 to read as follows:

9 In addition to other authority conferred in this title, the
10 department is authorized and required to review and approve development
11 regulations to protect critical areas adopted according to chapter
12 36.70A RCW. Development regulations to protect critical areas adopted
13 according to chapter 36.70A RCW shall take effect when and in such form
14 as approved or adopted by the department pursuant to section 5 of this
15 act.

16 **Sec. 10.** RCW 90.58.030 and 1996 c 265 s 1 are each amended to read
17 as follows:

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

20 (1) Administration:

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

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

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

26 (d) "Person" means an individual, partnership, corporation,
27 association, organization, cooperative, public or municipal
28 corporation, or agency of the state or local governmental unit however
29 designated;

30 (e) "Hearing board" means the shoreline hearings board established
31 by this chapter.

32 (2) Geographical:

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

35 (b) "Ordinary high water mark" on all lakes, streams, and tidal
36 water is that mark that will be found by examining the bed and banks
37 and ascertaining where the presence and action of waters are so common

1 and usual, and so long continued in all ordinary years, as to mark upon
2 the soil a character distinct from that of the abutting upland, in
3 respect to vegetation as that condition exists on June 1, 1971, as it
4 may naturally change thereafter, or as it may change thereafter in
5 accordance with permits issued by a local government or the department:
6 PROVIDED, That in any area where the ordinary high water mark cannot be
7 found, the ordinary high water mark adjoining salt water shall be the
8 line of mean higher high tide and the ordinary high water mark
9 adjoining fresh water shall be the line of mean high water;

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

12 (d) "Shorelines" means all of the water areas of the state,
13 including reservoirs, and their associated shorelands, together with
14 the lands underlying them; except (i) shorelines of statewide
15 significance; (ii) shorelines on segments of streams upstream of a
16 point where the mean annual flow is twenty cubic feet per second or
17 less and the wetlands associated with such upstream segments; and (iii)
18 shorelines on lakes less than twenty acres in size and wetlands
19 associated with such small lakes;

20 (e) "Shorelines of statewide significance" means the following
21 shorelines of the state:

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

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

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

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

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

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

32 and

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

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

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

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

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

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

10 (vi) Those shorelands associated with (i), (ii), (iv), and (v) of
11 this subsection (2)(e);

12 (f) "Shorelands" or "shoreland areas" means those lands extending
13 landward for two hundred feet in all directions as measured on a
14 horizontal plane from the ordinary high water mark; floodways and
15 contiguous floodplain areas landward two hundred feet from such
16 floodways; and all wetlands and river deltas associated with the
17 streams, lakes, and tidal waters which are subject to the provisions of
18 this chapter; the same to be designated as to location by the
19 department of ecology. Any county or city may determine that portion
20 of a one-hundred-year-flood plain to be included in its master program
21 as long as such portion includes, as a minimum, the floodway and the
22 adjacent land extending landward two hundred feet therefrom;

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

33 (h) "Wetlands" means areas that are inundated or saturated by
34 surface water or ground water at a frequency and duration sufficient to
35 support, and that under normal circumstances do support, a prevalence
36 of vegetation typically adapted for life in saturated soil conditions.
37 Wetlands generally include swamps, marshes, bogs, and similar areas.
38 Wetlands do not include those artificial wetlands intentionally created
39 from nonwetland sites, including, but not limited to, irrigation and

1 drainage ditches, grass-lined swales, canals, detention facilities,
2 wastewater treatment facilities, farm ponds, and landscape amenities,
3 or those wetlands created after July 1, 1990, that were unintentionally
4 created as a result of the construction of a road, street, or highway.
5 Wetlands may include those artificial wetlands intentionally created
6 from nonwetland areas to mitigate the conversion of wetlands.

7 (3) Procedural terms:

8 (a) "Guidelines" means those standards adopted to implement the
9 policy of this chapter for regulation of use of the shorelines of the
10 state prior to adoption of master programs. Such standards shall also
11 provide criteria to local governments and the department in developing
12 master programs and in designating and protecting critical areas as
13 required by chapter 36.70A RCW;

14 (b) "Master program" shall mean the comprehensive use plan for a
15 described area, and the use regulations together with maps, diagrams,
16 charts, or other descriptive material and text, a statement of desired
17 goals, and standards developed in accordance with the policies
18 enunciated in RCW 90.58.020. A master program includes development
19 regulations to protect critical areas adopted by counties and cities
20 according to chapter 36.70A RCW;

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

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

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

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

38 (ii) Construction of the normal protective bulkhead common to
39 single family residences;

1 (iii) Emergency construction necessary to protect property from
2 damage by the elements;

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

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

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

25 (vii) Construction of a dock, including a community dock, designed
26 for pleasure craft only, for the private noncommercial use of the
27 owner, lessee, or contract purchaser of single and multiple family
28 residences. This exception applies if either: (A) In salt waters, the
29 fair market value of the dock does not exceed two thousand five hundred
30 dollars; or (B) in fresh waters, the fair market value of the dock does
31 not exceed ten thousand dollars, but if subsequent construction having
32 a fair market value exceeding two thousand five hundred dollars occurs
33 within five years of completion of the prior construction, the
34 subsequent construction shall be considered a substantial development
35 for the purpose of this chapter;

36 (viii) Operation, maintenance, or construction of canals,
37 waterways, drains, reservoirs, or other facilities that now exist or
38 are hereafter created or developed as a part of an irrigation system
39 for the primary purpose of making use of system waters, including

1 return flow and artificially stored ground water for the irrigation of
2 lands;

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

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

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

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

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

18 (C) The activity does not involve the installation of a structure,
19 and upon completion of the activity the vegetation and land
20 configuration of the site are restored to conditions existing before
21 the activity;

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

26 (E) The activity is not subject to the permit requirements of RCW
27 90.58.550;

28 (xii) The process of removing or controlling an aquatic noxious
29 weed, as defined in RCW 17.26.020, through the use of an herbicide or
30 other treatment methods applicable to weed control that are recommended
31 by a final environmental impact statement published by the department
32 of agriculture or the department jointly with other state agencies
33 under chapter 43.21C RCW.

34 NEW SECTION. **Sec. 11.** A new section is added to chapter 90.58 RCW
35 to read as follows:

36 In addition to the authority to approve master programs in RCW
37 90.58.090, the department is authorized and required to review and
38 approve development regulations to protect critical areas adopted

1 according to chapter 36.70A RCW. Development regulations to protect
2 critical areas adopted according to chapter 36.70A RCW shall take
3 effect when and in such form as approved or adopted by the department
4 pursuant to section 5 of this act.

5 **Sec. 12.** RCW 90.58.100 and 1997 c 369 s 7 are each amended to read
6 as follows:

7 (1) The master programs provided for in this chapter, when adopted
8 or approved by the department shall constitute use regulations for the
9 various shorelines of the state. In preparing the master programs, and
10 any amendments thereto, the department and local governments shall to
11 the extent feasible:

12 (a) Utilize a systematic interdisciplinary approach which will
13 insure the integrated use of the natural and social sciences and the
14 environmental design arts;

15 (b) Consult with and obtain the comments of any federal, state,
16 regional, or local agency having any special expertise with respect to
17 any environmental impact;

18 (c) Consider all plans, studies, surveys, inventories, and systems
19 of classification made or being made by federal, state, regional, or
20 local agencies, by private individuals, or by organizations dealing
21 with pertinent shorelines of the state;

22 (d) Conduct or support such further research, studies, surveys, and
23 interviews as are deemed necessary;

24 (e) Utilize all available information regarding hydrology,
25 geography, topography, ecology, economics, and other pertinent data;

26 (f) Employ, when feasible, all appropriate, modern scientific data
27 processing and computer techniques to store, index, analyze, and manage
28 the information gathered.

29 (2) The master programs shall include, when appropriate, the
30 following:

31 (a) An economic development element for the location and design of
32 industries, industrial projects of statewide significance,
33 transportation facilities, port facilities, tourist facilities,
34 commerce and other developments that are particularly dependent on
35 their location on or use of the shorelines of the state;

36 (b) A public access element making provision for public access to
37 publicly owned areas;

1 (c) A recreational element for the preservation and enlargement of
2 recreational opportunities, including but not limited to parks,
3 tidelands, beaches, and recreational areas;

4 (d) A circulation element consisting of the general location and
5 extent of existing and proposed major thoroughfares, transportation
6 routes, terminals, and other public utilities and facilities, all
7 correlated with the shoreline use element;

8 (e) A use element which considers the proposed general distribution
9 and general location and extent of the use on shorelines and adjacent
10 land areas for housing, business, industry, transportation,
11 agriculture, natural resources, recreation, education, public buildings
12 and grounds, and other categories of public and private uses of the
13 land;

14 (f) A conservation element for the preservation of natural
15 resources, including but not limited to scenic vistas, aesthetics, and
16 vital estuarine areas for fisheries and wildlife protection;

17 (g) An historic, cultural, scientific, and educational element for
18 the protection and restoration of buildings, sites, and areas having
19 historic, cultural, scientific, or educational values;

20 (h) An element that gives consideration to the statewide interest
21 in the prevention and minimization of flood damages; ((and))

22 (i) Development regulations to protect critical areas adopted
23 according to chapter 36.70A RCW; and

24 (j) Any other element deemed appropriate or necessary to effectuate
25 the policy of this chapter.

26 (3) The master programs shall include such map or maps, descriptive
27 text, diagrams and charts, or other descriptive material as are
28 necessary to provide for ease of understanding.

29 (4) Master programs will reflect that state-owned shorelines of the
30 state are particularly adapted to providing wilderness beaches,
31 ecological study areas, and other recreational activities for the
32 public and will give appropriate special consideration to same.

33 (5) Each master program shall contain provisions to allow for the
34 varying of the application of use regulations of the program, including
35 provisions for permits for conditional uses and variances, to insure
36 that strict implementation of a program will not create unnecessary
37 hardships or thwart the policy enumerated in RCW 90.58.020. Any such
38 varying shall be allowed only if extraordinary circumstances are shown
39 and the public interest suffers no substantial detrimental effect. The

1 concept of this subsection shall be incorporated in the rules adopted
2 by the department relating to the establishment of a permit system as
3 provided in RCW 90.58.140(3).

4 (6) Each master program shall contain standards governing the
5 protection of single family residences and appurtenant structures
6 against damage or loss due to shoreline erosion. The standards shall
7 govern the issuance of substantial development permits for shoreline
8 protection, including structural methods such as construction of
9 bulkheads, and nonstructural methods of protection. The standards
10 shall provide for methods which achieve effective and timely protection
11 against loss or damage to single family residences and appurtenant
12 structures due to shoreline erosion. The standards shall provide a
13 preference for permit issuance for measures to protect single family
14 residences occupied prior to January 1, 1992, where the proposed
15 measure is designed to minimize harm to the shoreline natural
16 environment.

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