CERTIFICATION OF ENROLLMENT

ENGROSSED HOUSE BILL 1413

Chapter 328, Laws of 2007

60th Legislature
2007 Regular Session

SHORELINE MANAGEMENT ACT--FLOODWAYS

EFFECTIVE DATE: 07/22/07

Passed by the House April 17, 2007
Yeas 98  Nays 0

FRANK CHOPP
Speaker of the House of Representatives

Passed by the Senate April 13, 2007
Yeas 46  Nays 0

BRAD OWEN
President of the Senate

Approved May 4, 2007, 4:35 p.m.

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is ENGROSSED HOUSE BILL 1413 as passed by the House of Representatives and the Senate on the dates hereon set forth.

RICHARD NAFZIGER
Chief Clerk

FILED
May 7, 2007

CHRISTINE GREGOIRE
Governor of the State of Washington

SECRETARY OF STATE
State of Washington
AN ACT Relating to changing the definition of floodway in the shoreline management act; and amending RCW 90.58.030.

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

Sec. 1. RCW 90.58.030 and 2003 c 321 s 2 are each amended to read as follows:

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

(1) Administration:
   (a) "Department" means the department of ecology;
   (b) "Director" means the director of the department of ecology;
   (c) "Local government" means any county, incorporated city, or town which contains within its boundaries any lands or waters subject to this chapter;
   (d) "Person" means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or local governmental unit however designated;
   (e) "Hearing board" means the shoreline hearings board established by this chapter.
(2) Geographical:

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

(b) "Ordinary high water mark" on all lakes, streams, and tidal water is that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department:

PROVIDED, That in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water;

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

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

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

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

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

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

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

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

(D) Skagit Bay and adjacent area--from Brown Point to Yokeko Point,
(E) Padilla Bay--from March Point to William Point;

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

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

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

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

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

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

(f) "Shorelands" or "shoreland areas" means those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter; the same to be designated as to location by the department of ecology.

(i) Any county or city may determine that portion of a one-hundred-year-flood plain to be included in its master program as long as such portion includes, as a minimum, the floodway and the adjacent land extending landward two hundred feet therefrom.

(ii) Any city or county may also include in its master program land necessary for buffers for critical areas, as defined in chapter 36.70A RCW, that occur within shorelines of the state, provided that forest practices regulated under chapter 76.09 RCW, except conversions to nonforest land use, on lands subject to the provisions of this subsection (2)(f)(ii) are not subject to additional regulations under this chapter;
(g) "Floodway" means the area, as identified in a master program, that either: (i) Has been established in federal emergency management agency flood insurance rate maps or floodway maps; or (ii) consists of those portions of ((the area of)) a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition, topography, or other indicators of flooding that occurs with reasonable regularity, although not necessarily annually. Regardless of the method used to identify the floodway, the floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state;

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

(3) Procedural terms:

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

(b) "Master program" shall mean the comprehensive use plan for a described area, and the use regulations together with maps, diagrams,
charts, or other descriptive material and text, a statement of desired
goals, and standards developed in accordance with the policies
enunciated in RCW 90.58.020;

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

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

(e) "Substantial development" shall mean any development of which
the total cost or fair market value exceeds five thousand dollars, or
any development which materially interferes with the normal public use
of the water or shorelines of the state. The dollar threshold
established in this subsection (3)(e) must be adjusted for inflation by
the office of financial management every five years, beginning July 1,
2007, based upon changes in the consumer price index during that time
period. "Consumer price index" means, for any calendar year, that
year's annual average consumer price index, Seattle, Washington area,
for urban wage earners and clerical workers, all items, compiled by the
bureau of labor and statistics, United States department of labor. The
office of financial management must calculate the new dollar threshold
and transmit it to the office of the code reviser for publication in
the Washington State Register at least one month before the new dollar
threshold is to take effect. The following shall not be considered
substantial developments for the purpose of this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Passed by the House April 17, 2007.
Passed by the Senate April 13, 2007.
Approved by the Governor May 4, 2007.
Filed in Office of Secretary of State May 7, 2007.