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SENATE BILL 5671

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State of Washington

53rd Legislature

1993 Regular Session

By Senators Owen, Sutherland, Amondson, Erwin, Hargrove, Oke, L. Smith and Fraser

Read first time 02/08/93. Referred to Committee on Natural Resources.

1 AN ACT Relating to the definition of a substantial development; and  
2 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)) a county, incorporated city,  
12 or town ((which)) that contains within its boundaries ((any)) lands or  
13 waters subject to 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  
12 department(~~(: PROVIDED, That)~~). In ((any)) an area where the ordinary  
13 high water mark cannot be found, the ordinary high water mark adjoining  
14 salt water shall be the line of mean higher high tide and the ordinary  
15 high water mark adjoining fresh water shall be the line of mean high  
16 water;

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

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

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

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

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

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

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

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

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

39 and

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

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

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

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

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

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

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

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

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

1 control devices maintained by or maintained under license from the  
2 federal government, the state, or a political subdivision of the state.

3 (3) Procedural terms:

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

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

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

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

23 (e) "Substantial development" (~~shall mean any~~) means a  
24 development of which the total cost or fair market value exceeds  
25 (~~two~~) eight thousand five hundred dollars, to be reviewed and  
26 reported to the legislature every five years beginning September 1998  
27 by the department of ecology for possible increases due to inflation,  
28 or (~~any~~) a development (~~which~~) that materially interferes with the  
29 normal public use of the water or shorelines of the state; except that  
30 the following shall not be considered substantial developments for the  
31 purpose of this chapter:

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

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

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

38 (iv) Construction and practices normal or necessary for farming,  
39 irrigation, and ranching activities, including agricultural service

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

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

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

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

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

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

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

1           (xi) (~~Any~~) An action commenced prior to December 31, 1982,  
2 pertaining to (A) the restoration of interim transportation services as  
3 may be necessary as a consequence of the destruction of the Hood Canal  
4 bridge, including, but not limited to, improvements to highways,  
5 development of park and ride facilities, and development of ferry  
6 terminal facilities until a new or reconstructed Hood Canal bridge is  
7 open to traffic; and (B) the reconstruction of a permanent bridge at  
8 the site of the original Hood Canal bridge.

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