
HOUSE BILL 3005

State of Washington

61st Legislature

2010 Regular Session

By Representatives Nelson and Springer

Read first time 01/20/10. Referred to Committee on Local Government & Housing.

1 AN ACT Relating to the relationship between the shoreline
2 management act and the growth management act; amending RCW 36.70A.480
3 and 90.58.030; adding a new section to chapter 90.58 RCW; creating a
4 new section; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature recognizes that
7 Engrossed Substitute House Bill No. 1933, enacted as chapter 321, Laws
8 of 2003, modified the relationship between the shoreline management act
9 and the growth management act. The legislature recognizes also that
10 its 2003 efforts, while intended to create greater operational clarity
11 between these significant shoreline and land use acts, have been the
12 subject of differing, and occasionally contrary, legal interpretations.
13 This act is intended to affirm and clarify the legislature's intent
14 relating to the provisions of chapter 321, Laws of 2003.

15 (2) The legislature affirms that development regulations adopted
16 under the growth management act to protect critical areas remain in
17 effect within shorelines of the state otherwise governed under the
18 shoreline management act until the department of ecology, on or after

1 March 1, 2002, approves a comprehensive update to a shoreline master
2 program, or segment of a master program relating to critical areas.

3 (3) The legislature affirms that the adoption or update of critical
4 area regulations under the growth management act is not automatically
5 an update to the shoreline master program.

6 (4) This act is retroactive to July 27, 2003.

7 **Sec. 2.** RCW 36.70A.480 and 2003 c 321 s 5 are each amended to read
8 as follows:

9 (1) For shorelines of the state, the goals and policies of the
10 shoreline management act as set forth in RCW 90.58.020 are added as one
11 of the goals of this chapter as set forth in RCW 36.70A.020 without
12 creating an order of priority among the fourteen goals. The goals and
13 policies of a shoreline master program for a county or city approved
14 under chapter 90.58 RCW shall be considered an element of the county or
15 city's comprehensive plan. All other portions of the shoreline master
16 program for a county or city adopted under chapter 90.58 RCW, including
17 use regulations, shall be considered a part of the county or city's
18 development regulations.

19 (2) The shoreline master program shall be adopted pursuant to the
20 procedures of chapter 90.58 RCW rather than the goals, policies, and
21 procedures set forth in this chapter for the adoption of a
22 comprehensive plan or development regulations.

23 (3) The policies, goals, and provisions of chapter 90.58 RCW and
24 applicable guidelines shall be the sole basis for determining
25 compliance of a shoreline master program with this chapter except as
26 the shoreline master program is required to comply with the internal
27 consistency provisions of RCW 36.70A.070, 36.70A.040(4), 35.63.125, and
28 35A.63.105.

29 ~~(a) ((As of the date the department of ecology approves a local
30 government's shoreline master program adopted under applicable
31 shoreline guidelines, the protection of critical areas as defined by
32 RCW 36.70A.030(5) within shorelines of the state shall be accomplished
33 only through the local government's shoreline master program and shall
34 not be subject to the procedural and substantive requirements of this
35 chapter, except as provided in subsection (6) of this section.~~

36 ~~(b))~~ Development regulations adopted under this chapter to protect
37 critical areas remain in effect within shorelines of the state

1 otherwise governed by chapter 90.58 RCW until the department of ecology
2 approves one of the following: A comprehensive master program update,
3 as defined in RCW 90.58.030; a segment of a master program relating to
4 critical areas, as provided in RCW 90.58.090; or a new or amended
5 master program approved by the department of ecology on or after March
6 1, 2002, but before July 27, 2003, as provided in RCW 90.58.080. A
7 local government's adoption or update of critical area regulations
8 under this chapter prior to department of ecology approval of a master
9 program update as provided in this subsection is not a comprehensive or
10 segment update to the shoreline master program.

11 (b) Upon department of ecology approval of a shoreline master
12 program or critical area segment of a shoreline master program, as
13 provided in (a) of this subsection, critical areas within shorelines of
14 the state ((that have been identified as meeting the definition of
15 critical areas as defined by RCW 36.70A.030(5), and that are subject to
16 a shoreline master program adopted under applicable shoreline
17 guidelines)) shall be protected under chapter 90.58 RCW and shall not
18 be subject to the procedural and substantive requirements of this
19 chapter, except as provided in subsection (6) of this section. Nothing
20 in chapter 321, Laws of 2003 or this act is intended to affect whether
21 or to what extent agricultural activities, as defined in RCW 90.58.065,
22 are subject to chapter 36.70A RCW.

23 (c) The provisions of RCW 36.70A.172 shall not apply to the
24 adoption or subsequent amendment of a local government's shoreline
25 master program and shall not be used to determine compliance of a local
26 government's shoreline master program with chapter 90.58 RCW and
27 applicable guidelines. Nothing in this section, however, is intended
28 to limit or change the quality of information to be applied in
29 protecting critical areas within shorelines of the state, as required
30 by chapter 90.58 RCW and applicable guidelines.

31 (4) Shoreline master programs shall provide a level of protection
32 to critical areas located within shorelines of the state that is at
33 least equal to the level of protection provided to critical areas by
34 the local government's critical area ordinances adopted and thereafter
35 amended pursuant to RCW 36.70A.060(2).

36 (5) Shorelines of the state shall not be considered critical areas
37 under this chapter except to the extent that specific areas located
38 within shorelines of the state qualify for critical area designation

1 based on the definition of critical areas provided by RCW 36.70A.030(5)
2 and have been designated as such by a local government pursuant to RCW
3 36.70A.060(2).

4 (6) If a local jurisdiction's master program does not include land
5 necessary for buffers for critical areas that occur within shorelines
6 of the state, as authorized by RCW 90.58.030(2)(f), then the local
7 jurisdiction shall continue to regulate those critical areas and their
8 required buffers pursuant to RCW 36.70A.060(2).

9 **Sec. 3.** RCW 90.58.030 and 2007 c 328 s 1 are each amended to read
10 as follows:

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

13 (1) Administration:

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

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

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

19 (d) "Person" means an individual, partnership, corporation,
20 association, organization, cooperative, public or municipal
21 corporation, or agency of the state or local governmental unit however
22 designated;

23 (e) "~~((Hearing[s])~~) Hearings board" means the ~~((shoreline[s])~~)
24 shorelines hearings board established by this chapter.

25 (2) Geographical:

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

28 (b) "Ordinary high water mark" on all lakes, streams, and tidal
29 water is that mark that will be found by examining the bed and banks
30 and ascertaining where the presence and action of waters are so common
31 and usual, and so long continued in all ordinary years, as to mark upon
32 the soil a character distinct from that of the abutting upland, in
33 respect to vegetation as that condition exists on June 1, 1971, as it
34 may naturally change thereafter, or as it may change thereafter in
35 accordance with permits issued by a local government or the department:
36 PROVIDED, That in any area where the ordinary high water mark cannot be

1 found, the ordinary high water mark adjoining salt water shall be the
2 line of mean higher high tide and the ordinary high water mark
3 adjoining fresh water shall be the line of mean high water;

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

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

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

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

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

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

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

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

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

26 and

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

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

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

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

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

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

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

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

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

20 (ii) Any city or county may also include in its master program land
21 necessary for buffers for critical areas, as defined in chapter 36.70A
22 RCW, that occur within shorelines of the state, provided that forest
23 practices regulated under chapter 76.09 RCW, except conversions to
24 nonforest land use, on lands subject to the provisions of this
25 subsection (2)(f)(ii) are not subject to additional regulations under
26 this chapter;

27 (g) "Floodway" means the area, as identified in a master program,
28 that either: (i) Has been established in federal emergency management
29 agency flood insurance rate maps or floodway maps; or (ii) consists of
30 those portions of a river valley lying streamward from the outer limits
31 of a watercourse upon which flood waters are carried during periods of
32 flooding that occur with reasonable regularity, although not
33 necessarily annually, said floodway being identified, under normal
34 condition, by changes in surface soil conditions or changes in types or
35 quality of vegetative ground cover condition, topography, or other
36 indicators of flooding that occurs with reasonable regularity, although
37 not necessarily annually. Regardless of the method used to identify
38 the floodway, the floodway shall not include those lands that can

1 reasonably be expected to be protected from flood waters by flood
2 control devices maintained by or maintained under license from the
3 federal government, the state, or a political subdivision of the state;

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

17 (3) Procedural terms:

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

23 (b) "Master program" shall mean the comprehensive use plan for a
24 described area, and the use regulations together with maps, diagrams,
25 charts, or other descriptive material and text, a statement of desired
26 goals, and standards developed in accordance with the policies
27 enunciated in RCW 90.58.020. "Comprehensive master program update"
28 means a master program that fully achieves the procedural and
29 substantive requirements of the department guidelines effective January
30 17, 2004, as now or hereafter amended;

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

33 (d) "Development" means a use consisting of the construction or
34 exterior alteration of structures; dredging; drilling; dumping;
35 filling; removal of any sand, gravel, or minerals; bulkheading; driving
36 of piling; placing of obstructions; or any project of a permanent or
37 temporary nature which interferes with the normal public use of the

1 surface of the waters overlying lands subject to this chapter at any
2 state of water level;

3 (e) "Substantial development" shall mean any development of which
4 the total cost or fair market value exceeds five thousand dollars, or
5 any development which materially interferes with the normal public use
6 of the water or shorelines of the state. The dollar threshold
7 established in this subsection (3)(e) must be adjusted for inflation by
8 the office of financial management every five years, beginning July 1,
9 2007, based upon changes in the consumer price index during that time
10 period. "Consumer price index" means, for any calendar year, that
11 year's annual average consumer price index, Seattle, Washington area,
12 for urban wage earners and clerical workers, all items, compiled by the
13 bureau of labor and statistics, United States department of labor. The
14 office of financial management must calculate the new dollar threshold
15 and transmit it to the office of the code reviser for publication in
16 the Washington State Register at least one month before the new dollar
17 threshold is to take effect. The following shall not be considered
18 substantial developments for the purpose of this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

12 (E) The activity is not subject to the permit requirements of RCW
13 90.58.550;

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

20 NEW SECTION. **Sec. 4.** A new section is added to chapter 90.58 RCW
21 to read as follows:

22 RCW 36.70A.480 governs the relationship between shoreline master
23 programs and development regulations to protect critical areas that are
24 adopted under chapter 36.70A RCW.

25 NEW SECTION. **Sec. 5.** This act is necessary for the immediate
26 preservation of the public peace, health, or safety, or support of the
27 state government and its existing public institutions, and takes effect
28 immediately.

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