

**SENATE BILL 5665**

## **State of Washington**

67th Legislature

2022 Regular Session

**By** Senators Rolfes, Hasegawa, Hunt, Lovelett, Nguyen, Pedersen, Saldaña, and Stanford; by request of Office of Financial Management

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AN ACT Relating to protecting, restoring, and maintaining habitat for salmon recovery; amending RCW 77.85.160, 36.70A.020, 36.70A.030, 36.70A.172, and 77.55.231; adding a new section to chapter 77.85 RCW; adding a new section to chapter 36.70A RCW; adding a new section to chapter 90.58 RCW; adding a new section to chapter 43.06 RCW; adding a new chapter to Title 77 RCW; and prescribing penalties.

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

## PART 1

## **LEGISLATIVE INTENT**

10        NEW SECTION.    **Sec. 101.** This act shall be known and cited as the  
11 Lorraine Loomis act.

NEW SECTION. **Sec. 102.** (1) The legislature finds that riparian areas are the fulcrum for the cycle of life of aquatic species and many terrestrial wildlife species and that the health of all Washingtonians depends upon healthy riparian areas. These areas provide multibenefit ecosystem services such as water purification, water storage, large woody debris, flood protection, critical fish and wildlife migration, food supply and foraging, and in-stream and terrestrial cover habitats, and fisheries and, by interacting with

1 watershed-scale processes, they contribute to the creation and  
2 maintenance of aquatic habitats. The zone of influence for the health  
3 of riparian ecosystems encompasses the active floodplain, including  
4 riverine wetlands and terraces, and the adjacent uplands that  
5 contribute matter and energy to the active channel or active  
6 floodplain. Scientists, including those who developed the Washington  
7 state department of fish and wildlife's *Riparian Ecosystems Volume 1*  
8 and 2, which is accepted as the best available science in Washington  
9 state, estimate the width of a properly functioning riparian  
10 ecosystem for most streams and rivers in the state to be site  
11 potential tree height, and that protecting and restoring the  
12 conditions within this area is necessary to protect and maintain the  
13 full, healthy function of the riparian ecosystem.

14 (2) The legislature further finds that salmon are an indicator  
15 species dependent upon fully functioning, healthy riparian areas, and  
16 as wild salmon decline, it foretells the decline of the water quality  
17 and all other species in our aquatic systems. Salmon play a major  
18 role in our state's wildlife diversity and cultural heritage. Salmon  
19 are the keystone species to 137 other animals, including orcas and  
20 bears. Bold reforms and strategies that encompass solutions to many,  
21 if not all, of the causes behind salmon depletion are needed.  
22 Protecting our salmon is a priority for all Washingtonians.

23 (3) The legislature further finds that for thousands of years  
24 salmon have shaped the lives of the people who have lived here since  
25 time immemorial. Native nations of the Pacific Northwest define  
26 themselves as salmon people. The cultures, intertribal interactions,  
27 fishing technologies and negotiations, and the very spiritual ways of  
28 the Pacific Northwest tribes were and are all impacted and influenced  
29 by salmon. These lifeways have been at risk for some time and urgent  
30 action is required. As Billy Frank Jr. said almost 20 years ago, "As  
31 the salmon disappear, so do our cultures and treaty rights. We are at  
32 a crossroads and we are running out of time." And, in the words of  
33 Swinomish elder, Billy Frank Jr.'s close friend and true salmon  
34 warrior, Lorraine Loomis, "Salmon is food for our bodies and our  
35 spirits. For us, salmon is not optional. It is essential." "None of  
36 us tribal natural resources managers are working for today. We are  
37 all working for tomorrow. We are working to make certain there will  
38 be salmon for the next seven generations." Northwest Indian fisheries  
39 commission chair Loomis was the key to the development and  
40 implementation of the vitally important natural resource management

1 process and kept the protection and restoration of critical habitat  
2 at the forefront of those efforts.

3       (4) The legislature further finds that the effects of climate  
4 change on these special habitats and ecosystem services will be  
5 especially profound, due to altered snowpack and hydrologic regimes  
6 that are already occurring, and negative impacts are predicted to  
7 increase over time. Warming weather due to climate change has vastly  
8 increased the temperature of freshwater streams, making salmon more  
9 susceptible to predators, parasites, disease, and mortality. The  
10 functionality of many riparian ecosystems is already compromised by  
11 water diversions, agricultural and livestock practices, development,  
12 and population growth, all of which reduce the salmon's resilience to  
13 additional stresses that warmer water and a warmer climate brings.  
14 Over the next century, climate change will dramatically alter natural  
15 resource management. Because riparian ecosystems and the projected  
16 impacts of climate change are highly variable geographically, there  
17 is an urgent need to take place-based actions to respond to the  
18 impacts and threats of climate change to salmon.

19       (5) While the federal, state, and local governments and tribes  
20 must continue the important work of addressing all activities  
21 limiting the recovery of wild salmon, without protecting and  
22 restoring riparian habitat and watershed functions necessary for  
23 their survival, there is no reasonable prospect of achieving such a  
24 recovery.

25       (6) For these reasons, the legislature intends to act now, with  
26 needed urgency, to establish and implement a comprehensive program to  
27 protect and restore riparian habitat upon which salmon and other  
28 aquatic species depend by:

29           (a) Requiring the riparian management zone standard in defining  
30 the areas in which riparian functions must be protected and restored,  
31 and applying this statewide standard to state and local land use  
32 planning, permitting and incentive programs, water quality  
33 protection, enforcement of regulatory programs, and financial and  
34 technical assistance programs;

35           (b) Requiring inclusion and integration of salmon recovery goals,  
36 strategies, and actions in all elements of comprehensive plans  
37 including, but not limited to, land use plans, capital facilities  
38 plans, development regulations, and shoreline master programs;

39           (c) Adopting more protective standards applicable to shoreline  
40 armoring;

1           (d) Establishing financial incentives for restoration of riparian  
2 and shoreline habitats;

3           (e) Providing liability protection for permitting of habitat  
4 restoration work;

5 (f) Requiring mapping, monitoring, and regular review and  
6 assessment of watershed functions including riparian habitat in all  
7 watersheds;

(g) Increasing state funding of habitat restoration and protection projects, planning, and program implementation; and

10           (h) Increasing state resources devoted to habitat and water  
11 quality monitoring and enforcement, with the priority placed upon  
12 watersheds failing to meet progress goals in habitat protection and  
13 restoration.

## PART 2

## RIPARIAN MANAGEMENT ZONES

16        NEW SECTION.    **Sec. 201.** (1) It is the policy of the state to  
17 protect, restore, and maintain properly functioning riparian  
18 management zones and ecosystems to aid in recovering threatened and  
19 endangered salmon to abundant harvestable levels, prevent new  
20 listings of salmon populations as threatened or endangered, prevent  
21 extirpation of remaining salmon populations, and restore and protect  
22 water quality.

23           (2) The restoration and permanent protection of riparian  
24 management zones and ecosystems must occur at a significantly  
25 increased pace sufficient to address declining salmon populations,  
26 protect critical habitat for salmon and steelhead, protect and  
27 restore water quality, and prevent long-term impacts to the economy  
28 and well-being of Washington state.

29        NEW SECTION.    **Sec. 202.** The definitions in this section apply  
30 throughout this chapter unless the context clearly requires  
31 otherwise.

(1) "Department" means the department of fish and wildlife.

33       (2) "Riparian function" means the ecosystem services provided by  
34 a riparian management zone including, but not limited to, water  
35 quality and quantity protection, pollution filtration, flood  
36 protection and storage, critical fish and wildlife migration, food  
37 supply and foraging, and in-stream and terrestrial cover habitats.

1       (3) "Riparian management zone" means riparian management zone as  
2 defined in *Riparian Ecosystems Volume 2* published December 2020 by  
3 the department.

4       (4) "Riparian management zone map" means a map of a watershed  
5 established by the department that identifies the riparian management  
6 zone along salmon and steelhead bearing streams and rivers necessary  
7 to support riparian function.

8       (5) "Site class" means site class as defined in *Riparian*  
9 *Ecosystems Volume 2* published December 2020 by the department.

10      NEW SECTION. **Sec. 203.** (1) Except as provided in section 204 of  
11 this act, public and private landowners owning property adjacent to a  
12 water body identified and mapped on a riparian management zone map  
13 must establish, maintain, and protect a riparian management zone to  
14 achieve the goals of this chapter.

15      (2) Upon request by a landowner or authorized agency or operator  
16 of a landowner, the department may issue a validation of compliance  
17 with the requirements of this section. The department's validation  
18 may be appealed to the pollution control hearings board pursuant to  
19 RCW 43.21B.110.

20      (3) Nothing in this section limits the eligibility of a landowner  
21 or authorized agent or operator of a landowner to participate in  
22 federal or state conservation programs, including enrolling or  
23 reenrolling in federal conservation programs.

24      (4) A person replanting a riparian management zone to meet the  
25 requirements of this section may not use plants listed as noxious  
26 weeds by the noxious weed control board pursuant to chapter 17.10 RCW  
27 or an invasive plant species listed by the Washington invasive  
28 species council created under RCW 79A.25.310.

29      NEW SECTION. **Sec. 204.** Land adjacent to waters is exempt from  
30 requirements under this chapter if it is:

31       (1) Enrolled in the federal conservation reserve enhancement  
32 program that establishes a riparian management zone;

33       (2) Legally permitted and used as a public or private water  
34 access or recreational use area including stairways, landings, picnic  
35 areas, access paths, beach and watercraft access areas, and permitted  
36 water-oriented structures as provided in the shoreline master program  
37 pursuant to chapter 90.58 RCW;

1       (3) Covered by a road, trail, building, or other structure that  
2 exists at the time of the effective date of this section;

3       (4) Regulated by a national pollutant discharge elimination  
4 system permit and requires a riparian management zone;

5       (5) Regulated by the forest practices act pursuant to chapter  
6 76.09 RCW; or

7       (6) A small parcel in which the riparian management zone would  
8 cover more than 50 percent of the parcel. Any reduction in the size  
9 of the riparian management zone must maximize riparian functions to  
10 the greatest extent practicable and take into consideration  
11 opportunities for cost share. Reductions may not be granted for  
12 parcels determined to be small as a result of subdivision after the  
13 effective date of this section.

14       NEW SECTION. **Sec. 205.** (1) The department shall develop a map  
15 that illustrates the riparian management zone for salmon and  
16 steelhead bearing rivers and streams for each watershed as defined in  
17 chapter 90.82 RCW. The maps must be developed in consultation with  
18 federally recognized tribes and in coordination with regional salmon  
19 recovery organizations established in chapter 77.85 RCW. The map must  
20 be publicly available on a web-based application. The riparian  
21 management zone map must include all streams, rivers, and floodplains  
22 that support salmon and steelhead recovery, including those in  
23 undeveloped urban growth areas designated under chapter 36.70A RCW.  
24 The inclusion of tribal lands in a riparian management zone map may  
25 only occur upon permission of the tribe to include their lands.

26       (2) The department must prioritize watersheds in need of riparian  
27 management zone restoration to achieve riparian functions to recover  
28 and protect salmon and steelhead and to meet water quality standards  
29 based on the department of ecology's water quality assessments.  
30 Watershed priorities must be developed in consultation with federally  
31 recognized tribes, in coordination with the department of ecology,  
32 and input from regional salmon recovery organizations established in  
33 chapter 77.85 RCW.

34       (3) By June 30, 2023, the department must provide a riparian  
35 management zone map to each jurisdiction planning pursuant to RCW  
36 36.70A.130 with a periodic update due June 30, 2024. The department  
37 shall provide subsequent riparian management zone maps to each  
38 jurisdiction on or before June 30th of the previous year prior to a  
39 local jurisdiction's periodic update. Counties and cities fully

1 planning under RCW 36.70A.040 must include restoration and protection  
2 of riparian management zones pursuant to section 602 of this act.

(4) Within one year after the due date for adoption of a comprehensive plan update, the department, in consultation with federally recognized tribes, shall establish riparian restoration progress goals for the priority watersheds located within the area subject to the plan update.

8               (5) The department shall design and implement the work required  
9 by this chapter to achieve riparian management zones with healthy  
10 riparian functions in all priority watersheds of the state by  
11 December 31, 2032.

12        NEW SECTION. **Sec. 206.** (1) The department shall adopt rules and  
13 guidance to implement this chapter including, but not limited to:

14 (a) The application of the riparian management zone requirements  
15 and timelines;

16 (b) The process and criteria for reducing or exempting riparian  
17 management zone requirements for small parcels;

18 (c) Ensuring exceptions minimize loss of riparian function;

19 (d) The process and criteria for prioritization of watersheds;  
20 and

21 (e) The criteria to be used to establish progress goals for  
22 priority watersheds.

23           (2) Rules adopted by the department must address protection and  
24 restoration of the riparian management zone in different climate  
25 zones of the state, based on best available science.

## PART 3

## **FINANCIAL ASSISTANCE**

28        NEW SECTION.    **Sec. 301.** A new section is added to chapter 77.85  
29    RCW to read as follows:

30               (1) The salmon recovery funding board shall develop and implement  
31 a statewide riparian habitat conservation grant program to protect  
32 and restore riparian management zones and ecosystems and as an  
33 opportunity to cost share with landowners as described in section 302  
34 of this act. The board may establish criteria for determining when  
35 block grants may be made for purposes of distributing funds to the  
36 highest priority watersheds based on the department's prioritization  
37 process.

1       (2) The riparian habitat conservation grant program must be  
2 funded with state or federal funds set aside explicitly for riparian  
3 habitat in the salmon recovery account under RCW 77.85.170. The  
4 riparian funds must be separate from state salmon recovery funding  
5 board or federal pacific coastal salmon recovery funds for lead  
6 entity salmon recovery projects. Riparian projects are eligible for  
7 funding under the riparian grant program where consistent with the  
8 department's riparian management zone maps and the department's best  
9 available science standards.

10      (3) The salmon recovery funding board, with input from the state/  
11 tribal riparian management oversight committee established in section  
12 701 of this act, may prioritize funding for riparian restoration  
13 projects in watersheds prioritized in accordance with section 205 of  
14 this act and where progress goals established by the department have  
15 not been met.

16      (4) Funding may only be provided in watersheds in which riparian  
17 management zone maps are complete.

18      NEW SECTION.    **Sec. 302.**    (1) In priority watersheds, the  
19 department shall provide landowners with an offer of grant funding to  
20 assist in implementation of the requirements of this chapter. The  
21 cost-sharing offer may come from a state agency, board, office, or  
22 commission where the department determines that the offer meets the  
23 conditions of this section.

24      (2) A cost-share offer must cover at least 70 percent of the  
25 landowner's cost to establish and maintain the riparian management  
26 zone, or 90 percent of the landowner's cost if there is an economic  
27 hardship.

28      (3) A landowner's cost to establish and maintain a riparian  
29 management zone includes all of the following that apply:

30       (a) Costs to establish or enhance a riparian management zone or  
31 to provide temporary cover until a permanent riparian management zone  
32 is established. This may include costs for mulch, fertilizer, seed,  
33 seedling trees, and other necessary materials;

34       (b) The reasonable value of necessary labor, equipment, fencing,  
35 and supplies to establish the riparian management zone; and

36       (c) The reasonable value of necessary yearly maintenance costs,  
37 up to a maximum of five years.

38      (4) If a landowner must remove more than .5 acre of riparian land  
39 from agricultural production, the cost-share offer must include part

1 of the cost of removing that land from production. The amount must be  
2 at least equal to the amount that would be offered under the  
3 conservation reserve enhancement program if the affected lands were  
4 enrolled in that program for 10 years, regardless of whether the  
5 lands are actually eligible for the conservation reserve enhancement  
6 program. This subsection does not apply unless the landowner agrees  
7 to keep the riparian management zone out of agricultural production  
8 in perpetuity.

9 (5) A grant from any public or private source, or combination of  
10 sources, may be counted as part of a cost-share grant under  
11 subsection (1) of this section. A loan is not a grant.

12 (6) Before making a determination of a bona fide offer of cost  
13 sharing to the landowner, the department must provide 30 days' notice  
14 in writing of their intent to make a determination of a bona fide  
15 offer under subsection (1) of this section.

16 (7) Nothing in this section limits the authority of a state  
17 agency, local government, or landowner to carry out its obligations  
18 under other federal, state, or local law.

19 **PART 4**  
20 **ENFORCEMENT**

21 **NEW SECTION.** **Sec. 401.** (1) In watersheds prioritized pursuant  
22 to section 205 of this act, where progress goals established by the  
23 department have not been met, and where a cost-sharing offer has been  
24 made, the department shall take additional action to secure  
25 compliance with this chapter.

26 (2) If the department determines that a landowner is not in  
27 compliance with this chapter, the department must provide the  
28 landowner with a list of corrective actions needed to come into  
29 compliance and a practical timeline to meet the requirements.

30 (3) If the department determines that steps have been taken to  
31 fully resolve the noncompliance, all or part of corrective action  
32 must be deemed complete.

33 (4) Corrective action is not required for conditions resulting  
34 from a flood or other acts of nature.

35 (5) A landowner, landowner agent, or operator of a landowner may  
36 not conduct any activity that would remove or willfully degrade a  
37 riparian management zone, wholly or partially, unless the activity is  
38 consistent with the exceptions established in rule pursuant to

1 section 206 of this act and the landowner has obtained the necessary  
2 permits to do so.

3 (6) If the landowner does not comply with the list of actions and  
4 timeline provided, the department shall pursue compliance and  
5 enforcement of this chapter and must notify the department of  
6 ecology.

7       **NEW SECTION.**   **Sec. 402.** When, in the opinion of the department,  
8 after consultation with the department of ecology, any person  
9 violates the provisions of this chapter or rules adopted or issued  
10 under this chapter, the department must notify the person of its  
11 determination by registered mail. The determination does not  
12 constitute an order or directive under RCW 43.21B.310. Within 30 days  
13 from the receipt of notice of the determination, the person must file  
14 with the department a full report stating what steps have been and  
15 are being taken to establish and maintain a riparian management zone  
16 or to otherwise comply with the determination of the department.  
17 After receiving the report, the department must issue an order or  
18 directive as it deems appropriate under the circumstances and notify  
19 the person of the order by registered mail.

20       **NEW SECTION.**   **Sec. 403.** (1) A person who violates this chapter  
21 or rules adopted under this chapter is subject to a penalty in an  
22 amount of up to \$10,000 a day for each violation. This penalty is in  
23 addition to any other penalty provided under law. Each violation is a  
24 separate and distinct offense, and, in case of a continuing  
25 violation, every day's continuance is a separate and distinct  
26 violation.

27       (2) Any act of commission or omission that procures, aids, or  
28 abets in the violation of this chapter is considered a violation  
29 under the provisions of this section and subject to the penalty  
30 provided in subsection (1) of this section. The department must set  
31 the penalty amount in consideration of the previous history of the  
32 violator and the severity of the violation's impact on public health  
33 or the environment in addition to other relevant factors.

34       (3) When enforcing the riparian management zone requirements  
35 under this chapter, the department must coordinate with the  
36 department of ecology who may also take actions to enforce any water  
37 quality standard violation resulting from the conditions in the  
38 riparian lands owned by the person.

(4) Any penalty issued by the department must be delivered to the person by registered mail.

**3            NEW SECTION.**    **Sec. 404.** Orders and penalties issued by the  
4 department to enforce the provisions of this chapter are appealable  
5 under chapter 43.21B RCW.

## PART 5

# MONITORING

**Sec. 501.** RCW 77.85.160 and 1999 sp.s. c 13 s 13 are each amended to read as follows:

10       (1) State salmon monitoring data provided by lead entities,  
11 regional fisheries enhancement groups, and others shall be ((included  
12 in the database of SASSI [salmon and steelhead stock inventory] and  
13 SSHIAP [salmon and steelhead habitat inventory assessment project]))  
14 made available for inclusion in the state and tribal databases of the  
15 salmon and steelhead habitat inventory assessment program.  
16 Information pertaining to habitat preservation projects funded  
17 through the Washington wildlife and recreation program, the  
18 conservation reserve enhancement program, and other conservancy  
19 programs related to salmon habitat shall be included in the  
20 ((SSHIAP)) salmon and steelhead habitat inventory assessment program  
21 project databases.

(2) High-resolution and other digital data pertaining to the amount and condition of riparian management zones as defined in section 205 of this act and other habitat conditions necessary for salmon recovery across the state must be maintained by the department in a digital web-based atlas. The riparian and salmon habitat atlas will consolidate riparian and salmon habitat data from the department, department of ecology, department of natural resources, department of agriculture, and conservation commission, in consultation with federally recognized tribes, lead entities, and salmon recovery regional organizations on an annual basis and make information available in a public-facing web application. The department must monitor changes and report biennially in the consolidated report on salmon recovery and watershed health under RCW 77.85.020.

**LAND USE**

2       **Sec. 601.** RCW 36.70A.020 and 2021 c 254 s 1 are each amended to  
3 read as follows:

4       The following goals are adopted to guide the development and  
5 adoption of comprehensive plans and development regulations of those  
6 counties and cities that are required or choose to plan under RCW  
7 36.70A.040. The following goals are not listed in order of priority  
8 and shall be used exclusively for the purpose of guiding the  
9 development of comprehensive plans and development regulations:

10      (1) Urban growth. Encourage development in urban areas where  
11 adequate public facilities and services exist or can be provided in  
12 an efficient manner.

13      (2) Reduce sprawl. Reduce the inappropriate conversion of  
14 undeveloped land into sprawling, low-density development.

15      (3) Transportation. Encourage efficient multimodal transportation  
16 systems that are based on regional priorities and coordinated with  
17 county and city comprehensive plans.

18      (4) Housing. Plan for and accommodate housing affordable to all  
19 economic segments of the population of this state, promote a variety  
20 of residential densities and housing types, and encourage  
21 preservation of existing housing stock.

22      (5) Economic development. Encourage economic development  
23 throughout the state that is consistent with adopted comprehensive  
24 plans, promote economic opportunity for all citizens of this state,  
25 especially for unemployed and for disadvantaged persons, promote the  
26 retention and expansion of existing businesses and recruitment of new  
27 businesses, recognize regional differences impacting economic  
28 development opportunities, and encourage growth in areas experiencing  
29 insufficient economic growth, all within the capacities of the  
30 state's natural resources, public services, and public facilities.

31      (6) Property rights. Private property shall not be taken for  
32 public use without just compensation having been made. The property  
33 rights of landowners shall be protected from arbitrary and  
34 discriminatory actions.

35      (7) Permits. Applications for both state and local government  
36 permits should be processed in a timely and fair manner to ensure  
37 predictability.

38      (8) Natural resource industries. Maintain and enhance natural  
39 resource-based industries, including productive timber, agricultural,

1 and fisheries industries. Encourage the conservation of productive  
2 forestlands and productive agricultural lands, and discourage  
3 incompatible uses.

4 (9) Open space and recreation. Retain open space, enhance  
5 recreational opportunities, conserve fish and wildlife habitat,  
6 increase access to natural resource lands and water, and develop  
7 parks and recreation facilities.

8 (10) Environment. Protect the environment and enhance the state's  
9 high quality of life, including air and water quality, and the  
10 availability of water.

11 (11) Citizen participation and coordination. Encourage the  
12 involvement of citizens in the planning process and ensure  
13 coordination between communities and jurisdictions to reconcile  
14 conflicts.

15 (12) Public facilities and services. Ensure that those public  
16 facilities and services necessary to support development shall be  
17 adequate to serve the development at the time the development is  
18 available for occupancy and use without decreasing current service  
19 levels below locally established minimum standards.

20 (13) Historic preservation. Identify and encourage the  
21 preservation of lands, sites, and structures, that have historical or  
22 archaeological significance.

23 (14) Salmon recovery. Support the recovery and enhancement of  
24 salmon and steelhead stocks through the protection and restoration of  
25 floodplains, riparian management zones, and other salmon habitat  
26 restoration areas identified in salmon recovery plans and achieve  
27 abundance for harvest and the delisting and recovery of threatened or  
28 endangered salmon and steelhead runs under the federal endangered  
29 species act.

30 NEW SECTION. **Sec. 602.** A new section is added to chapter 36.70A  
31 RCW to read as follows:

32 Counties and cities fully planning under RCW 36.70A.040 must  
33 include restoration and protection of riparian management zones as  
34 part of their next scheduled periodic update including, but not  
35 limited to, comprehensive plans, capital facilities plans,  
36 development regulations, critical areas protection, and shoreline  
37 master programs.

1       **Sec. 603.** RCW 36.70A.030 and 2021 c 254 s 6 are each amended to  
2 read as follows:

3       ((Unless the context clearly requires otherwise, the)) The  
4 definitions in this section apply throughout this chapter unless the  
5 context clearly requires otherwise.

6       (1) "Adopt a comprehensive land use plan" means to enact a new  
7 comprehensive land use plan or to update an existing comprehensive  
8 land use plan.

9       (2) "Affordable housing" means, unless the context clearly  
10 indicates otherwise, residential housing whose monthly costs,  
11 including utilities other than telephone, do not exceed ((thirty)) 30  
12 percent of the monthly income of a household whose income is:

13       (a) For rental housing, ((sixty)) 60 percent of the median  
14 household income adjusted for household size, for the county where  
15 the household is located, as reported by the United States department  
16 of housing and urban development; or

17       (b) For owner-occupied housing, eighty percent of the median  
18 household income adjusted for household size, for the county where  
19 the household is located, as reported by the United States department  
20 of housing and urban development.

21       (3) "Agricultural land" means land primarily devoted to the  
22 commercial production of horticultural, viticultural, floricultural,  
23 dairy, apiary, vegetable, or animal products or of berries, grain,  
24 hay, straw, turf, seed, Christmas trees not subject to the excise tax  
25 imposed by RCW 84.33.100 through 84.33.140, finfish in upland  
26 hatcheries, or livestock, and that has long-term commercial  
27 significance for agricultural production.

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

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

33       (6) "Critical areas" include the following areas and ecosystems:

34       (a) Wetlands; (b) areas with a critical recharging effect on aquifers  
35 used for potable water; (c) fish and wildlife habitat conservation  
36 areas; (d) frequently flooded areas; and (e) geologically hazardous  
37 areas. ((Fish and wildlife habitat conservation areas) does not  
38 include such artificial features or constructs as irrigation delivery  
39 systems, irrigation infrastructure, irrigation canals, or drainage

~~ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company.)~~

(7) "Department" means the department of commerce.

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

(9) "Emergency housing" means temporary indoor accommodations for individuals or families who are homeless or at imminent risk of becoming homeless that is intended to address the basic health, food, clothing, and personal hygiene needs of individuals or families. Emergency housing may or may not require occupants to enter into a lease or an occupancy agreement.

(10) "Emergency shelter" means a facility that provides a temporary shelter for individuals or families who are currently homeless. Emergency shelter may not require occupants to enter into a lease or an occupancy agreement. Emergency shelter facilities may include day and warming centers that do not provide overnight accommodations.

(11) "Extremely low-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below thirty percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States department of housing and urban development.

(12) "Forestland" means land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under RCW 84.33.100 through 84.33.140, and that has long-term commercial significance. In determining whether forestland is primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, the following factors shall be considered: (a) The proximity of the land

1 to urban, suburban, and rural settlements; (b) surrounding parcel  
2 size and the compatibility and intensity of adjacent and nearby land  
3 uses; (c) long-term local economic conditions that affect the ability  
4 to manage for timber production; and (d) the availability of public  
5 facilities and services conducive to conversion of forestland to  
6 other uses.

7 (13) "Freight rail dependent uses" means buildings and other  
8 infrastructure that are used in the fabrication, processing, storage,  
9 and transport of goods where the use is dependent on and makes use of  
10 an adjacent short line railroad. Such facilities are both urban and  
11 rural development for purposes of this chapter. "Freight rail  
12 dependent uses" does not include buildings and other infrastructure  
13 that are used in the fabrication, processing, storage, and transport  
14 of coal, liquefied natural gas, or "crude oil" as defined in RCW  
15 90.56.010.

16 (14) "Geologically hazardous areas" means areas that because of  
17 their susceptibility to erosion, sliding, earthquake, or other  
18 geological events, are not suited to the siting of commercial,  
19 residential, or industrial development consistent with public health  
20 or safety concerns.

21 (15) "Long-term commercial significance" includes the growing  
22 capacity, productivity, and soil composition of the land for long-  
23 term commercial production, in consideration with the land's  
24 proximity to population areas, and the possibility of more intense  
25 uses of the land.

26 (16) "Low-income household" means a single person, family, or  
27 unrelated persons living together whose adjusted income is at or  
28 below eighty percent of the median household income adjusted for  
29 household size, for the county where the household is located, as  
30 reported by the United States department of housing and urban  
31 development.

32 (17) "Minerals" include gravel, sand, and valuable metallic  
33 substances.

34 (18) "Moderate-income household" means a single person, family,  
35 or unrelated persons living together whose adjusted income is at or  
36 below 120 percent of the median household income adjusted for  
37 household size, for the county where the household is located, as  
38 reported by the United States department of housing and urban  
39 development.

1       (19) "Permanent supportive housing" is subsidized, leased housing  
2 with no limit on length of stay that prioritizes people who need  
3 comprehensive support services to retain tenancy and utilizes  
4 admissions practices designed to use lower barriers to entry than  
5 would be typical for other subsidized or unsubsidized rental housing,  
6 especially related to rental history, criminal history, and personal  
7 behaviors. Permanent supportive housing is paired with on-site or  
8 off-site voluntary services designed to support a person living with  
9 a complex and disabling behavioral health or physical health  
10 condition who was experiencing homelessness or was at imminent risk  
11 of homelessness prior to moving into housing to retain their housing  
12 and be a successful tenant in a housing arrangement, improve the  
13 resident's health status, and connect the resident of the housing  
14 with community-based health care, treatment, or employment services.  
15 Permanent supportive housing is subject to all of the rights and  
16 responsibilities defined in chapter 59.18 RCW.

17      (20) "Public facilities" include streets, roads, highways,  
18 sidewalks, street and road lighting systems, traffic signals,  
19 domestic water systems, storm and sanitary sewer systems, parks and  
20 recreational facilities, and schools.

21      (21) "Public services" include fire protection and suppression,  
22 law enforcement, public health, education, recreation, environmental  
23 protection, and other governmental services.

24      (22) "Recreational land" means land so designated under RCW  
25 36.70A.1701 and that, immediately prior to this designation, was  
26 designated as agricultural land of long-term commercial significance  
27 under RCW 36.70A.170. Recreational land must have playing fields and  
28 supporting facilities existing before July 1, 2004, for sports played  
29 on grass playing fields.

30      (23) "Rural character" refers to the patterns of land use and  
31 development established by a county in the rural element of its  
32 comprehensive plan:

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

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

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

39       (d) That are compatible with the use of the land by wildlife  
40 ((and))L for fish and wildlife habitat;

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

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

5       (g) That are consistent with the protection of natural surface  
6 water flows and groundwater and surface water recharge and discharge  
7 areas.

8       (24) "Rural development" refers to development outside the urban  
9 growth area and outside agricultural, forest, and mineral resource  
10 lands designated pursuant to RCW 36.70A.170. Rural development can  
11 consist of a variety of uses and residential densities, including  
12 clustered residential development, at levels that are consistent with  
13 the preservation of rural character and the requirements of the rural  
14 element. Rural development does not refer to agriculture or forestry  
15 activities that may be conducted in rural areas.

16       (25) "Rural governmental services" or "rural services" include  
17 those public services and public facilities historically and  
18 typically delivered at an intensity usually found in rural areas, and  
19 may include domestic water systems, fire and police protection  
20 services, transportation and public transit services, and other  
21 public utilities associated with rural development and normally not  
22 associated with urban areas. Rural services do not include storm or  
23 sanitary sewers, except as otherwise authorized by RCW 36.70A.110(4).

24       (26) "Short line railroad" means those railroad lines designated  
25 class II or class III by the United States surface transportation  
26 board.

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

34       (28) "Urban growth" refers to growth that makes intensive use of  
35 land for the location of buildings, structures, and impermeable  
36 surfaces to such a degree as to be incompatible with the primary use  
37 of land for the production of food, other agricultural products, or  
38 fiber, or the extraction of mineral resources, rural uses, rural  
39 development, and natural resource lands designated pursuant to RCW  
40 36.70A.170. A pattern of more intensive rural development, as

1 provided in RCW 36.70A.070(5)(d), is not urban growth. When allowed  
2 to spread over wide areas, urban growth typically requires urban  
3 governmental services. "Characterized by urban growth" refers to land  
4 having urban growth located on it, or to land located in relationship  
5 to an area with urban growth on it as to be appropriate for urban  
6 growth.

7 (29) "Urban growth areas" means those areas designated by a  
8 county pursuant to RCW 36.70A.110.

9 (30) "Very low-income household" means a single person, family,  
10 or unrelated persons living together whose adjusted income is at or  
11 below ((fifty)) 50 percent of the median household income adjusted  
12 for household size, for the county where the household is located, as  
13 reported by the United States department of housing and urban  
14 development.

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

30 (32) (a) (i) "Fish and wildlife habitat conservation areas" means  
31 areas that serve a critical role in sustaining needed habitats and  
32 species for the functional integrity of the ecosystem and which, if  
33 functions are reduced, may reduce the likelihood that the species  
34 will persist. These areas include, but are not limited to: Riparian  
35 management zones, floodplains, rare or vulnerable ecological systems,  
36 communities, and habitat or habitat elements including seasonal  
37 ranges, breeding habitat, winter range, and movement corridors; and  
38 areas with high relative population density or species richness.

39 (ii) Counties and cities may also designate locally important  
40 habitats and species.

1       (b) "Fish and wildlife habitat conservation areas" does not  
2 include artificial features or constructs such as irrigation delivery  
3 systems, irrigation infrastructure, irrigation canals, or drainage  
4 ditches that lie within the boundaries of, and are maintained by, a  
5 port district or an irrigation district or company.

6       (33) "Riparian management zone" has the same meaning as defined  
7 in section 202 of this act.

8       (34) "Watershed" means a water resource inventory area or "WRIA"  
9 established consistent with chapter 90.82 RCW, a subbasin watershed  
10 established in that chapter, or an independent natural drainage that  
11 flows directly into marine waters.

12      **Sec. 604.** RCW 36.70A.172 and 2010 c 211 s 3 are each amended to  
13 read as follows:

14       (1) In designating and protecting critical areas under this  
15 chapter, counties and cities shall include the best available science  
16 in developing policies and development regulations to protect the  
17 functions and values of critical areas. Management recommendations  
18 for wetlands made by the department of ecology, and for fish and  
19 wildlife habitat conservation areas made by the department of fish  
20 and wildlife, form the basis for inclusion of best available science.  
21 In addition, counties and cities shall give special consideration to  
22 conservation or protection measures necessary to preserve or enhance  
23 anadromous fisheries, including riparian management zones established  
24 by the department of fish and wildlife in accordance with this act.

25       (2) If it determines that advice from scientific or other experts  
26 is necessary or will be of substantial assistance in reaching its  
27 decision, the growth management hearings board may retain scientific  
28 or other expert advice to assist in reviewing a petition under RCW  
29 36.70A.290 that involves critical areas.

30      NEW SECTION. **Sec. 605.** A new section is added to chapter 90.58  
31 RCW to read as follows:

32       Shoreline master program updates approved after the effective  
33 date of this section must include riparian management zone protection  
34 and restoration requirements of this act.

35      **Sec. 606.** RCW 77.55.231 and 2021 c 279 s 2 are each amended to  
36 read as follows:

1       (1) (a) Conditions imposed upon a permit must be reasonably  
2 related to the project. The permit conditions must ensure that the  
3 project provides proper protection for fish life, but the department  
4 may not impose conditions that attempt to optimize conditions for  
5 fish life that are out of proportion to the impact of the proposed  
6 project.

7       (b) In the event that any person desires to replace  
8 ((residential)) marine shoreline stabilization or armoring, a person  
9 must use the least impacting technically feasible bank protection  
10 alternative for the protection of fish life. Unless the department  
11 provides an exemption depending on the scale and nature of the  
12 project, a person that desires to replace ((residential)) marine  
13 shoreline stabilization or armoring must conduct a site assessment to  
14 consider the least impactful alternatives. A person should propose a  
15 hard armor technique only after considering site characteristics such  
16 as the threat to major improvements, wave energy, and other factors  
17 in an analysis of alternatives. The common alternatives identified in  
18 (b)(i) through (vii) of this subsection are in order from most  
19 preferred to least preferred:

- 20           (i) Remove the structure and restore the beach;
- 21           (ii) Remove the structure and install native vegetation;
- 22           (iii) Remove the structure and control upland drainage;
- 23           (iv) Remove the structure and replace it with a soft structure  
constructed of natural materials, including bioengineering;
- 24           (v) Remove the hard structure and construct upland retaining  
walls;
- 25           (vi) Remove the hard structure and replace it with a hard  
structure located landward of the existing structure, preferably at  
26 or above the ordinary high water line; or
- 27           (vii) Remove the hard structure and replace it with hard  
shoreline structure in the same footprint as the existing structure.

32       (c) For the purposes of this subsection, "feasible" means  
33 available and capable of being done after taking into consideration  
34 cost, existing technology, and logistics in light of overall project  
35 purposes.

36       (2) The permit must contain provisions allowing for minor  
37 modifications to the plans and specifications without requiring  
38 reissuance of the permit.

39       (3) The permit must contain provisions that allow for minor  
40 modifications to the required work timing without requiring the

1 reissuance of the permit. "Minor modifications to the required work  
2 timing" means a minor deviation from the timing window set forth in  
3 the permit when there are no spawning or incubating fish present  
4 within the vicinity of the project.

## PART 7

## **STATE/TRIBAL RIPARIAN OVERSIGHT COMMITTEE**

NEW SECTION. **Sec. 701.** A new section is added to chapter 43.06  
RCW to read as follows:

9       The governor's office of Indian affairs shall convene a state/  
10 tribal riparian management oversight committee that will review and  
11 support implementation of this act. The committee may develop  
12 performance targets and adaptive management thresholds, and recommend  
13 changes to rules, regulations, and policies as needed to improve  
14 implementation of this act.

## PART 8

## **MISCELLANEOUS PROVISIONS**

NEW SECTION. **Sec. 801.** Sections 101 through 206 and 302 through 404 of this act constitute a new chapter in Title 77 RCW.

19        NEW SECTION.    **Sec. 802.**    If any provision of this act or its  
20 application to any person or circumstance is held invalid, the  
21 remainder of the act or the application of the provision to other  
22 persons or circumstances is not affected.

--- END ---