
HOUSE BILL 2316

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By Representatives Connors, Klicker, Ybarra, Barkis, Dufault, Dent, Graham, and Barnard

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1 AN ACT Relating to land use development when vegetation
2 associated with shrubsteppe is present in the urban growth areas;
3 amending RCW 36.70A.110; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that only 3.74
6 percent of Washington's total land area falls within urban growth
7 boundaries. The state's policy is for intense development to happen
8 on property within the urban growth boundaries. The growth management
9 act offers broad concepts to provide flexibility in local choices,
10 not requirements for every property. Urban development can be
11 skyscrapers with parking garages, sidewalks, and every square inch of
12 the land fully developed. The ability to develop such density and
13 fully use property within urban growth boundaries is necessary
14 statewide when there are such small amounts of land available for
15 intense development.

16 The legislature is serious about facilitating the creation of
17 affordable housing in urban growth areas along with other development
18 opportunities needed to support the people living in those areas.
19 Land within urban growth areas is not suited for wildlife or
20 conservation areas due to the people, buildings, roadways, and
21 lights.

1 Shrubsteppe is typically considered an ecosystem in undeveloped
2 areas where wildlife is present. The presence of plants or shrubs
3 that can be found in the shrubsteppe on property does not make that
4 property a functional ecosystem.

5 Shrubsteppe is a conduit for wildfire. Wildfire in urban areas
6 endangers lives and property. Building codes meant to reduce the
7 threat of wildfire recommend creating a defensible space to prevent
8 wildfire from spreading from forest lands to buildings in urban
9 areas, and thus removal of such fire fuel is desirable in urban
10 growth areas.

11 The legislature finds that the loss of plants and bushes
12 associated with shrubsteppe in urban growth areas has a negligible
13 impact on the environment and natural ecosystems. The ability to
14 develop land within the urban growth boundary to the fullest
15 potential helps reduce pressures to develop land outside of the urban
16 growth boundary. Government regulations that require property owners
17 to take additional steps add costs and delays that this act intends
18 to prevent. This policy will assist the state in achieving the
19 governor's housing goal of producing more than one million homes
20 statewide by 2044. Therefore, it is the intent of the legislature
21 that the existence of shrubsteppe within urban growth areas does not
22 prevent needed housing and other development. This act gives clear
23 direction to help improve development outcomes consistent with the
24 intent of the growth management act.

25 **Sec. 2.** RCW 36.70A.110 and 2025 c 258 s 2 are each amended to
26 read as follows:

27 (1) Each county that is required or chooses to plan under RCW
28 36.70A.040 shall designate an urban growth area or areas within which
29 urban growth shall be encouraged and outside of which growth can
30 occur only if it is not urban in nature. Each city that is located in
31 such a county shall be included within an urban growth area. An urban
32 growth area may include more than a single city. An urban growth area
33 may include territory that is located outside of a city only if such
34 territory already is characterized by urban growth whether or not the
35 urban growth area includes a city, or is adjacent to territory
36 already characterized by urban growth, or is a designated new fully
37 contained community as defined by RCW 36.70A.350. When a federally
38 recognized Indian tribe whose reservation or ceded lands lie within
39 the county or city has voluntarily chosen to participate in the

1 planning process pursuant to RCW 36.70A.040, the county or city and
2 the tribe shall coordinate their planning efforts for any areas
3 planned for urban growth consistent with the terms outlined in the
4 memorandum of agreement provided for in RCW 36.70A.040(8).

5 (2) Based upon the growth management population projection made
6 for the county by the office of financial management, the county and
7 each city within the county shall include areas and densities
8 sufficient to permit the urban growth that is projected to occur in
9 the county or city for the succeeding twenty-year period, except for
10 those urban growth areas contained totally within a national
11 historical reserve. As part of this planning process, each city
12 within the county must include areas sufficient to accommodate the
13 broad range of needs and uses that will accompany the projected urban
14 growth including, as appropriate, medical, governmental,
15 institutional, commercial, service, retail, and other nonresidential
16 uses.

17 Each urban growth area shall permit urban densities and shall
18 include greenbelt and open space areas. In the case of urban growth
19 areas contained totally within a national historical reserve, the
20 city may restrict densities, intensities, and forms of urban growth
21 as determined to be necessary and appropriate to protect the
22 physical, cultural, or historic integrity of the reserve. An urban
23 growth area determination may include a reasonable land market supply
24 factor and shall permit a range of urban densities and uses. In
25 determining this market factor, cities and counties may consider
26 local circumstances. Cities and counties have discretion in their
27 comprehensive plans to make many choices about accommodating growth.

28 Within one year of July 1, 1990, each county that as of June 1,
29 1991, was required or chose to plan under RCW 36.70A.040, shall begin
30 consulting with each city located within its boundaries and each city
31 shall propose the location of an urban growth area. Within sixty days
32 of the date the county legislative authority of a county adopts its
33 resolution of intention or of certification by the office of
34 financial management, all other counties that are required or choose
35 to plan under RCW 36.70A.040 shall begin this consultation with each
36 city located within its boundaries. The county shall attempt to reach
37 agreement with each city on the location of an urban growth area
38 within which the city is located. If such an agreement is not reached
39 with each city located within the urban growth area, the county shall
40 justify in writing why it so designated the area an urban growth

1 area. A city may object formally with the department over the
2 designation of the urban growth area within which it is located.
3 Where appropriate, the department shall attempt to resolve the
4 conflicts, including the use of mediation services.

5 (3) Urban growth should be located first in areas already
6 characterized by urban growth that have adequate existing public
7 facility and service capacities to serve such development, second in
8 areas already characterized by urban growth that will be served
9 adequately by a combination of both existing public facilities and
10 services and any additional needed public facilities and services
11 that are provided by either public or private sources, and third in
12 the remaining portions of the urban growth areas. Urban growth may
13 also be located in designated new fully contained communities as
14 defined by RCW 36.70A.350.

15 (4) In general, cities are the units of local government most
16 appropriate to provide urban governmental services. In general, it is
17 not appropriate that urban governmental services be extended to or
18 expanded in rural areas except in those limited circumstances shown
19 to be necessary to protect basic public health and safety and the
20 environment and when such services are financially supportable at
21 rural densities and do not permit urban development and as authorized
22 in RCW 36.70A.830.

23 (5) On or before October 1, 1993, each county that was initially
24 required to plan under RCW 36.70A.040(1) shall adopt development
25 regulations designating interim urban growth areas under this
26 chapter. Within three years and three months of the date the county
27 legislative authority of a county adopts its resolution of intention
28 or of certification by the office of financial management, all other
29 counties that are required or choose to plan under RCW 36.70A.040
30 shall adopt development regulations designating interim urban growth
31 areas under this chapter. Adoption of the interim urban growth areas
32 may only occur after public notice; public hearing; and compliance
33 with the state environmental policy act, chapter 43.21C RCW, and
34 under this section. Such action may be appealed to the growth
35 management hearings board under RCW 36.70A.280. Final urban growth
36 areas shall be adopted at the time of comprehensive plan adoption
37 under this chapter.

38 (6) Each county shall include designations of urban growth areas
39 in its comprehensive plan.

1 (7) An urban growth area designated in accordance with this
2 section may include within its boundaries urban service areas or
3 potential annexation areas designated for specific cities or towns
4 within the county.

5 (8) If, during the county's annual review under RCW
6 36.70A.130(2)(a), the county determines revision of the urban growth
7 area is not required to accommodate the population projection for the
8 county made by the office of financial management for the succeeding
9 20-year period, but does determine that patterns of development have
10 created pressure for development in areas exceeding the amount of
11 available developable lands within the urban growth area, then the
12 county may revise the urban growth area or areas based on identified
13 patterns of development and likely future development pressure if the
14 following requirements are met:

15 (a) The revised urban growth area would not result in a net
16 increase in the total acreage or development capacity of the urban
17 growth area or areas;

18 (b) The areas added to the urban growth area are not designated
19 by the county as agricultural, forest, or mineral resource lands of
20 long-term commercial significance;

21 (c) If the areas added to the urban growth area have previously
22 been designated as agricultural, forest, or mineral resource lands of
23 long-term commercial significance, either an equivalent amount of
24 agricultural, forest, or mineral resource lands of long-term
25 commercial significance must be added to the area outside of the
26 urban growth area, or the county must wait a minimum of two years
27 before another swap may occur;

28 (d) Less than 15 percent of the areas added to the urban growth
29 area are critical areas other than critical aquifer recharge areas.
30 Critical aquifer recharge areas must have been previously designated
31 by the county and be maintained per county development regulations
32 within the expanded urban growth area and the revised urban growth
33 area must not result in a net increase in critical aquifer recharge
34 areas within the urban growth area;

35 (e) The areas added to the urban growth areas are suitable for
36 urban growth;

37 (f) The transportation element and capital facility plan element
38 of the county's comprehensive plan have identified the transportation
39 facilities and public facilities and services needed to serve the

1 urban growth area and the funding to provide the transportation
2 facilities and public facilities and services;

3 (g) The areas removed from the urban growth area are not
4 characterized by urban growth or urban densities;

5 (h) The revised urban growth area is contiguous, does not include
6 holes or gaps, and will not increase pressures to urbanize rural or
7 natural resource lands;

8 (i) The county's proposed urban growth area revision has been
9 reviewed according to the process and procedure in the countywide
10 planning policies adopted and approved according to RCW 36.70A.210;
11 and

12 (j) The revised urban growth area meets all other requirements of
13 this section.

14 (9) (a) At the earliest possible date prior to the revision of the
15 county's urban growth area authorized under subsection (8) of this
16 section, the county must engage in meaningful consultation with any
17 federally recognized Indian tribe that may be potentially affected by
18 the proposed revision. Meaningful consultation must include
19 discussion of the potential impacts to cultural resources and tribal
20 treaty rights.

21 (b) A county must notify the affected federally recognized Indian
22 tribe of the proposed revision using at least two methods, including
23 by mail. Upon receiving a notice, the federally recognized Indian
24 tribe may request a consultation to determine whether an agreement
25 can be reached related to the revision of the county's urban growth
26 area. If an agreement is not reached, the parties must enter
27 mediation pursuant to RCW 36.70A.040.

28 (10) (a) Except as provided in (b) of this subsection, the
29 expansion of an urban growth area is prohibited into the one hundred
30 year floodplain of any river or river segment that: (i) Is located
31 west of the crest of the Cascade mountains; and (ii) has a mean
32 annual flow of one thousand or more cubic feet per second as
33 determined by the department of ecology.

34 (b) Subsection (10) (a) of this section does not apply to:

35 (i) Urban growth areas that are fully contained within a
36 floodplain and lack adjacent buildable areas outside the floodplain;

37 (ii) Urban growth areas where expansions are precluded outside
38 floodplains because:

39 (A) Urban governmental services cannot be physically provided to
40 serve areas outside the floodplain; or

1 (B) Expansions outside the floodplain would require a river or
2 estuary crossing to access the expansion; or

3 (iii) Urban growth area expansions where:

4 (A) Public facilities already exist within the floodplain and the
5 expansion of an existing public facility is only possible on the land
6 to be included in the urban growth area and located within the
7 floodplain; or

8 (B) Urban development already exists within a floodplain as of
9 July 26, 2009, and is adjacent to, but outside of, the urban growth
10 area, and the expansion of the urban growth area is necessary to
11 include such urban development within the urban growth area; or

12 (C) The land is owned by a jurisdiction planning under this
13 chapter or the rights to the development of the land have been
14 permanently extinguished, and the following criteria are met:

15 (I) The permissible use of the land is limited to one of the
16 following: Outdoor recreation; environmentally beneficial projects,
17 including but not limited to habitat enhancement or environmental
18 restoration; stormwater facilities; flood control facilities; or
19 underground conveyances; and

20 (II) The development and use of such facilities or projects will
21 not decrease flood storage, increase stormwater runoff, discharge
22 pollutants to fresh or salt waters during normal operations or
23 floods, or increase hazards to people and property.

24 (c) For the purposes of this subsection (10), "one hundred year
25 floodplain" means the same as "special flood hazard area" as set
26 forth in WAC 173-158-040 as it exists on July 26, 2009.

27 (11) If a county, city, or utility has adopted a capital facility
28 plan or utilities element to provide sewer service within the urban
29 growth areas during the twenty-year planning period, nothing in this
30 chapter obligates counties, cities, or utilities to install sanitary
31 sewer systems to properties within urban growth areas designated
32 under subsection (2) of this section by the end of the twenty-year
33 planning period when those properties:

34 (a)(i) Have existing, functioning, nonpolluting on-site sewage
35 systems;

36 (ii) Have a periodic inspection program by a public agency to
37 verify the on-site sewage systems function properly and do not
38 pollute surface or groundwater; and

39 (iii) Have no redevelopment capacity; or

1 (b) Do not require sewer service because development densities
2 are limited due to wetlands, floodplains, fish and wildlife habitats,
3 or geological hazards.

4 (12) Property within the urban growth area boundaries with bushes
5 and plants associated with shrubsteppe may not be considered wildlife
6 habitat, wildlife corridors, critical areas, vital habitat for safe
7 passage or species migration, conservation areas, or subject to
8 environmental protection that restricts the ability to develop the
9 property. Development regulations, state agency rules, guidance,
10 permits, and policies may not require replacement of shrubs and
11 plants, impose penalties, or require environmental enhancements if
12 shrubs and plants associated with shrubsteppe are damaged or removed
13 from property within urban growth area boundaries. State and local
14 government agencies may not require mitigation, protection, or
15 restoration of shrubsteppe within an urban growth area. The bushes
16 and plants associated with shrubsteppe include, but are not limited
17 to, Wyoming big sagebrush, antelope bitterbrush, three-tip sagebrush,
18 stiff sagebrush, Idaho fescue, bluebunch wheatgrass, Sandberg
19 bluegrass, Thurber's needlegrass, needle-and-thread, balsamroot,
20 buckwheat, lupines, and algae, moss, or lichens which are part of the
21 cryptobiotic crust. Invasive species such as cheat grass, mustards,
22 crested wheat grass, Russian thistle, and tumbleweeds that often mix
23 with shrubsteppe are included for the purposes of this subsection.

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