
HOUSE BILL 3031

State of Washington 56th Legislature 2000 Regular Session

By Representatives Mulliken, Doumit and Hatfield

Read first time 01/26/2000. Referred to Committee on Local Government.

1 AN ACT Relating to integrating permitting for development on
2 shorelines not of state-wide significance into the growth management
3 act; and amending RCW 90.58.180, 90.58.140, and 36.70A.030.

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

5 **Sec. 1.** RCW 90.58.180 and 1997 c 199 s 1 are each amended to read
6 as follows:

7 (1) Any person aggrieved by the granting, denying, or rescinding of
8 a permit on shorelines of (~~the state~~) state-wide significance
9 pursuant to RCW 90.58.140 may seek review from the shorelines hearings
10 board by filing a petition for review within twenty-one days of the
11 date of filing as defined in RCW 90.58.140(6). Appeals of permits
12 issued for shorelines that are not of state-wide significance shall be
13 governed by a local jurisdiction's critical areas and land-use
14 ordinances, subject to review under chapter 36.70C RCW.

15 Within seven days of the filing of any petition for review with the
16 board as provided in this section pertaining to a final decision of a
17 local government, the petitioner shall serve copies of the petition on
18 the department, the office of the attorney general, and the local
19 government. The department and the attorney general may intervene to

1 protect the public interest and insure that the provisions of this
2 chapter are complied with at any time within fifteen days from the date
3 of the receipt by the department or the attorney general of a copy of
4 the petition for review filed pursuant to this section. The shorelines
5 hearings board shall schedule review proceedings on the petition for
6 review without regard as to whether the period for the department or
7 the attorney general to intervene has or has not expired.

8 (2) The department or the attorney general may obtain review of any
9 final decision granting a permit, or granting or denying an application
10 for a permit issued by a local government regarding a shoreline of
11 state-wide significance by filing a written petition with the
12 shorelines hearings board and the appropriate local government within
13 twenty-one days from the date the final decision was filed as provided
14 in RCW 90.58.140(6).

15 (3) The review proceedings authorized in subsections (1) and (2) of
16 this section are subject to the provisions of chapter 34.05 RCW
17 pertaining to procedures in adjudicative proceedings. Judicial review
18 of such proceedings of the shorelines hearings board is governed by
19 chapter 34.05 RCW. The board shall issue its decision on the appeal
20 authorized under subsections (1) and (2) of this section within one
21 hundred eighty days after the date the petition is filed with the board
22 or a petition to intervene is filed by the department or the attorney
23 general, whichever is later. The time period may be extended by the
24 board for a period of thirty days upon a showing of good cause or may
25 be waived by the parties.

26 (4) Any person may appeal any rules, regulations, or guidelines
27 adopted or approved by the department within thirty days of the date of
28 the adoption or approval. The board shall make a final decision within
29 sixty days following the hearing held thereon.

30 (5) The board shall find the rule, regulation, or guideline to be
31 valid and enter a final decision to that effect unless it determines
32 that the rule, regulation, or guideline:

33 (a) Is clearly erroneous in light of the policy of this chapter; or

34 (b) Constitutes an implementation of this chapter in violation of
35 constitutional or statutory provisions; or

36 (c) Is arbitrary and capricious; or

37 (d) Was developed without fully considering and evaluating all
38 material submitted to the department during public review and comment;

39 or

1 (e) Was not adopted in accordance with required procedures.

2 (6) If the board makes a determination under subsection (5)(a)
3 through (e) of this section, it shall enter a final decision declaring
4 the rule, regulation, or guideline invalid, remanding the rule,
5 regulation, or guideline to the department with a statement of the
6 reasons in support of the determination, and directing the department
7 to adopt, after a thorough consultation with the affected local
8 government and any other interested party, a new rule, regulation, or
9 guideline consistent with the board's decision.

10 (7) A decision of the board on the validity of a rule, regulation,
11 or guideline shall be subject to review in superior court, if
12 authorized pursuant to chapter 34.05 RCW. A petition for review of the
13 decision of the shorelines hearings board on a rule, regulation, or
14 guideline shall be filed within thirty days after the date of final
15 decision by the shorelines hearings board.

16 **Sec. 2.** RCW 90.58.140 and 1995 c 347 s 309 are each amended to
17 read as follows:

18 (1) A development shall not be undertaken on (~~the~~) shorelines of
19 (~~the state~~) state-wide significance unless it is consistent with the
20 policy of this chapter and, after adoption or approval, as appropriate,
21 the applicable guidelines, rules, or master program. Development on
22 shorelines of the state shall be governed by a local jurisdiction's
23 critical area and land use ordinances adopted under chapter 36.70A RCW.

24 (2) A substantial development shall not be undertaken on shorelines
25 of (~~the state~~) state-wide significance without first obtaining a
26 permit from the government entity having administrative jurisdiction
27 under this chapter.

28 A permit shall be granted:

29 (a) From June 1, 1971, until such time as an applicable master
30 program has become effective, only when the development proposed is
31 consistent with: (i) The policy of RCW 90.58.020; and (ii) after their
32 adoption, the guidelines and rules of the department; and (iii) so far
33 as can be ascertained, the master program being developed for the area;

34 (b) After adoption or approval, as appropriate, by the department
35 of an applicable master program, only when the development proposed is
36 consistent with the applicable master program and this chapter.

37 (3) The local government shall establish a program, consistent with
38 rules adopted by the department, for the administration and enforcement

1 of the permit system provided in this section. The administration of
2 the system so established shall be performed exclusively by the local
3 government.

4 (4) Except as otherwise specifically provided in subsection (11) of
5 this section, the local government shall require notification of the
6 public of all applications for permits governed by any permit system
7 established pursuant to subsection (3) of this section by ensuring that
8 notice of the application is given by at least one of the following
9 methods:

10 (a) Mailing of the notice to the latest recorded real property
11 owners as shown by the records of the county assessor within at least
12 three hundred feet of the boundary of the property upon which the
13 substantial development is proposed;

14 (b) Posting of the notice in a conspicuous manner on the property
15 upon which the project is to be constructed; or

16 (c) Any other manner deemed appropriate by local authorities to
17 accomplish the objectives of reasonable notice to adjacent landowners
18 and the public.

19 The notices shall include a statement that any person desiring to
20 submit written comments concerning an application, or desiring to
21 receive notification of the final decision concerning an application as
22 expeditiously as possible after the issuance of the decision, may
23 submit the comments or requests for decisions to the local government
24 within thirty days of the last date the notice is to be published
25 pursuant to this subsection. The local government shall forward, in a
26 timely manner following the issuance of a decision, a copy of the
27 decision to each person who submits a request for the decision.

28 If a hearing is to be held on an application, notices of such a
29 hearing shall include a statement that any person may submit oral or
30 written comments on an application at the hearing.

31 (5) The system shall include provisions to assure that construction
32 pursuant to a permit will not begin or be authorized until twenty-one
33 days from the date the permit decision was filed as provided in
34 subsection (6) of this section; or until all review proceedings are
35 terminated if the proceedings were initiated within twenty-one days
36 from the date of filing as defined in subsection (6) of this section
37 except as follows:

38 (a) In the case of any permit issued to the state of Washington,
39 department of transportation, for the construction and modification of

1 SR 90 (I-90) on or adjacent to Lake Washington, the construction may
2 begin after thirty days from the date of filing, and the permits are
3 valid until December 31, 1995;

4 (b) Construction may be commenced no sooner than thirty days after
5 the date of the appeal of the board's decision is filed if a permit is
6 granted by the local government and (i) the granting of the permit is
7 appealed to the shorelines hearings board within twenty-one days of the
8 date of filing, (ii) the hearings board approves the granting of the
9 permit by the local government or approves a portion of the substantial
10 development for which the local government issued the permit, and (iii)
11 an appeal for judicial review of the hearings board decision is filed
12 pursuant to chapter 34.05 RCW. The appellant may request, within ten
13 days of the filing of the appeal with the court, a hearing before the
14 court to determine whether construction pursuant to the permit approved
15 by the hearings board or to a revised permit issued pursuant to the
16 order of the hearings board should not commence. If, at the conclusion
17 of the hearing, the court finds that construction pursuant to such a
18 permit would involve a significant, irreversible damaging of the
19 environment, the court shall prohibit the permittee from commencing the
20 construction pursuant to the approved or revised permit until all
21 review proceedings are final. Construction pursuant to a permit
22 revised at the direction of the hearings board may begin only on that
23 portion of the substantial development for which the local government
24 had originally issued the permit, and construction pursuant to such a
25 revised permit on other portions of the substantial development may not
26 begin until after all review proceedings are terminated. In such a
27 hearing before the court, the burden of proving whether the
28 construction may involve significant irreversible damage to the
29 environment and demonstrating whether such construction would or would
30 not be appropriate is on the appellant;

31 (c) If the permit is for a substantial development meeting the
32 requirements of subsection (11) of this section, construction pursuant
33 to that permit may not begin or be authorized until twenty-one days
34 from the date the permit decision was filed as provided in subsection
35 (6) of this section.

36 If a permittee begins construction pursuant to subsections (a),
37 (b), or (c) of this subsection, the construction is begun at the
38 permittee's own risk. If, as a result of judicial review, the courts
39 order the removal of any portion of the construction or the restoration

1 of any portion of the environment involved or require the alteration of
2 any portion of a substantial development constructed pursuant to a
3 permit, the permittee is barred from recovering damages or costs
4 involved in adhering to such requirements from the local government
5 that granted the permit, the hearings board, or any appellant or
6 intervener.

7 (6) Any decision on an application for a permit under the authority
8 of this section, whether it is an approval or a denial, shall,
9 concurrently with the transmittal of the ruling to the applicant, be
10 filed with the department and the attorney general. With regard to a
11 permit other than a permit governed by subsection (10) of this section,
12 "date of filing" as used herein means the date of actual receipt by the
13 department. With regard to a permit for a variance or a conditional
14 use, "date of filing" means the date a decision of the department
15 rendered on the permit pursuant to subsection (10) of this section is
16 transmitted by the department to the local government. The department
17 shall notify in writing the local government and the applicant of the
18 date of filing.

19 (7) Applicants for permits under this section have the burden of
20 proving that a proposed substantial development is consistent with the
21 criteria that must be met before a permit is granted. In any review of
22 the granting or denial of an application for a permit as provided in
23 RCW 90.58.180 (1) and (2), the person requesting the review has the
24 burden of proof.

25 (8) Any permit may, after a hearing with adequate notice to the
26 permittee and the public, be rescinded by the issuing authority upon
27 the finding that a permittee has not complied with conditions of a
28 permit. If the department is of the opinion that noncompliance exists,
29 the department shall provide written notice to the local government and
30 the permittee. If the department is of the opinion that the
31 noncompliance continues to exist thirty days after the date of the
32 notice, and the local government has taken no action to rescind the
33 permit, the department may petition the hearings board for a rescission
34 of the permit upon written notice of the petition to the local
35 government and the permittee if the request by the department is made
36 to the hearings board within fifteen days of the termination of the
37 thirty-day notice to the local government.

1 (9) The holder of a certification from the governor pursuant to
2 chapter 80.50 RCW shall not be required to obtain a permit under this
3 section.

4 (10) Any permit for a variance or a conditional use by local
5 government under approved master programs must be submitted to the
6 department for its approval or disapproval.

7 (11)(a) An application for a substantial development permit for a
8 limited utility extension or for the construction of a bulkhead or
9 other measures to protect a single family residence and its appurtenant
10 structures from shoreline erosion shall be subject to the following
11 procedures:

12 (i) The public comment period under subsection (4) of this section
13 shall be twenty days. The notice provided under subsection (4) of this
14 section shall state the manner in which the public may obtain a copy of
15 the local government decision on the application no later than two days
16 following its issuance;

17 (ii) The local government shall issue its decision to grant or deny
18 the permit within twenty-one days of the last day of the comment period
19 specified in (i) of this subsection; and

20 (iii) If there is an appeal of the decision to grant or deny the
21 permit to the local government legislative authority, the appeal shall
22 be finally determined by the legislative authority within thirty days.

23 (b) For purposes of this section, a limited utility extension means
24 the extension of a utility service that:

25 (i) Is categorically exempt under chapter 43.21C RCW for one or
26 more of the following: Natural gas, electricity, telephone, water, or
27 sewer;

28 (ii) Will serve an existing use in compliance with this chapter;
29 and

30 (iii) Will not extend more than twenty-five hundred linear feet
31 within the shorelines of the state.

32 **Sec. 3.** RCW 36.70A.030 and 1997 c 429 s 3 are each amended to read
33 as follows:

34 Unless the context clearly requires otherwise, the definitions in
35 this section apply throughout this chapter.

36 (1) "Adopt a comprehensive land use plan" means to enact a new
37 comprehensive land use plan or to update an existing comprehensive land
38 use plan.

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

8 (3) "City" means any city or town, including a code city.

9 (4) "Comprehensive land use plan," "comprehensive plan," or "plan"
10 means a generalized coordinated land use policy statement of the
11 governing body of a county or city that is adopted pursuant to this
12 chapter.

13 (5) "Critical areas" include the following areas and ecosystems:
14 (a) Wetlands; (b) areas with a critical recharging effect on aquifers
15 used for potable water; (c) fish and wildlife habitat conservation
16 areas; (d) frequently flooded areas; ~~((and))~~ (e) geologically hazardous
17 areas; and (f) shorelines, as defined by RCW 90.58.030(2)(d).

18 (6) "Department" means the department of community, trade, and
19 economic development.

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

30 (8) "Forest land" means land primarily devoted to growing trees for
31 long-term commercial timber production on land that can be economically
32 and practically managed for such production, including Christmas trees
33 subject to the excise tax imposed under RCW 84.33.100 through
34 84.33.140, and that has long-term commercial significance. In
35 determining whether forest land is primarily devoted to growing trees
36 for long-term commercial timber production on land that can be
37 economically and practically managed for such production, the following
38 factors shall be considered: (a) The proximity of the land to urban,
39 suburban, and rural settlements; (b) surrounding parcel size and the

1 compatibility and intensity of adjacent and nearby land uses; (c) long-
2 term local economic conditions that affect the ability to manage for
3 timber production; and (d) the availability of public facilities and
4 services conducive to conversion of forest land to other uses.

5 (9) "Geologically hazardous areas" means areas that because of
6 their susceptibility to erosion, sliding, earthquake, or other
7 geological events, are not suited to the siting of commercial,
8 residential, or industrial development consistent with public health or
9 safety concerns.

10 (10) "Long-term commercial significance" includes the growing
11 capacity, productivity, and soil composition of the land for long-term
12 commercial production, in consideration with the land's proximity to
13 population areas, and the possibility of more intense uses of the land.

14 (11) "Minerals" include gravel, sand, and valuable metallic
15 substances.

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

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

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

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

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

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

32 (d) That are compatible with the use of the land by wildlife and
33 for fish and wildlife habitat;

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

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

1 (g) That are consistent with the protection of natural surface
2 water flows and ground water and surface water recharge and discharge
3 areas.

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

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

20 (17) "Urban growth" refers to growth that makes intensive use of
21 land for the location of buildings, structures, and impermeable
22 surfaces to such a degree as to be incompatible with the primary use of
23 land for the production of food, other agricultural products, or fiber,
24 or the extraction of mineral resources, rural uses, rural development,
25 and natural resource lands designated pursuant to RCW 36.70A.170. A
26 pattern of more intensive rural development, as provided in RCW
27 36.70A.070(5)(d), is not urban growth. When allowed to spread over
28 wide areas, urban growth typically requires urban governmental
29 services. "Characterized by urban growth" refers to land having urban
30 growth located on it, or to land located in relationship to an area
31 with urban growth on it as to be appropriate for urban growth.

32 (18) "Urban growth areas" means those areas designated by a county
33 pursuant to RCW 36.70A.110.

34 (19) "Urban governmental services" or "urban services" include
35 those public services and public facilities at an intensity
36 historically and typically provided in cities, specifically including
37 storm and sanitary sewer systems, domestic water systems, street
38 cleaning services, fire and police protection services, public transit

1 services, and other public utilities associated with urban areas and
2 normally not associated with rural areas.

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

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