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HOUSE BILL 1475

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State of Washington                      58th Legislature                      2003 Regular Session

By Representatives Pearson, Grant, Mielke, Sump, Boldt, Kristiansen, Chandler, Hinkle, Condotta, Armstrong, Buck and Anderson

Read first time 01/28/2003.      Referred to Committee on Fisheries, Ecology & Parks.

1            AN ACT Relating to clarifying the definition of ordinary high water  
2 mark; and amending RCW 90.58.030.

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

4            **Sec. 1.** RCW 90.58.030 and 2002 c 230 s 2 are each amended to read  
5 as follows:

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

8            (1) Administration:

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

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

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

14           (d) "Person" means an individual, partnership, corporation,  
15 association, organization, cooperative, public or municipal  
16 corporation, or agency of the state or local governmental unit however  
17 designated;

18           (e) "Hearing board" means the shoreline hearings board established  
19 by this chapter.

1 (2) Geographical:

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

4 (b) "Ordinary high water mark" on all lakes, streams, and tidal  
5 water is that mark that will be found by examining the bed and banks  
6 and ascertaining where the presence and action of waters are so common  
7 and usual, and so long continued in all ordinary years, as to mark upon  
8 the soil a character distinct from that of the abutting upland, in  
9 respect to vegetation as that condition exists on June 1, 1971, as it  
10 may naturally change thereafter, or as it may change thereafter in  
11 accordance with permits issued by a local government or the department:  
12 PROVIDED, That in any area where the ordinary high water mark cannot be  
13 found, the ordinary high water mark adjoining salt water shall be the  
14 line of mean higher high tide and the ordinary high water mark  
15 adjoining fresh water shall be the line of mean high water: PROVIDED  
16 FURTHER, That lands periodically submerged but still useful for  
17 agricultural purposes shall be deemed above the ordinary high water  
18 mark;

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

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

29 (e) "Shorelines of statewide significance" means the following  
30 shorelines of the state:

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

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

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

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

1 (C) Hood Canal--from Tala Point to Foulweather Bluff,  
2 (D) Skagit Bay and adjacent area--from Brown Point to Yokeko Point,  
3 and  
4 (E) Padilla Bay--from March Point to William Point;  
5 (iii) Those areas of Puget Sound and the Strait of Juan de Fuca and  
6 adjacent salt waters north to the Canadian line and lying seaward from  
7 the line of extreme low tide;  
8 (iv) Those lakes, whether natural, artificial, or a combination  
9 thereof, with a surface acreage of one thousand acres or more measured  
10 at the ordinary high water mark;  
11 (v) Those natural rivers or segments thereof as follows:  
12 (A) Any west of the crest of the Cascade range downstream of a  
13 point where the mean annual flow is measured at one thousand cubic feet  
14 per second or more,  
15 (B) Any east of the crest of the Cascade range downstream of a  
16 point where the annual flow is measured at two hundred cubic feet per  
17 second or more, or those portions of rivers east of the crest of the  
18 Cascade range downstream from the first three hundred square miles of  
19 drainage area, whichever is longer;  
20 (vi) Those shorelands associated with (i), (ii), (iv), and (v) of  
21 this subsection (2)(e);  
22 (f) "Shorelands" or "shoreland areas" means those lands extending  
23 landward for two hundred feet in all directions as measured on a  
24 horizontal plane from the ordinary high water mark; floodways and  
25 contiguous floodplain areas landward two hundred feet from such  
26 floodways; and all wetlands and river deltas associated with the  
27 streams, lakes, and tidal waters which are subject to the provisions of  
28 this chapter; the same to be designated as to location by the  
29 department of ecology. Any county or city may determine that portion  
30 of a one-hundred-year-flood plain to be included in its master program  
31 as long as such portion includes, as a minimum, the floodway and the  
32 adjacent land extending landward two hundred feet therefrom;  
33 (g) "Floodway" means those portions of the area of a river valley  
34 lying streamward from the outer limits of a watercourse upon which  
35 flood waters are carried during periods of flooding that occur with  
36 reasonable regularity, although not necessarily annually, said floodway  
37 being identified, under normal condition, by changes in surface soil  
38 conditions or changes in types or quality of vegetative ground cover

1 condition. The floodway shall not include those lands that can  
2 reasonably be expected to be protected from flood waters by flood  
3 control devices maintained by or maintained under license from the  
4 federal government, the state, or a political subdivision of the state;

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

18 (3) Procedural terms:

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

24 (b) "Master program" shall mean the comprehensive use plan for a  
25 described area, and the use regulations together with maps, diagrams,  
26 charts, or other descriptive material and text, a statement of desired  
27 goals, and standards developed in accordance with the policies  
28 enunciated in RCW 90.58.020;

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

31 (d) "Development" means a use consisting of the construction or  
32 exterior alteration of structures; dredging; drilling; dumping;  
33 filling; removal of any sand, gravel, or minerals; bulkheading; driving  
34 of piling; placing of obstructions; or any project of a permanent or  
35 temporary nature which interferes with the normal public use of the  
36 surface of the waters overlying lands subject to this chapter at any  
37 state of water level;

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

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

19 (ii) Construction of the normal protective bulkhead common to  
20 single family residences;

21 (iii) Emergency construction necessary to protect property from  
22 damage by the elements;

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

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

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

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

19 (viii) Operation, maintenance, or construction of canals,  
20 waterways, drains, reservoirs, or other facilities that now exist or  
21 are hereafter created or developed as a part of an irrigation system  
22 for the primary purpose of making use of system waters, including  
23 return flow and artificially stored ground water for the irrigation of  
24 lands;

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

28 (x) Operation and maintenance of any system of dikes, ditches,  
29 drains, or other facilities existing on September 8, 1975, which were  
30 created, developed, or utilized primarily as a part of an agricultural  
31 drainage or diking system;

32 (xi) Site exploration and investigation activities that are  
33 prerequisite to preparation of an application for development  
34 authorization under this chapter, if:

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

37 (B) The activity will have no significant adverse impact on the

1 environment including, but not limited to, fish, wildlife, fish or  
2 wildlife habitat, water quality, and aesthetic values;

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

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

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

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

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