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HOUSE BILL 1413

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State of Washington

60th Legislature

2007 Regular Session

By Representatives Eddy, Simpson and Curtis; by request of Department of Ecology

Read first time 01/18/2007. Referred to Committee on Local Government.

1 AN ACT Relating to changing the definition of floodway in the  
2 shoreline management act; 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 2003 c 321 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;

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

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

26 (e) "Shorelines of statewide significance" means the following  
27 shorelines of the state:

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

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

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

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

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

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

38 and

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

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

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

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

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

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

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

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

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

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

1 (g) "Floodway" means (~~(those portions of)~~) the area of a river  
2 valley (~~(lying streamward from the outer limits of a watercourse upon~~  
3 ~~which flood waters are carried during periods of flooding that occur)~~)  
4 that conveys flood waters with reasonable regularity, although not  
5 necessarily annually(~~(, said floodway being identified, under normal~~  
6 ~~condition, by changes in surface soil conditions or changes in types or~~  
7 ~~quality of vegetative ground cover condition))~~). At a minimum, the  
8 floodway is that which has been established in federal emergency  
9 management act flood insurance rate maps or federal emergency  
10 management act floodway maps. Other data and information, including  
11 topography, changes in soil or vegetation, and other indicators of past  
12 flooding may be used to define and map a floodway that meets the  
13 objectives of the shoreline management act, chapter 90.58 RCW. The  
14 floodway shall not include those lands that can reasonably be expected  
15 to be protected from one hundred-year flood waters by flood control  
16 devices maintained by or maintained under license from the federal  
17 government, the state, or a political subdivision of the state;

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

31 (3) Procedural terms:

32 (a) "Guidelines" means those standards adopted to implement the  
33 policy of this chapter for regulation of use of the shorelines of the  
34 state prior to adoption of master programs. Such standards shall also  
35 provide criteria to local governments and the department in developing  
36 master programs;

37 (b) "Master program" shall mean the comprehensive use plan for a  
38 described area, and the use regulations together with maps, diagrams,

1 charts, or other descriptive material and text, a statement of desired  
2 goals, and standards developed in accordance with the policies  
3 enunciated in RCW 90.58.020;

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

6 (d) "Development" means a use consisting of the construction or  
7 exterior alteration of structures; dredging; drilling; dumping;  
8 filling; removal of any sand, gravel, or minerals; bulkheading; driving  
9 of piling; placing of obstructions; or any project of a permanent or  
10 temporary nature which interferes with the normal public use of the  
11 surface of the waters overlying lands subject to this chapter at any  
12 state of water level;

13 (e) "Substantial development" shall mean any development of which  
14 the total cost or fair market value exceeds five thousand dollars, or  
15 any development which materially interferes with the normal public use  
16 of the water or shorelines of the state. The dollar threshold  
17 established in this subsection (3)(e) must be adjusted for inflation by  
18 the office of financial management every five years, beginning July 1,  
19 2007, based upon changes in the consumer price index during that time  
20 period. "Consumer price index" means, for any calendar year, that  
21 year's annual average consumer price index, Seattle, Washington area,  
22 for urban wage earners and clerical workers, all items, compiled by the  
23 bureau of labor and statistics, United States department of labor. The  
24 office of financial management must calculate the new dollar threshold  
25 and transmit it to the office of the code reviser for publication in  
26 the Washington State Register at least one month before the new dollar  
27 threshold is to take effect. The following shall not be considered  
28 substantial developments for the purpose of this chapter:

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

31 (ii) Construction of the normal protective bulkhead common to  
32 single family residences;

33 (iii) Emergency construction necessary to protect property from  
34 damage by the elements;

35 (iv) Construction and practices normal or necessary for farming,  
36 irrigation, and ranching activities, including agricultural service  
37 roads and utilities on shorelands, and the construction and maintenance  
38 of irrigation structures including but not limited to head gates,

1 pumping facilities, and irrigation channels. A feedlot of any size,  
2 all processing plants, other activities of a commercial nature,  
3 alteration of the contour of the shorelands by leveling or filling  
4 other than that which results from normal cultivation, shall not be  
5 considered normal or necessary farming or ranching activities. A  
6 feedlot shall be an enclosure or facility used or capable of being used  
7 for feeding livestock hay, grain, silage, or other livestock feed, but  
8 shall not include land for growing crops or vegetation for livestock  
9 feeding and/or grazing, nor shall it include normal livestock wintering  
10 operations;

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

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

20 (vii) Construction of a dock, including a community dock, designed  
21 for pleasure craft only, for the private noncommercial use of the  
22 owner, lessee, or contract purchaser of single and multiple family  
23 residences. This exception applies if either: (A) In salt waters, the  
24 fair market value of the dock does not exceed two thousand five hundred  
25 dollars; or (B) in fresh waters, the fair market value of the dock does  
26 not exceed ten thousand dollars, but if subsequent construction having  
27 a fair market value exceeding two thousand five hundred dollars occurs  
28 within five years of completion of the prior construction, the  
29 subsequent construction shall be considered a substantial development  
30 for the purpose of this chapter;

31 (viii) Operation, maintenance, or construction of canals,  
32 waterways, drains, reservoirs, or other facilities that now exist or  
33 are hereafter created or developed as a part of an irrigation system  
34 for the primary purpose of making use of system waters, including  
35 return flow and artificially stored ground water for the irrigation of  
36 lands;

37 (ix) The marking of property lines or corners on state owned lands,

1 when such marking does not significantly interfere with normal public  
2 use of the surface of the water;

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

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

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

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

15 (C) The activity does not involve the installation of a structure,  
16 and upon completion of the activity the vegetation and land  
17 configuration of the site are restored to conditions existing before  
18 the activity;

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

23 (E) The activity is not subject to the permit requirements of RCW  
24 90.58.550;

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

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