

**HB 1653** - H AMD 1155

By Representative Simpson

ADOPTED 2/15/2010

1 Strike everything after the enacting clause and insert the  
2 following:

3  
4 "NEW SECTION. **Sec. 1.** (1) The legislature recognizes that  
5 Engrossed Substitute House Bill No. 1933, enacted as chapter 321, Laws  
6 of 2003, modified the relationship between the shoreline management  
7 act and the growth management act. The legislature recognizes also  
8 that its 2003 efforts, while intended to create greater operational  
9 clarity between these significant shoreline and land use acts, have  
10 been the subject of differing, and occasionally contrary, legal  
11 interpretations. This act is intended to affirm and clarify the  
12 legislature's intent relating to the provisions of chapter 321, Laws  
13 of 2003.

14 (2) The legislature affirms that development regulations adopted  
15 under the growth management act to protect critical areas apply within  
16 shorelines of the state as provided in section 2 of this act.

17 (3) The legislature affirms that the adoption or update of  
18 critical area regulations under the growth management act is not  
19 automatically an update to the shoreline master program.

20 (4) The legislature intends for this act to be remedial and  
21 curative in nature, and to apply retroactively to July 27, 2003.

22  
23 **Sec. 2.** RCW 36.70A.480 and 2003 c 321 s 5 are each amended to  
24 read as follows:

25 (1) For shorelines of the state, the goals and policies of the  
26 shoreline management act as set forth in RCW 90.58.020 are added as  
27 one of the goals of this chapter as set forth in RCW 36.70A.020

1 without creating an order of priority among the fourteen goals. The  
2 goals and policies of a shoreline master program for a county or city  
3 approved under chapter 90.58 RCW shall be considered an element of the  
4 county or city's comprehensive plan. All other portions of the  
5 shoreline master program for a county or city adopted under chapter  
6 90.58 RCW, including use regulations, shall be considered a part of  
7 the county or city's development regulations.

8 (2) The shoreline master program shall be adopted pursuant to the  
9 procedures of chapter 90.58 RCW rather than the goals, policies, and  
10 procedures set forth in this chapter for the adoption of a  
11 comprehensive plan or development regulations.

12 (3)(a) The policies, goals, and provisions of chapter 90.58 RCW  
13 and applicable guidelines shall be the sole basis for determining  
14 compliance of a shoreline master program with this chapter except as  
15 the shoreline master program is required to comply with the internal  
16 consistency provisions of RCW 36.70A.070, 36.70A.040(4), 35.63.125,  
17 and 35A.63.105.

18 ~~((a) As of the date the department of ecology approves a local  
19 government's shoreline master program adopted under applicable  
20 shoreline guidelines, the protection of critical areas as defined by  
21 RCW 36.70A.030(5) within shorelines of the state shall be accomplished  
22 only through the local government's shoreline master program and shall  
23 not be subject to the procedural and substantive requirements of this  
24 chapter, except as provided in subsection (6) of this section.))~~

25 (b) Except as otherwise provided in (c) of this subsection,  
26 development regulations adopted under this chapter to protect critical  
27 areas within shorelines of the state apply within shorelines of the  
28 state until the department of ecology approves one of the following:  
29 A comprehensive master program update, as defined in RCW 90.58.030; a  
30 segment of a master program relating to critical areas, as provided in  
31 RCW 90.58.090; or a new or amended master program approved by the  
32 department of ecology on or after March 1, 2002, as provided in RCW  
33 90.58.080. The adoption or update of development regulations to  
34 protect critical areas under this chapter prior to department of

1 ecology approval of a master program update as provided in this  
2 subsection is not a comprehensive or segment update to the master  
3 program.

4 (c)(i) Until the department of ecology approves a master program  
5 or segment of a master program as provided in (b) of this subsection,  
6 a use or structure legally located within shorelines of the state that  
7 was established or vested on or before the effective date of the local  
8 government's development regulations to protect critical areas may  
9 continue as a conforming use and may be redeveloped or modified if:  
10 (A) The redevelopment or modification is consistent with the local  
11 government's master program; and (B) the local government determines  
12 that the proposed redevelopment or modification will result in no net  
13 loss of shoreline ecological functions. The local government may  
14 waive this requirement if the redevelopment or modification is  
15 consistent with the master program and the local government's  
16 development regulations to protect critical areas.

17 (ii) For purposes of this subsection (c), an agricultural activity  
18 that does not expand the area being used for the agricultural activity  
19 is not a redevelopment or modification. "Agricultural activity," as  
20 used in this subsection (c) has the same meaning as defined in RCW  
21 90.58.065.

22 (d) Upon department of ecology approval of a shoreline master  
23 program or critical area segment of a shoreline master program,  
24 critical areas within shorelines of the state ((that have been  
25 identified as meeting the definition of critical areas as defined by  
26 RCW 36.70A.030(5), and that are subject to a shoreline master program  
27 adopted under applicable shoreline guidelines shall not be)) are  
28 protected under chapter 90.58 RCW and are not subject to the  
29 procedural and substantive requirements of this chapter, except as  
30 provided in subsection (6) of this section. Nothing in chapter 321,  
31 Laws of 2003 or this act is intended to affect whether or to what  
32 extent agricultural activities, as defined in RCW 90.58.065, are  
33 subject to chapter 36.70A RCW.

34

1       ~~((e))~~ (e) The provisions of RCW 36.70A.172 shall not apply to  
2 the adoption or subsequent amendment of a local government's shoreline  
3 master program and shall not be used to determine compliance of a  
4 local government's shoreline master program with chapter 90.58 RCW and  
5 applicable guidelines. Nothing in this section, however, is intended  
6 to limit or change the quality of information to be applied in  
7 protecting critical areas within shorelines of the state, as required  
8 by chapter 90.58 RCW and applicable guidelines.

9       (4) Shoreline master programs shall provide a level of protection  
10 to critical areas located within shorelines of the state that ~~((is at  
11 least equal to the level of protection provided to critical areas by  
12 the local government's critical area ordinances adopted and thereafter  
13 amended pursuant to RCW 36.70A.060(2)))~~ assures no net loss of  
14 shoreline ecological functions necessary to sustain shoreline natural  
15 resources as defined by department of ecology guidelines adopted  
16 pursuant to RCW 90.58.060.

17       (5) Shorelines of the state shall not be considered critical areas  
18 under this chapter except to the extent that specific areas located  
19 within shorelines of the state qualify for critical area designation  
20 based on the definition of critical areas provided by RCW  
21 36.70A.030(5) and have been designated as such by a local government  
22 pursuant to RCW 36.70A.060(2).

23       (6) If a local jurisdiction's master program does not include land  
24 necessary for buffers for critical areas that occur within shorelines  
25 of the state, as authorized by RCW 90.58.030(2)(f), then the local  
26 jurisdiction shall continue to regulate those critical areas and their  
27 required buffers pursuant to RCW 36.70A.060(2).

28  
29       **Sec. 3.** RCW 90.58.030 and 2007 c 328 s 1 are each amended to read  
30 as follows:

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

33       (1) Administration:

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

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

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

5 (d) "Person" means an individual, partnership, corporation,  
6 association, organization, cooperative, public or municipal  
7 corporation, or agency of the state or local governmental unit however  
8 designated;

9 (e) "~~((Hearing[s]))~~ Hearings board" means the ~~((shoreline[s]))~~  
10 shorelines hearings board established by this chapter.

11 (2) Geographical:

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

14 (b) "Ordinary high water mark" on all lakes, streams, and tidal  
15 water is that mark that will be found by examining the bed and banks  
16 and ascertaining where the presence and action of waters are so common  
17 and usual, and so long continued in all ordinary years, as to mark  
18 upon the soil a character distinct from that of the abutting upland,  
19 in respect to vegetation as that condition exists on June 1, 1971, as  
20 it may naturally change thereafter, or as it may change thereafter in  
21 accordance with permits issued by a local government or the  
22 department: PROVIDED, That in any area where the ordinary high water  
23 mark cannot be found, the ordinary high water mark adjoining salt  
24 water shall be the line of mean higher high tide and the ordinary high  
25 water mark adjoining fresh water shall be the line of mean high water;

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

28 (d) "Shorelines" means all of the water areas of the state,  
29 including reservoirs, and their associated shorelands, together with  
30 the lands underlying them; except (i) shorelines of statewide  
31 significance; (ii) shorelines on segments of streams upstream of a  
32 point where the mean annual flow is twenty cubic feet per second or  
33 less and the wetlands associated with such upstream segments; and

34

1 (iii) shorelines on lakes less than twenty acres in size and wetlands  
2 associated with such small lakes;

3 (e) "Shorelines of statewide significance" means the following  
4 shorelines of the state:

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

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

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

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

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

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

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

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

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

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

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

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

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

34

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

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

13 (ii) Any city or county may also include in its master program  
14 land necessary for buffers for critical areas, as defined in chapter  
15 36.70A RCW, that occur within shorelines of the state, provided that  
16 forest practices regulated under chapter 76.09 RCW, except conversions  
17 to nonforest land use, on lands subject to the provisions of this  
18 subsection (2)(f)(ii) are not subject to additional regulations under  
19 this chapter;

20 (g) "Floodway" means the area, as identified in a master program,  
21 that either: (i) Has been established in federal emergency management  
22 agency flood insurance rate maps or floodway maps; or (ii) consists of  
23 those portions of a river valley lying streamward from the outer  
24 limits of a watercourse upon which flood waters are carried during  
25 periods of flooding that occur with reasonable regularity, although  
26 not necessarily annually, said floodway being identified, under normal  
27 condition, by changes in surface soil conditions or changes in types  
28 or quality of vegetative ground cover condition, topography, or other  
29 indicators of flooding that occurs with reasonable regularity,  
30 although not necessarily annually. Regardless of the method used to  
31 identify the floodway, the floodway shall not include those lands that  
32 can reasonably be expected to be protected from flood waters by flood  
33 control devices maintained by or maintained under license from the  
34

1 federal government, the state, or a political subdivision of the  
2 state;

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

17 (3) Procedural terms:

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

23 (b) "Master program" shall mean the comprehensive use plan for a  
24 described area, and the use regulations together with maps, diagrams,  
25 charts, or other descriptive material and text, a statement of desired  
26 goals, and standards developed in accordance with the policies  
27 enunciated in RCW 90.58.020. "Comprehensive master program update"  
28 means a master program that fully achieves the procedural and  
29 substantive requirements of the department guidelines effective  
30 January 17, 2004, as now or hereafter amended;

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

33 (d) "Development" means a use consisting of the construction or  
34 exterior alteration of structures; dredging; drilling; dumping;



1 filling; removal of any sand, gravel, or minerals; bulkheading;  
2 driving of piling; placing of obstructions; or any project of a  
3 permanent or temporary nature which interferes with the normal public  
4 use of the surface of the waters overlying lands subject to this  
5 chapter at any state of water level;

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

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

25 (ii) Construction of the normal protective bulkhead common to  
26 single family residences;

27 (iii) Emergency construction necessary to protect property from  
28 damage by the elements;

29 (iv) Construction and practices normal or necessary for farming,  
30 irrigation, and ranching activities, including agricultural service  
31 roads and utilities on shorelands, and the construction and  
32 maintenance of irrigation structures including but not limited to head  
33 gates, pumping facilities, and irrigation channels. A feedlot of any  
34 size, all processing plants, other activities of a commercial nature,

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

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

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

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

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

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

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

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

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

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

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

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

24 (E) The activity is not subject to the permit requirements of RCW  
25 90.58.550;

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

32  
33 NEW SECTION. **Sec. 4.** A new section is added to chapter 90.58 RCW  
34 to read as follows:

1 RCW 36.70A.480 governs the relationship between shoreline master  
2 programs and development regulations to protect critical areas that  
3 are adopted under chapter 36.70A RCW.

4  
5 NEW SECTION. **Sec. 5.** This act is remedial and curative in nature  
6 and applies retroactively to July 27, 2003.

7  
8 NEW SECTION. **Sec. 6.** This act is necessary for the immediate  
9 preservation of the public peace, health, or safety, or support of the  
10 state government and its existing public institutions, and takes  
11 effect immediately."

12  
13 Correct the title.

14  
**EFFECT:** (1) Removes amendatory provisions in the underlying bill  
pertaining to the protection of wetlands and fish and wildlife  
habitat conservation areas in shorelines of the state. (2)  
Specifies that, with some exceptions, development regulations  
adopted under the Growth Management Act (GMA) to protect critical  
areas within shorelines of the state apply within these areas  
until the Department of Ecology (DOE) takes one of several  
delineated approval actions. (3) Includes provisions for the  
modification and redevelopment legally established or vested  
structures within shorelines of the state. (4) Specifies that  
upon DOE approval of a shoreline master program (SMP) or critical  
area segment of an SMP, critical areas within shorelines of the  
state are protected under the Shoreline Management Act (SMA) and,  
with limited exceptions, are not subject to the procedural and  
substantive requirements of the GMA. (5) Specifies that SMPs must  
provide a level of protection to critical areas located within  
shorelines of the state that assures no net loss of shoreline  
ecological functions necessary to sustain shoreline natural  
resources as defined by guidelines of the DOE adopted pursuant to  
specific provisions of the SMA, rather than guidelines effective  
on or after January 17, 2004. (6) Removes amendatory provisions  
for SMPs in the underlying bill pertaining to the protection of  
wetlands and fish and wildlife habitat conservation areas. (7)  
Defines "comprehensive master program update" in the SMA. (8)  
Establishes that a specific provision of the GMA that is modified  
in the striking amendment governs the relationship between SMPs  
and development regulations to protect critical areas that are  
adopted under the GMA. (9) Adds a retroactive effective date of

July 27, 2003. (10) Adds an emergency clause. (11) Modifies intent language.

--- END ---