
HOUSE BILL 2924

State of Washington

61st Legislature

2010 Regular Session

By Representative Angel

Read first time 01/18/10. Referred to Committee on Local Government & Housing.

1 AN ACT Relating to regulating shorelines of the state solely
2 through the shoreline management act; amending RCW 36.70A.030,
3 36.70A.280, 36.70A.290, 36.70A.300, 36.70A.320, 90.58.030, 90.58.080,
4 90.58.090, 90.58.100, 90.58.110, 90.58.120, 90.58.140, 90.58.180, and
5 90.58.190; adding a new section to chapter 36.70A RCW; creating a new
6 section; and repealing RCW 36.70A.480 and 36.70A.481.

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

8 NEW SECTION. **Sec. 1.** The legislature finds that the blending of
9 the growth management act and the shoreline management act has lead to
10 significant confusion and litigation. The litigation and complexity of
11 the requirements of the acts cost governments millions of dollars
12 annually. It is the intent of the legislature to separate overlapping
13 obligations of the acts to ensure that the shoreline management act
14 governs activities on the shorelines of the state in accordance with
15 legislative directives executed by local governments.

16 The legislature further finds there is a need to simplify the
17 approval process for shoreline master programs adopted by local
18 authorities, and there is a need to reduce the size of government

1 during this economically stressed time. The legislature intends to
2 streamline the approval process and reduce costly obligations borne by
3 the department of ecology.

4 **Sec. 2.** RCW 36.70A.030 and 2009 c 565 s 22 are each amended to
5 read as follows:

6 Unless the context clearly requires otherwise, the definitions in
7 this section apply throughout this chapter.

8 (1) "Adopt a comprehensive land use plan" means to enact a new
9 comprehensive land use plan or to update an existing comprehensive land
10 use plan.

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

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

19 (4) "Comprehensive land use plan," "comprehensive plan," or "plan"
20 means a generalized coordinated land use policy statement of the
21 governing body of a county or city that is adopted pursuant to this
22 chapter.

23 (5) "Critical areas" include the following areas and ecosystems:
24 (a) Wetlands; (b) areas with a critical recharging effect on aquifers
25 used for potable water; (c) fish and wildlife habitat conservation
26 areas; (d) frequently flooded areas; and (e) geologically hazardous
27 areas.

28 (6) "Department" means the department of commerce.

29 (7) "Development regulations" or "regulation" means the controls
30 placed on development or land use activities by a county or city,
31 including, but not limited to, zoning ordinances, critical areas
32 ordinances, (~~shoreline master programs,~~) official controls, planned
33 unit development ordinances, subdivision ordinances, and binding site
34 plan ordinances together with any amendments thereto. A development
35 regulation does not include a decision to approve a project permit
36 application, as defined in RCW 36.70B.020, even though the decision may

1 be expressed in a resolution or ordinance of the legislative body of
2 the county or city.

3 (8) "Forest land" means land primarily devoted to growing trees for
4 long-term commercial timber production on land that can be economically
5 and practically managed for such production, including Christmas trees
6 subject to the excise tax imposed under RCW 84.33.100 through
7 84.33.140, and that has long-term commercial significance. In
8 determining whether forest land is primarily devoted to growing trees
9 for long-term commercial timber production on land that can be
10 economically and practically managed for such production, the following
11 factors shall be considered: (a) The proximity of the land to urban,
12 suburban, and rural settlements; (b) surrounding parcel size and the
13 compatibility and intensity of adjacent and nearby land uses; (c) long-
14 term local economic conditions that affect the ability to manage for
15 timber production; and (d) the availability of public facilities and
16 services conducive to conversion of forest land to other uses.

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

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

26 (11) "Minerals" include gravel, sand, and valuable metallic
27 substances.

28 (12) "Public facilities" include streets, roads, highways,
29 sidewalks, street and road lighting systems, traffic signals, domestic
30 water systems, storm and sanitary sewer systems, parks and recreational
31 facilities, and schools.

32 (13) "Public services" include fire protection and suppression, law
33 enforcement, public health, education, recreation, environmental
34 protection, and other governmental services.

35 (14) "Recreational land" means land so designated under RCW
36 36.70A.1701 and that, immediately prior to this designation, was
37 designated as agricultural land of long-term commercial significance

1 under RCW 36.70A.170. Recreational land must have playing fields and
2 supporting facilities existing before July 1, 2004, for sports played
3 on grass playing fields.

4 (15) "Rural character" refers to the patterns of land use and
5 development established by a county in the rural element of its
6 comprehensive plan:

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

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

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

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

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

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

19 (g) That are consistent with the protection of natural surface
20 water flows and groundwater and surface water recharge and discharge
21 areas.

22 (16) "Rural development" refers to development outside the urban
23 growth area and outside agricultural, forest, and mineral resource
24 lands designated pursuant to RCW 36.70A.170. Rural development can
25 consist of a variety of uses and residential densities, including
26 clustered residential development, at levels that are consistent with
27 the preservation of rural character and the requirements of the rural
28 element. Rural development does not refer to agriculture or forestry
29 activities that may be conducted in rural areas.

30 (17) "Rural governmental services" or "rural services" include
31 those public services and public facilities historically and typically
32 delivered at an intensity usually found in rural areas, and may include
33 domestic water systems, fire and police protection services,
34 transportation and public transit services, and other public utilities
35 associated with rural development and normally not associated with
36 urban areas. Rural services do not include storm or sanitary sewers,
37 except as otherwise authorized by RCW 36.70A.110(4).

1 (18) "Urban governmental services" or "urban services" include
2 those public services and public facilities at an intensity
3 historically and typically provided in cities, specifically including
4 storm and sanitary sewer systems, domestic water systems, street
5 cleaning services, fire and police protection services, public transit
6 services, and other public utilities associated with urban areas and
7 normally not associated with rural areas.

8 (19) "Urban growth" refers to growth that makes intensive use of
9 land for the location of buildings, structures, and impermeable
10 surfaces to such a degree as to be incompatible with the primary use of
11 land for the production of food, other agricultural products, or fiber,
12 or the extraction of mineral resources, rural uses, rural development,
13 and natural resource lands designated pursuant to RCW 36.70A.170. A
14 pattern of more intensive rural development, as provided in RCW
15 36.70A.070(5)(d), is not urban growth. When allowed to spread over
16 wide areas, urban growth typically requires urban governmental
17 services. "Characterized by urban growth" refers to land having urban
18 growth located on it, or to land located in relationship to an area
19 with urban growth on it as to be appropriate for urban growth.

20 (20) "Urban growth areas" means those areas designated by a county
21 pursuant to RCW 36.70A.110.

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

36 **Sec. 3.** RCW 36.70A.280 and 2008 c 289 s 5 are each amended to read
37 as follows:

1 (1) A growth management hearings board shall hear and determine
2 only those petitions alleging either:

3 (a) That, except as provided otherwise by this subsection, a state
4 agency, county, or city planning under this chapter is not in
5 compliance with the requirements of this chapter(~~(, chapter 90.58 RCW~~
6 ~~as it relates to the adoption of shoreline master programs or~~
7 ~~amendments thereto,)) or chapter 43.21C RCW as it relates to plans,
8 development regulations, or amendments, adopted under RCW 36.70A.040
9 (~~or chapter 90.58 RCW~~). Nothing in this subsection authorizes a
10 board to hear petitions alleging noncompliance with RCW 36.70A.5801; or~~

11 (b) That the twenty-year growth management planning population
12 projections adopted by the office of financial management pursuant to
13 RCW 43.62.035 should be adjusted.

14 (2) A petition may be filed only by: (a) The state, or a county or
15 city that plans under this chapter; (b) a person who has participated
16 orally or in writing before the county or city regarding the matter on
17 which a review is being requested; (c) a person who is certified by the
18 governor within sixty days of filing the request with the board; or (d)
19 a person qualified pursuant to RCW 34.05.530.

20 (3) For purposes of this section "person" means any individual,
21 partnership, corporation, association, state agency, governmental
22 subdivision or unit thereof, or public or private organization or
23 entity of any character.

24 (4) To establish participation standing under subsection (2)(b) of
25 this section, a person must show that his or her participation before
26 the county or city was reasonably related to the person's issue as
27 presented to the board.

28 (5) When considering a possible adjustment to a growth management
29 planning population projection prepared by the office of financial
30 management, a board shall consider the implications of any such
31 adjustment to the population forecast for the entire state.

32 The rationale for any adjustment that is adopted by a board must be
33 documented and filed with the office of financial management within ten
34 working days after adoption.

35 If adjusted by a board, a county growth management planning
36 population projection shall only be used for the planning purposes set
37 forth in this chapter and shall be known as a "board adjusted
38 population projection". None of these changes shall affect the

1 official state and county population forecasts prepared by the office
2 of financial management, which shall continue to be used for state
3 budget and planning purposes.

4 **Sec. 4.** RCW 36.70A.290 and 1997 c 429 s 12 are each amended to
5 read as follows:

6 (1) All requests for review to a growth management hearings board
7 shall be initiated by filing a petition that includes a detailed
8 statement of issues presented for resolution by the board. The board
9 shall render written decisions articulating the basis for its holdings.
10 The board shall not issue advisory opinions on issues not presented to
11 the board in the statement of issues, as modified by any prehearing
12 order.

13 (2) All petitions relating to whether or not an adopted
14 comprehensive plan, development regulation, or permanent amendment
15 thereto, is in compliance with the goals and requirements of this
16 chapter or chapter ~~((90.58-01))~~ 43.21C RCW must be filed within sixty
17 days after publication by the legislative bodies of the county or city.

18 ~~((Except as provided in (c) of this subsection,))~~ The date of
19 publication for a city shall be the date the city publishes the
20 ordinance, or summary of the ordinance, adopting the comprehensive plan
21 or development regulations, or amendment thereto, as is required to be
22 published.

23 (b) Promptly after adoption, a county shall publish a notice that
24 it has adopted the comprehensive plan or development regulations, or
25 amendment thereto.

26 ~~((Except as provided in (c) of this subsection,))~~ For purposes of
27 this section the date of publication for a county shall be the date the
28 county publishes the notice that it has adopted the comprehensive plan
29 or development regulations, or amendment thereto.

30 ~~((c) For local governments planning under RCW 36.70A.040, promptly
31 after approval or disapproval of a local government's shoreline master
32 program or amendment thereto by the department of ecology as provided
33 in RCW 90.58.090, the local government shall publish a notice that the
34 shoreline master program or amendment thereto has been approved or
35 disapproved by the department of ecology. For purposes of this
36 section, the date of publication for the adoption or amendment of a~~

1 ~~shoreline master program is the date the local government publishes~~
2 ~~notice that the shoreline master program or amendment thereto has been~~
3 ~~approved or disapproved by the department of ecology.))~~

4 (3) Unless the board dismisses the petition as frivolous or finds
5 that the person filing the petition lacks standing, or the parties have
6 filed an agreement to have the case heard in superior court as provided
7 in RCW 36.70A.295, the board shall, within ten days of receipt of the
8 petition, set a time for hearing the matter.

9 (4) The board shall base its decision on the record developed by
10 the city, county, or the state and supplemented with additional
11 evidence if the board determines that such additional evidence would be
12 necessary or of substantial assistance to the board in reaching its
13 decision.

14 (5) The board, shall consolidate, when appropriate, all petitions
15 involving the review of the same comprehensive plan or the same
16 development regulation or regulations.

17 **Sec. 5.** RCW 36.70A.300 and 1997 c 429 s 14 are each amended to
18 read as follows:

19 (1) The board shall issue a final order that shall be based
20 exclusively on whether or not a state agency, county, or city is in
21 compliance with the requirements of this chapter(~~(, chapter 90.58 RCW~~
22 ~~as it relates to adoption or amendment of shoreline master programs,)~~)
23 or chapter 43.21C RCW as it relates to adoption of plans, development
24 regulations, and amendments thereto, under RCW 36.70A.040 (~~(or chapter~~
25 ~~90.58 RCW)~~).

26 (2)(a) Except as provided in (b) of this subsection, the final
27 order shall be issued within one hundred eighty days of receipt of the
28 petition for review, or, if multiple petitions are filed, within one
29 hundred eighty days of receipt of the last petition that is
30 consolidated.

31 (b) The board may extend the period of time for issuing a decision
32 to enable the parties to settle the dispute if additional time is
33 necessary to achieve a settlement, and (i) an extension is requested by
34 all parties, or (ii) an extension is requested by the petitioner and
35 respondent and the board determines that a negotiated settlement
36 between the remaining parties could resolve significant issues in
37 dispute. The request must be filed with the board not later than seven

1 days before the date scheduled for the hearing on the merits of the
2 petition. The board may authorize one or more extensions for up to
3 ninety days each, subject to the requirements of this section.

4 (3) In the final order, the board shall either:

5 (a) Find that the state agency, county, or city is in compliance
6 with the requirements of this chapter(~~(, chapter 90.58 RCW as it~~
7 ~~relates to the adoption or amendment of shoreline master programs,~~) or
8 chapter 43.21C RCW as it relates to adoption of plans, development
9 regulations, and amendments thereto, under RCW 36.70A.040 (~~or chapter~~
10 ~~90.58 RCW~~)); or

11 (b) Find that the state agency, county, or city is not in
12 compliance with the requirements of this chapter(~~(, chapter 90.58 RCW~~
13 ~~as it relates to the adoption or amendment of shoreline master~~
14 ~~programs,~~) or chapter 43.21C RCW as it relates to adoption of plans,
15 development regulations, and amendments thereto, under RCW 36.70A.040
16 (~~or chapter 90.58 RCW~~), in which case the board shall remand the
17 matter to the affected state agency, county, or city. The board shall
18 specify a reasonable time not in excess of one hundred eighty days, or
19 such longer period as determined by the board in cases of unusual scope
20 or complexity, within which the state agency, county, or city shall
21 comply with the requirements of this chapter. The board may require
22 periodic reports to the board on the progress the jurisdiction is
23 making towards compliance.

24 (4) Unless the board makes a determination of invalidity as
25 provided in RCW 36.70A.302, a finding of noncompliance and an order of
26 remand shall not affect the validity of comprehensive plans and
27 development regulations during the period of remand.

28 (5) Any party aggrieved by a final decision of the hearings board
29 may appeal the decision to superior court as provided in RCW 34.05.514
30 or 36.01.050 within thirty days of the final order of the board.

31 **Sec. 6.** RCW 36.70A.320 and 1997 c 429 s 20 are each amended to
32 read as follows:

33 (1) (~~Except as provided in subsection (5) of this section,~~)
34 Comprehensive plans and development regulations, and amendments
35 thereto, adopted under this chapter are presumed valid upon adoption.

36 (2) Except as otherwise provided in subsection (4) of this section,

1 the burden is on the petitioner to demonstrate that any action taken by
2 a state agency, county, or city under this chapter is not in compliance
3 with the requirements of this chapter.

4 (3) In any petition under this chapter, the board, after full
5 consideration of the petition, shall determine whether there is
6 compliance with the requirements of this chapter. In making its
7 determination, the board shall consider the criteria adopted by the
8 department under RCW 36.70A.190(4). The board shall find compliance
9 unless it determines that the action by the state agency, county, or
10 city is clearly erroneous in view of the entire record before the board
11 and in light of the goals and requirements of this chapter.

12 (4) A county or city subject to a determination of invalidity made
13 under RCW 36.70A.300 or 36.70A.302 has the burden of demonstrating that
14 the ordinance or resolution it has enacted in response to the
15 determination of invalidity will no longer substantially interfere with
16 the fulfillment of the goals of this chapter under the standard in RCW
17 36.70A.302(1).

18 ~~((5) The shoreline element of a comprehensive plan and the
19 applicable development regulations adopted by a county or city shall
20 take effect as provided in chapter 90.58 RCW.))~~

21 **Sec. 7.** RCW 90.58.030 and 2007 c 328 s 1 are each amended to read
22 as follows:

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

25 (1) Administration:

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

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

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

31 (d) "Person" means an individual, partnership, corporation,
32 association, organization, cooperative, public or municipal
33 corporation, or agency of the state or local governmental unit however
34 designated;

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

37 (2) Geographical:

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

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

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

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

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

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

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

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

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

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

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

37 and

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

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

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

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

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

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

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

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

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

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

37 (g) "Floodway" means the area, as identified in a master program,
38 that either: (i) Has been established in federal emergency management

1 agency flood insurance rate maps or floodway maps; or (ii) consists of
2 those portions of a river valley lying streamward from the outer limits
3 of a watercourse upon which flood waters are carried during periods of
4 flooding that occur 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, topography, or other
8 indicators of flooding that occurs with reasonable regularity, although
9 not necessarily annually. Regardless of the method used to identify
10 the floodway, the floodway shall not include those lands that can
11 reasonably be expected to be protected from flood waters by flood
12 control devices maintained by or maintained under license from the
13 federal government, the state, or a political subdivision of the state;

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

27 (3) Procedural terms:

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

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

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

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

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

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

28 (ii) Construction of the normal protective bulkhead common to
29 single family residences;

30 (iii) Emergency construction necessary to protect property from
31 damage by the elements;

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

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

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

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

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

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

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

37 (x) Operation and maintenance of any system of dikes, ditches,

1 drains, or other facilities existing on September 8, 1975, which were
2 created, developed, or utilized primarily as a part of an agricultural
3 drainage or diking system;

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

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

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

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

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

20 (E) The activity is not subject to the permit requirements of RCW
21 90.58.550;

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

28 **Sec. 8.** RCW 90.58.080 and 2007 c 170 s 1 are each amended to read
29 as follows:

30 (1) Local governments shall develop or amend a master program for
31 regulation of uses of the shorelines of the state consistent with the
32 required elements of the guidelines adopted by the department in
33 accordance with the schedule established by this section.

34 (2)(a) Subject to the provisions of subsections (5) and (6) of this
35 section, each local government subject to this chapter shall develop or
36 amend its master program for the regulation of uses of shorelines
37 within its jurisdiction according to the following schedule:

1 (i) On or before December 1, 2005, for the city of Port Townsend,
2 the city of Bellingham, the city of Everett, Snohomish county, and
3 Whatcom county;

4 (ii) On or before December 1, 2009, for King county and the cities
5 within King county greater in population than ten thousand;

6 (iii) Except as provided by (a)(i) and (ii) of this subsection, on
7 or before December 1, 2011, for Clallam, Clark, Jefferson, King,
8 Kitsap, Pierce, Snohomish, Thurston, and Whatcom counties and the
9 cities within those counties;

10 (iv) On or before December 1, 2012, for Cowlitz, Island, Lewis,
11 Mason, San Juan, Skagit, and Skamania counties and the cities within
12 those counties;

13 (v) On or before December 1, 2013, for Benton, Chelan, Douglas,
14 Grant, Kittitas, Spokane, and Yakima counties and the cities within
15 those counties; and

16 (vi) On or before December 1, 2014, for Adams, Asotin, Columbia,
17 Ferry, Franklin, Garfield, Grays Harbor, Klickitat, Lincoln, Okanogan,
18 Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman
19 counties and the cities within those counties.

20 (b) Nothing in this subsection (2) shall preclude a local
21 government from developing or amending its master program prior to the
22 dates established by this subsection (2).

23 (3)(a) Following approval (~~by the department~~) of a new or amended
24 master program, local governments required to develop or amend master
25 programs on or before December 1, 2009, as provided by subsection
26 (2)(a)(i) and (ii) of this section, shall be deemed to have complied
27 with the schedule established by subsection (2)(a)(iii) of this section
28 and shall not be required to complete master program amendments until
29 seven years after the applicable dates established by subsection
30 (2)(a)(iii) of this section. Any jurisdiction listed in subsection
31 (2)(a)(i) of this section that has a new or amended master program
32 approved by the department on or after March 1, 2002, but before July
33 27, 2003, shall not be required to complete master program amendments
34 until seven years after the applicable date provided by subsection
35 (2)(a)(iii) of this section.

36 (b) Following approval by the department of a new or amended master
37 program, local governments choosing to develop or amend master programs
38 on or before December 1, 2009, shall be deemed to have complied with

1 the schedule established by subsection (2)(a)(iii) through (vi) of this
2 section and shall not be required to complete master program amendments
3 until seven years after the applicable dates established by subsection
4 (2)(a)(iii) through (vi) of this section.

5 (4) Local governments shall conduct a review of their master
6 programs at least once every seven years after the applicable dates
7 established by subsection (2)(a)(iii) through (vi) of this section.
8 Following the review required by this subsection (4), local governments
9 shall, if necessary, revise their master programs. The purpose of the
10 review is((÷

11 (a)) to assure that the master program complies with applicable
12 law and guidelines in effect at the time of the review((÷and

13 ~~(b) To assure consistency of the master program with the local
14 government's comprehensive plan and development regulations adopted
15 under chapter 36.70A RCW, if applicable, and other local
16 requirements)).~~

17 (5) Local governments are encouraged to begin the process of
18 developing or amending their master programs early and are eligible for
19 grants from the department as provided by RCW 90.58.250, subject to
20 available funding. Except for those local governments listed in
21 subsection (2)(a)(i) and (ii) of this section, the deadline for
22 completion of the new or amended master programs shall be two years
23 after the date the grant is approved by the department. Subsequent
24 master program review dates shall not be altered by the provisions of
25 this subsection.

26 (6)(a) Grants to local governments for developing and amending
27 master programs pursuant to the schedule established by this section
28 shall be provided at least two years before the adoption dates
29 specified in subsection (2) of this section. To the extent possible,
30 the department shall allocate grants within the amount appropriated for
31 such purposes to provide reasonable and adequate funding to local
32 governments that have indicated their intent to develop or amend master
33 programs during the biennium according to the schedule established by
34 subsection (2) of this section. Any local government that applies for
35 but does not receive funding to comply with the provisions of
36 subsection (2) of this section may delay the development or amendment
37 of its master program until the following biennium.

1 (b) Local governments with delayed compliance dates as provided in
2 (a) of this subsection shall be the first priority for funding in
3 subsequent biennia, and the development or amendment compliance
4 deadline for those local governments shall be two years after the date
5 of grant approval.

6 (c) Failure of the local government to apply in a timely manner for
7 a master program development or amendment grant in accordance with the
8 requirements of the department shall not be considered a delay
9 resulting from the provisions of (a) of this subsection.

10 (7) Notwithstanding the provisions of this section, all local
11 governments subject to the requirements of this chapter that have not
12 developed or amended master programs on or after March 1, 2002, shall,
13 no later than December 1, 2014, develop or amend their master programs
14 to comply with guidelines adopted by the department after January 1,
15 2003.

16 (8) Local governments may be provided an additional year beyond the
17 deadlines in this section to complete their master program or
18 amendment. The department shall grant the request if it determines
19 that the local government is likely to adopt or amend its master
20 program within the additional year.

21 **Sec. 9.** RCW 90.58.090 and 2003 c 321 s 3 are each amended to read
22 as follows:

23 (1) A master program(~~(, segment of a master program, or an~~
24 ~~amendment to a master program shall become effective when approved by~~
25 ~~the department)) or master program segment becomes effective upon final
26 adoption by the legislative authority of the applicable county or city.~~

27 (2)(a) Each county and city proposing adoption or amendment of a
28 master program or master program segment shall: (i) Notify the
29 department of its intent to adopt or amend the master program or master
30 program segment at least one hundred twenty days before final adoption;
31 and (ii) transmit a complete and accurate copy of its final proposal to
32 the department at least sixty days before final adoption.

33 (b) Each county and city that adopts or amends a master program or
34 master program segment shall transmit a complete and accurate copy of
35 its master program to the department within ten days of final adoption.

36 (3) State agencies, including the department, may provide

1 nonbinding comments to the county or city on the proposed master
2 program or master program segment before final adoption.

3 (4) Within the time period provided in RCW 90.58.080, each local
4 government shall have submitted a master program, either totally or by
5 segments, for all shorelines of the state within its jurisdiction to
6 the department for review (~~(and approval)~~).

7 ~~((+2))~~ (5) Upon receipt of a proposed master program or amendment,
8 the department shall:

9 (a) Provide notice to and opportunity for written comment by all
10 interested parties of record as a part of the local government review
11 process for the proposal and to all persons, groups, and agencies that
12 have requested in writing notice of proposed master programs or
13 amendments generally or for a specific area, subject matter, or issue.
14 The comment period shall be at least thirty days, unless the department
15 determines that the level of complexity or controversy involved
16 supports a shorter period;

17 (b) In the department's discretion, conduct a public hearing during
18 the thirty-day comment period in the jurisdiction proposing the master
19 program or amendment;

20 (c) Within ~~((fifteen))~~ ten days after the close of public comment,
21 request the local government to review the issues identified by the
22 public, interested parties, groups, and agencies and provide a written
23 response as to how the proposal addresses the identified issues(~~(+~~

24 ~~(d) Within thirty days after receipt of the local government~~
25 ~~response pursuant to (c) of this subsection, make written findings and~~
26 ~~conclusions regarding the consistency of the proposal with the policy~~
27 ~~of RCW 90.58.020 and the applicable guidelines,)). The county or city
28 has fifteen days to provide a response to the issues identified in
29 ~~((c) of this subsection, and either approve the proposal as submitted,~~
30 ~~recommend specific changes necessary to make the proposal approvable,~~
31 ~~or deny approval of the proposal in those instances where no alteration~~
32 ~~of the proposal appears likely to be consistent with the policy of RCW~~
33 ~~90.58.020 and the applicable guidelines. The written findings and~~
34 ~~conclusions shall be provided to the local government, all interested~~
35 ~~persons, parties, groups, and agencies of record on the proposal;~~~~

36 ~~(e) If the department recommends changes to the proposed master~~
37 ~~program or amendment, within thirty days after the department mails the~~

1 ~~written findings and conclusions to the local government, the local~~
2 ~~government may:~~

3 ~~(i) Agree to the proposed changes. The receipt by the department~~
4 ~~of the written notice of agreement constitutes final action by the~~
5 ~~department approving the amendment; or~~

6 ~~(ii) Submit an alternative proposal. If, in the opinion of the~~
7 ~~department, the alternative is consistent with the purpose and intent~~
8 ~~of the changes originally submitted by the department and with this~~
9 ~~chapter it shall approve the changes and provide written notice to all~~
10 ~~recipients of the written findings and conclusions. If the department~~
11 ~~determines the proposal is not consistent with the purpose and intent~~
12 ~~of the changes proposed by the department, the department may resubmit~~
13 ~~the proposal for public and agency review pursuant to this section or~~
14 ~~reject the proposal.~~

15 ~~(3) The department shall approve the segment of a master program~~
16 ~~relating to shorelines unless it determines that the submitted segments~~
17 ~~are not consistent with the policy of RCW 90.58.020 and the applicable~~
18 ~~guidelines.~~

19 ~~(4) The department shall approve the segment of a master program~~
20 ~~relating to critical areas as defined by RCW 36.70A.030(5) provided the~~
21 ~~master program segment is consistent with RCW 90.58.020 and applicable~~
22 ~~shoreline guidelines, and if the segment provides a level of protection~~
23 ~~of critical areas at least equal to that provided by the local~~
24 ~~government's critical areas ordinances adopted and thereafter amended~~
25 ~~pursuant to RCW 36.70A.060(2).~~

26 ~~(5) The department shall approve those segments of the master~~
27 ~~program relating to shorelines of statewide significance only after~~
28 ~~determining the program provides the optimum implementation of the~~
29 ~~policy of this chapter to satisfy the statewide interest. If the~~
30 ~~department does not approve a segment of a local government master~~
31 ~~program relating to a shoreline of statewide significance, the~~
32 ~~department may develop and by rule adopt an alternative to the local~~
33 ~~government's proposal)) this subsection (c).~~

34 (6) In the event a local government has not complied with the
35 requirements of RCW 90.58.070 it may thereafter upon written notice to
36 the department elect to adopt a master program for the shorelines
37 within its jurisdiction, in which event it shall comply with the

1 provisions established by this chapter for the adoption of a master
2 program for such shorelines.

3 Upon (~~approval~~) adoption of such master program by the
4 (~~department~~) county or city it shall supersede (~~such~~) the
5 previously adopted master program (~~as may have been adopted by the~~
6 ~~department~~) for such shorelines.

7 (7) (~~A master program or amendment to a master program takes~~
8 ~~effect when and in such form as approved or adopted by the~~
9 ~~department.~~) Shoreline master programs that were adopted by the
10 department prior to July 22, 1995, in accordance with the provisions of
11 this section then in effect, shall be deemed approved by the department
12 in accordance with the provisions of this section that became effective
13 on that date. The department shall maintain a record of each master
14 program, the action taken on any proposal for adoption or amendment of
15 the master program, and any appeal of the department's action. (~~The~~
16 ~~department's approved document of record constitutes the official~~
17 ~~master program.~~)

18 **Sec. 10.** RCW 90.58.100 and 2009 c 421 s 9 are each amended to read
19 as follows:

20 (1) The master programs provided for in this chapter(~~, when~~
21 ~~adopted or approved by the department~~) shall constitute use
22 regulations for the various shorelines of the state. In preparing the
23 master programs, and any amendments thereto, the department and local
24 governments shall to the extent feasible:

25 (a) Utilize a systematic interdisciplinary approach which will
26 insure the integrated use of the natural and social sciences and the
27 environmental design arts;

28 (b) Consult with and obtain the comments of any federal, state,
29 regional, or local agency having any special expertise with respect to
30 any environmental impact;

31 (c) Consider all plans, studies, surveys, inventories, and systems
32 of classification made or being made by federal, state, regional, or
33 local agencies, by private individuals, or by organizations dealing
34 with pertinent shorelines of the state;

35 (d) Conduct or support such further research, studies, surveys, and
36 interviews as are deemed necessary;

1 (e) Utilize all available information regarding hydrology,
2 geography, topography, ecology, economics, and other pertinent data;
3 and

4 (f) Employ, when feasible, all appropriate, modern scientific data
5 processing and computer techniques to store, index, analyze, and manage
6 the information gathered.

7 (2) The master programs shall include, when appropriate, the
8 following:

9 (a) An economic development element for the location and design of
10 industries, projects of statewide significance, transportation
11 facilities, port facilities, tourist facilities, commerce and other
12 developments that are particularly dependent on their location on or
13 use of the shorelines of the state;

14 (b) A public access element making provision for public access to
15 publicly owned areas;

16 (c) A recreational element for the preservation and enlargement of
17 recreational opportunities, including but not limited to parks,
18 tidelands, beaches, and recreational areas;

19 (d) A circulation element consisting of the general location and
20 extent of existing and proposed major thoroughfares, transportation
21 routes, terminals, and other public utilities and facilities, all
22 correlated with the shoreline use element;

23 (e) A use element which considers the proposed general distribution
24 and general location and extent of the use on shorelines and adjacent
25 land areas for housing, business, industry, transportation,
26 agriculture, natural resources, recreation, education, public buildings
27 and grounds, and other categories of public and private uses of the
28 land;

29 (f) A conservation element for the preservation of natural
30 resources, including but not limited to scenic vistas, aesthetics, and
31 vital estuarine areas for fisheries and wildlife protection;

32 (g) An historic, cultural, scientific, and educational element for
33 the protection and restoration of buildings, sites, and areas having
34 historic, cultural, scientific, or educational values;

35 (h) An element that gives consideration to the statewide interest
36 in the prevention and minimization of flood damages; and

37 (i) Any other element deemed appropriate or necessary to effectuate
38 the policy of this chapter.

1 (3) The master programs shall include such map or maps, descriptive
2 text, diagrams and charts, or other descriptive material as are
3 necessary to provide for ease of understanding.

4 (4) Master programs will reflect that state-owned shorelines of the
5 state are particularly adapted to providing wilderness beaches,
6 ecological study areas, and other recreational activities for the
7 public and will give appropriate special consideration to same.

8 (5) Each master program shall contain provisions to allow for the
9 varying of the application of use regulations of the program, including
10 provisions for permits for conditional uses and variances, to insure
11 that strict implementation of a program will not create unnecessary
12 hardships or thwart the policy enumerated in RCW 90.58.020. Any such
13 varying shall be allowed only if extraordinary circumstances are shown
14 and the public interest suffers no substantial detrimental effect. The
15 concept of this subsection shall be incorporated in the rules adopted
16 by the department relating to the establishment of a permit system as
17 provided in RCW 90.58.140(3).

18 (6) Each master program shall contain standards governing the
19 protection of single family residences and appurtenant structures
20 against damage or loss due to shoreline erosion. The standards shall
21 govern the issuance of substantial development permits for shoreline
22 protection, including structural methods such as construction of
23 bulkheads, and nonstructural methods of protection. The standards
24 shall provide for methods which achieve effective and timely protection
25 against loss or damage to single family residences and appurtenant
26 structures due to shoreline erosion. (~~The standards shall provide a
27 preference for permit issuance for measures to protect single family
28 residences occupied prior to January 1, 1992, where the proposed
29 measure is designed to minimize harm to the shoreline natural
30 environment.~~)

31 (7) Each master program should, to the maximum extent practicable,
32 seek to minimize the creation of nonconforming uses and areas.

33 **Sec. 11.** RCW 90.58.110 and 1971 ex.s. c 286 s 11 are each amended
34 to read as follows:

35 (1) Whenever it shall appear to the director that a master program
36 should be developed for a region of the shorelines of the state which
37 includes lands and waters located in two or more adjacent local

1 government jurisdictions, the director shall designate such region and
2 notify the appropriate units of local government thereof. It shall be
3 the duty of the notified units to develop cooperatively an inventory
4 and master program in accordance with and within the time provided in
5 RCW 90.58.080.

6 (2) (~~At the discretion of the department,~~) A local government
7 master program may be adopted in segments applicable to particular
8 areas so that immediate attention may be given to those areas of the
9 shorelines of the state in most need of a use regulation.

10 **Sec. 12.** RCW 90.58.120 and 1995 c 347 s 308 are each amended to
11 read as follows:

12 All rules, regulations, designations, and guidelines, issued by the
13 department(~~, and master programs and amendments adopted by the~~
14 ~~department pursuant to RCW 90.58.070(2) or 90.58.090(4))~~) shall be
15 adopted or approved in accordance with the provisions of RCW 34.05.310
16 through 34.05.395 insofar as such provisions are not inconsistent with
17 the provisions of this chapter. In addition:

18 (1) Prior to the adoption by (~~the department~~) a county or city of
19 a master program, or portion thereof pursuant to RCW (~~90.58.070(2)~~
20 ~~or~~) 90.58.090(~~(4)~~), or the adoption of a master program or portion
21 thereof pursuant to RCW 90.58.070(2), at least one public hearing shall
22 be held in each county affected by a program or portion thereof for the
23 purpose of obtaining the views and comments of the public. Notice of
24 each such hearing shall be published at least once in each of the three
25 weeks immediately preceding the hearing in one or more newspapers of
26 general circulation in the county in which the hearing is to be held.

27 (2) All guidelines, regulations, designations, or master programs
28 adopted or approved under this chapter shall be available for public
29 inspection at the office of the department or the appropriate county
30 and city. The terms "adopt" and "approve" for purposes of this
31 section, shall include modifications and rescission of guidelines.

32 **Sec. 13.** RCW 90.58.140 and 1995 c 347 s 309 are each amended to
33 read as follows:

34 (1) A development shall not be undertaken on the shorelines of the
35 state unless it is consistent with the policy of this chapter and,

1 after adoption or approval, as appropriate, the applicable guidelines,
2 rules, or master program.

3 (2) A substantial development shall not be undertaken on shorelines
4 of the state without first obtaining a permit from the government
5 entity having administrative jurisdiction under this chapter.

6 A permit shall be granted(~~(~~

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

13 ~~(b) After adoption or approval, as appropriate, by the department~~
14 ~~of an applicable master program, only when the development proposed is~~
15 ~~consistent with))~~ the applicable master program, guidelines and rules
16 of the department, and this chapter.

17 (3) The local government shall establish a program, consistent with
18 rules adopted by the department, for the administration and enforcement
19 of the permit system provided in this section. The administration of
20 the system so established shall be performed exclusively by the local
21 government.

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

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

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

34 (c) Any other manner deemed appropriate by local authorities to
35 accomplish the objectives of reasonable notice to adjacent landowners
36 and the public.

37 The notices shall include a statement that any person desiring to
38 submit written comments concerning an application, or desiring to

1 receive notification of the final decision concerning an application as
2 expeditiously as possible after the issuance of the decision, may
3 submit the comments or requests for decisions to the local government
4 within thirty days of the last date the notice is to be published
5 pursuant to this subsection. The local government shall forward, in a
6 timely manner following the issuance of a decision, a copy of the
7 decision to each person who submits a request for the decision.

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

11 (5) The system shall include provisions to assure that construction
12 pursuant to a permit will not begin or be authorized until twenty-one
13 days from the date the permit decision was filed as provided in
14 subsection (6) of this section; or until all review proceedings are
15 terminated if the proceedings were initiated within twenty-one days
16 from the date of filing as defined in subsection (6) of this section
17 except as follows:

18 (a) In the case of any permit issued to the state of Washington,
19 department of transportation, for the construction and modification of
20 SR 90 (I-90) on or adjacent to Lake Washington, the construction may
21 begin after thirty days from the date of filing, and the permits are
22 valid until December 31, 1995;

23 (b) Construction may be commenced no sooner than thirty days after
24 the date of the appeal of the board's decision is filed if a permit is
25 granted by the local government and (i) the granting of the permit is
26 appealed to the shorelines hearings board within twenty-one days of the
27 date of filing, (ii) the hearings board approves the granting of the
28 permit by the local government or approves a portion of the substantial
29 development for which the local government issued the permit, and (iii)
30 an appeal for judicial review of the hearings board decision is filed
31 pursuant to chapter 34.05 RCW. The appellant may request, within ten
32 days of the filing of the appeal with the court, a hearing before the
33 court to determine whether construction pursuant to the permit approved
34 by the hearings board or to a revised permit issued pursuant to the
35 order of the hearings board should not commence. If, at the conclusion
36 of the hearing, the court finds that construction pursuant to such a
37 permit would involve a significant, irreversible damaging of the
38 environment, the court shall prohibit the permittee from commencing the

1 construction pursuant to the approved or revised permit until all
2 review proceedings are final. Construction pursuant to a permit
3 revised at the direction of the hearings board may begin only on that
4 portion of the substantial development for which the local government
5 had originally issued the permit, and construction pursuant to such a
6 revised permit on other portions of the substantial development may not
7 begin until after all review proceedings are terminated. In such a
8 hearing before the court, the burden of proving whether the
9 construction may involve significant irreversible damage to the
10 environment and demonstrating whether such construction would or would
11 not be appropriate is on the appellant;

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

17 If a permittee begins construction pursuant to subsections (a),
18 (b), or (c) of this subsection, the construction is begun at the
19 permittee's own risk. If, as a result of judicial review, the courts
20 order the removal of any portion of the construction or the restoration
21 of any portion of the environment involved or require the alteration of
22 any portion of a substantial development constructed pursuant to a
23 permit, the permittee is barred from recovering damages or costs
24 involved in adhering to such requirements from the local government
25 that granted the permit, the hearings board, or any appellant or
26 intervener.

27 (6) Any decision on an application for a permit under the authority
28 of this section, whether it is an approval or a denial, shall,
29 concurrently with the transmittal of the ruling to the applicant, be
30 filed with the department and the attorney general. With regard to a
31 permit other than a permit governed by subsection (10) of this section,
32 "date of filing" as used herein means the date of actual receipt by the
33 department. With regard to a permit for a variance or a conditional
34 use, "date of filing" means the date a decision of the department
35 rendered on the permit pursuant to subsection (10) of this section is
36 transmitted by the department to the local government. The department
37 shall notify in writing the local government and the applicant of the
38 date of filing.

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

7 (8) Any permit may, after a hearing with adequate notice to the
8 permittee and the public, be rescinded by the issuing authority upon
9 the finding that a permittee has not complied with conditions of a
10 permit. If the department is of the opinion that noncompliance exists,
11 the department shall provide written notice to the local government and
12 the permittee. If the department is of the opinion that the
13 noncompliance continues to exist thirty days after the date of the
14 notice, and the local government has taken no action to rescind the
15 permit, the department may petition the hearings board for a rescission
16 of the permit upon written notice of the petition to the local
17 government and the permittee if the request by the department is made
18 to the hearings board within fifteen days of the termination of the
19 thirty-day notice to the local government.

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

23 (10) Any permit for a variance or a conditional use by local
24 government under ~~((approved))~~ adopted master programs must be
25 ~~((submitted))~~ transmitted to the department ~~((for its approval or~~
26 ~~disapproval))~~.

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

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

37 (ii) The local government shall issue its decision to grant or deny

1 the permit within twenty-one days of the last day of the comment period
2 specified in (i) of this subsection; and

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

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

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

11 (ii) Will serve an existing use in compliance with this chapter;
12 and

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

15 **Sec. 14.** RCW 90.58.180 and 2003 c 393 s 22 are each amended to
16 read as follows:

17 (1) Any person aggrieved by the granting, denying, or rescinding of
18 a permit on shorelines of the state pursuant to RCW 90.58.140 may,
19 except as otherwise provided in chapter 43.21L RCW, seek review from
20 the shorelines hearings board by filing a petition for review within
21 twenty-one days of the date of filing as defined in RCW 90.58.140(6).

22 Within seven days of the filing of any petition for review with the
23 board as provided in this section pertaining to a final decision of a
24 local government, the petitioner shall serve copies of the petition on
25 the department, the office of the attorney general, and the local
26 government. The department and the attorney general may intervene to
27 protect the public interest and insure that the provisions of this
28 chapter are complied with at any time within fifteen days from the date
29 of the receipt by the department or the attorney general of a copy of
30 the petition for review filed pursuant to this section. The shorelines
31 hearings board shall schedule review proceedings on the petition for
32 review without regard as to whether the period for the department or
33 the attorney general to intervene has or has not expired.

34 (2) The (~~department or the~~) attorney general may obtain review of
35 any final decision granting a permit, or granting or denying an
36 application for a permit issued by a local government by filing a

1 written petition with the shorelines hearings board and the appropriate
2 local government within twenty-one days from the date the final
3 decision was filed as provided in RCW 90.58.140(6).

4 (3) The review proceedings authorized in subsections (1) and (2) of
5 this section are subject to the provisions of chapter 34.05 RCW
6 pertaining to procedures in adjudicative proceedings. Judicial review
7 of such proceedings of the shorelines hearings board is governed by
8 chapter 34.05 RCW. The board shall issue its decision on the appeal
9 authorized under subsections (1) and (2) of this section within one
10 hundred eighty days after the date the petition is filed with the board
11 or a petition to intervene is filed by the department or the attorney
12 general, whichever is later. The time period may be extended by the
13 board for a period of thirty days upon a showing of good cause or may
14 be waived by the parties.

15 (4) Any person may appeal any rules, regulations, or guidelines
16 adopted or approved by the department, or the adoption or amendment of
17 a shoreline master program approved by a county or city, within thirty
18 days of the date of the adoption or approval. The board shall make a
19 final decision within sixty days following the hearing held thereon.

20 (5) The board shall find the rule, regulation, ~~((or))~~ guideline,
21 master program, or master program amendment to be valid and enter a
22 final decision to that effect unless it determines that the rule,
23 regulation, ~~((or))~~ guideline, master program, or master program
24 amendment:

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

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

28 (c) Is arbitrary and capricious; or

29 (d) Was developed without fully considering and evaluating all
30 material submitted to the department during public review and comment;
31 or

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

33 (6) If the board makes a determination under subsection (5)(a)
34 through (e) of this section, it shall enter a final decision declaring
35 the rule, regulation, ~~((or))~~ guideline, master program, or master
36 program amendment invalid, remanding the rule, regulation, ~~((or))~~
37 guideline, master program, or master program amendment to the
38 department or adopting county or city with a statement of the reasons

1 in support of the determination, and directing the department or
2 adopting county or city to adopt, after a thorough consultation with
3 ~~((the))~~ affected ~~((local government))~~ and any other interested
4 ~~((party))~~ parties, a new rule, regulation, ~~((or))~~ guideline, master
5 program, or master program amendment that is consistent with the
6 board's decision.

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

14 **Sec. 15.** RCW 90.58.190 and 2003 c 321 s 4 are each amended to read
15 as follows:

16 (1) ~~((The appeal of the department's decision to adopt a master~~
17 ~~program or amendment pursuant to RCW 90.58.070(2) or 90.58.090(5) is~~
18 ~~governed by RCW 34.05.510 through 34.05.598.~~

19 ~~(2)(a) The department's decision to approve, reject, or modify a~~
20 ~~proposed master program or amendment adopted by a local government~~
21 ~~planning under RCW 36.70A.040 shall be appealed to the growth~~
22 ~~management hearings board with jurisdiction over the local government.~~
23 ~~The appeal shall be initiated by filing a petition as provided in RCW~~
24 ~~36.70A.250 through 36.70A.320.~~

25 ~~(b) If the appeal to the growth management hearings board concerns~~
26 ~~shorelines, the growth management hearings board shall review the~~
27 ~~proposed master program or amendment solely for compliance with the~~
28 ~~requirements of this chapter, the policy of RCW 90.58.020 and the~~
29 ~~applicable guidelines, the internal consistency provisions of RCW~~
30 ~~36.70A.070, 36.70A.040(4), 35.63.125, and 35A.63.105, and chapter~~
31 ~~43.21C RCW as it relates to the adoption of master programs and~~
32 ~~amendments under chapter 90.58 RCW.~~

33 ~~(c) If the appeal to the growth management hearings board concerns~~
34 ~~a shoreline of statewide significance, the board shall uphold the~~
35 ~~decision by the department unless the board, by clear and convincing~~
36 ~~evidence, determines that the decision of the department is~~

1 ~~inconsistent with the policy of RCW 90.58.020 and the applicable~~
2 ~~guidelines.~~

3 ~~(d) The appellant has the burden of proof in all appeals to the~~
4 ~~growth management hearings board under this subsection.~~

5 ~~(e) Any party aggrieved by a final decision of a growth management~~
6 ~~hearings board under this subsection may appeal the decision to~~
7 ~~superior court as provided in RCW 36.70A.300.~~

8 ~~(3)(a) The department's decision to approve, reject, or modify a~~
9 ~~proposed master program or master program amendment by a local~~
10 ~~government not planning under RCW 36.70A.040 shall be appealed to the~~
11 ~~shorelines hearings board by filing a petition within thirty days of~~
12 ~~the date of the department's written notice to the local government of~~
13 ~~the department's decision to approve, reject, or modify a proposed~~
14 ~~master program or master program amendment as provided in RCW~~
15 ~~90.58.090(2).~~

16 ~~(b))~~ In an appeal relating to shorelines of the state, the
17 shorelines hearings board shall review the proposed master program or
18 master program amendment and, after full consideration of the
19 presentations of the local government (~~and the department~~), shall
20 determine the validity of the local government's master program or
21 amendment in light of the policy of RCW 90.58.020 and the applicable
22 guidelines.

23 ~~((c) In an appeal relating to shorelines of statewide~~
24 ~~significance, the shorelines hearings board shall uphold the decision~~
25 ~~by the department unless the board determines, by clear and convincing~~
26 ~~evidence that the decision of the department is inconsistent with the~~
27 ~~policy of RCW 90.58.020 and the applicable guidelines.~~

28 ~~(d))~~ (2) Review by the shorelines hearings board shall be
29 considered an adjudicative proceeding under chapter 34.05 RCW, the
30 Administrative Procedure Act. The aggrieved local government shall
31 have the burden of proof in all such reviews.

32 ~~((e))~~ (3) Whenever possible, the review by the shorelines
33 hearings board shall be heard within the county where the land subject
34 to the proposed master program or master program amendment is primarily
35 located. The department and any local government aggrieved by a final
36 decision of the hearings board may appeal the decision to superior
37 court as provided in chapter 34.05 RCW.

1 (4) A master program amendment shall become effective after ((the
2 ~~approval of the department or after~~) the decision of the shorelines
3 hearings board to uphold the master program or master program
4 amendment, provided that the board may remand the master program or
5 master program adjustment to the local government ((~~or the department~~))
6 for modification prior to the final adoption of the master program or
7 master program amendment.

8 (5) The appellant has the burden of proof in all appeals under this
9 section.

10 NEW SECTION. Sec. 16. A new section is added to chapter 36.70A
11 RCW to read as follows:

12 Shorelines of the state, including critical areas designated under
13 this chapter that are located on shorelines of the state, are governed
14 solely by chapter 90.58 RCW and applicable guidelines and are not
15 subject to this chapter.

16 Development regulations adopted under this chapter prior to the
17 effective date of this section that apply to critical areas in
18 shorelines of the state have no applicability in shorelines of the
19 state and may not be enforced within such areas.

20 NEW SECTION. Sec. 17. The following acts or parts of acts are
21 each repealed:

22 (1) RCW 36.70A.480 (Shorelines of the state) and 2003 c 321 s 5 &
23 1995 c 347 s 104; and

24 (2) RCW 36.70A.481 (Construction--Chapter 347, Laws of 1995) and
25 1995 c 382 s 13.

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