

EHB 2417 - S AMD 154
By Senator Morton

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

3 "Sec. 1. RCW 90.58.030 and 2010 c 107 s 3 are each reenacted and
4 amended to read as follows:

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

7 (1) Administration:

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

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

10 (c) "Hearings board" means the shorelines hearings board
11 established by this chapter;

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

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

19 (2) Geographical:

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

22 (b) "Floodway" means the area, as identified in a master program,
23 that either: (i) Has been established in federal emergency management
24 agency flood insurance rate maps or floodway maps; or (ii) consists of
25 those portions of a river valley lying streamward from the outer limits
26 of a watercourse upon which flood waters are carried during periods of
27 flooding that occur with reasonable regularity, although not
28 necessarily annually, said floodway being identified, under normal
29 condition, by changes in surface soil conditions or changes in types or
30 quality of vegetative ground cover condition, topography, or other

1 indicators of flooding that occurs with reasonable regularity, although
2 not necessarily annually. Regardless of the method used to identify
3 the floodway, the floodway shall not include those lands that can
4 reasonably be expected to be protected from flood waters by flood
5 control devices maintained by or maintained under license from the
6 federal government, the state, or a political subdivision of the state;

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

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

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

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

1 (e) "Shorelines" means all of the water areas of the state,
2 including reservoirs, and their associated shorelands, together with
3 the lands underlying them; except (i) shorelines of statewide
4 significance; (ii) shorelines on segments of streams upstream of a
5 point where the mean annual flow is twenty cubic feet per second or
6 less and the wetlands associated with such upstream segments; and (iii)
7 shorelines on lakes less than twenty acres in size and wetlands
8 associated with such small lakes;

9 (f) "Shorelines of statewide significance" means the following
10 shorelines of the state:

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

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

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

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

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

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

21 and

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

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

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

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

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

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

1 (vi) Those shorelands associated with (i), (ii), (iv), and (v) of
2 this subsection (2)(f);

3 (g) "Shorelines of the state" are the total of all "shorelines" and
4 "shorelines of statewide significance" within the state;

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

18 (3) Procedural terms:

19 (a) "Development" means a use consisting of the construction or
20 exterior alteration of structures; dredging; drilling; dumping;
21 filling; removal of any sand, gravel, or minerals; bulkheading; driving
22 of piling; placing of obstructions; or any project of a permanent or
23 temporary nature which interferes with the normal public use of the
24 surface of the waters overlying lands subject to this chapter at any
25 state of water level;

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

31 (c) "Master program" shall mean the comprehensive use plan for a
32 described area, and the use regulations together with maps, diagrams,
33 charts, or other descriptive material and text, a statement of desired
34 goals, and standards developed in accordance with the policies
35 enunciated in RCW 90.58.020. "Comprehensive master program update"
36 means a master program that fully achieves the procedural and
37 substantive requirements of the department guidelines effective January
38 17, 2004, as now or hereafter amended;

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

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

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

22 (ii) Construction of the normal protective bulkhead common to
23 single family residences;

24 (iii) Emergency construction necessary to protect property from
25 damage by the elements;

26 (iv) Construction and practices normal or necessary for farming,
27 irrigation, and ranching activities, including agricultural service
28 roads and utilities on shorelands, and the construction and maintenance
29 of irrigation structures including but not limited to head gates,
30 pumping facilities, and irrigation channels. A feedlot of any size,
31 all processing plants, other activities of a commercial nature,
32 alteration of the contour of the shorelands by leveling or filling
33 other than that which results from normal cultivation, shall not be
34 considered normal or necessary farming or ranching activities. A
35 feedlot shall be an enclosure or facility used or capable of being used
36 for feeding livestock hay, grain, silage, or other livestock feed, but
37 shall not include land for growing crops or vegetation for livestock

1 feeding and/or grazing, nor shall it include normal livestock wintering
2 operations;

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

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

12 (vii) Construction of a dock, including a community dock, designed
13 for pleasure craft only, for the private noncommercial use of the
14 owner, lessee, or contract purchaser of single and multiple family
15 residences. This exception applies if either: (A) In salt waters, the
16 fair market value of the dock does not exceed two thousand five hundred
17 dollars; or (B) in fresh waters, the fair market value of the dock does
18 not exceed ~~((ten))~~ twenty thousand dollars ~~((, but if subsequent~~
19 ~~construction having a fair market value exceeding two thousand five~~
20 ~~hundred dollars occurs within five years of completion of the prior~~
21 ~~construction)).~~ However, if subsequent construction occurs within five
22 years of completion of the prior construction, and the combined fair
23 market value of the subsequent and prior construction exceeds the
24 amount specified in (e)(vii)(A) or (B) of this subsection (3), the
25 subsequent construction shall be considered a substantial development
26 for the purpose of this chapter;

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

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

36 (x) Operation and maintenance of any system of dikes, ditches,
37 drains, or other facilities existing on September 8, 1975, which were

1 created, developed, or utilized primarily as a part of an agricultural
2 drainage or diking system;

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

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

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

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

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

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

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

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27 On page 1, line 3 of the title, after "act;" strike the remainder
28 of the title and insert "and reenacting and amending RCW 90.58.030."

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