

ESHB 2847 - S COMM AMD

By Committee on Energy, Environment & Telecommunications

ADOPTED 03/02/2016

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

3 "Sec. 1. RCW 90.58.030 and 2014 c 23 s 1 are each amended to
4 read as follows:

5 As used in this chapter, unless the context otherwise requires,
6 the 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
13 town which contains within its boundaries any lands or waters subject
14 to 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
18 however designated.

19 (2) Geographical:

20 (a) "Extreme low tide" means the lowest line on the land reached
21 by 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
25 of those portions of a river valley lying streamward from the outer
26 limits of a watercourse upon which flood waters are carried during
27 periods of flooding that occur with reasonable regularity, although
28 not necessarily annually, said floodway being identified, under
29 normal condition, by changes in surface soil conditions or changes in
30 types or quality of vegetative ground cover condition, topography, or
31 other indicators of flooding that occurs with reasonable regularity,

1 although not necessarily annually. Regardless of the method used to
2 identify the floodway, the floodway shall not include those lands
3 that can reasonably be expected to be protected from flood waters by
4 flood control devices maintained by or maintained under license from
5 the federal government, the state, or a political subdivision of the
6 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
10 common and usual, and so long continued in all ordinary years, as to
11 mark upon the soil a character distinct from that of the abutting
12 upland, in respect to vegetation as that condition exists on June 1,
13 1971, as it may naturally change thereafter, or as it may change
14 thereafter in accordance with permits issued by a local government or
15 the department: PROVIDED, That in any area where the ordinary high
16 water mark cannot be found, the ordinary high water mark adjoining
17 salt water shall be the line of mean higher high tide and the
18 ordinary high water mark adjoining fresh water shall be the line of
19 mean high water;

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

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

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

39 (e) "Shorelines" means all of the water areas of the state,
40 including reservoirs, and their associated shorelands, together with

1 the lands underlying them; except (i) shorelines of statewide
2 significance; (ii) shorelines on segments of streams upstream of a
3 point where the mean annual flow is twenty cubic feet per second or
4 less and the wetlands associated with such upstream segments; and
5 (iii) shorelines on lakes less than twenty acres in size and wetlands
6 associated with such small lakes;

7 (f) "Shorelines of statewide significance" means the following
8 shorelines of the state:

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

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

- 16 (A) Nisqually Delta—from DeWolf Bight to Tatsolo Point,
- 17 (B) Birch Bay—from Point Whitehorn to Birch Point,
- 18 (C) Hood Canal—from Tala Point to Foulweather Bluff,
- 19 (D) Skagit Bay and adjacent area—from Brown Point to Yokeko
20 Point, and
- 21 (E) Padilla Bay—from March Point to William Point;

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

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

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

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

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

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

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

17 (3) Procedural terms:

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

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

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

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

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

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

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

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

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

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

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

8 (vii) Construction of a dock, including a community dock,
9 designed for pleasure craft only, for the private noncommercial use
10 of the owner, lessee, or contract purchaser of single and multiple
11 family residences. This exception applies if either: (A) In salt
12 waters, the fair market value of the dock does not exceed two
13 thousand five hundred dollars; or (B) in fresh waters, the fair
14 market value of the dock does not exceed: (I) Twenty thousand dollars
15 for docks that are constructed to replace existing docks, are of
16 equal or lesser square footage than the existing dock being replaced,
17 and are located in a county, city, or town that has updated its
18 master program consistent with the master program guidelines in
19 chapter 173-26 WAC as adopted in 2003; or (II) ten thousand dollars
20 for all other docks constructed in fresh waters. However, if
21 subsequent construction occurs within five years of completion of the
22 prior construction, and the combined fair market value of the
23 subsequent and prior construction exceeds the amount specified in
24 either (e)(vii)(A) or (B) of this subsection (3), the subsequent
25 construction shall be considered a substantial development for the
26 purpose of this chapter. All dollar thresholds under (e)(vii)(B) of
27 this subsection (3) must be adjusted for inflation by the office of
28 financial management every five years, beginning July 1, 2018, based
29 upon changes in the consumer price index during that time period.
30 "Consumer price index" means, for any calendar year, that year's
31 annual average consumer price index, Seattle, Washington area, for
32 urban wage earners and clerical workers, all items, compiled by the
33 bureau of labor and statistics, United States department of labor.
34 The office of financial management must calculate the new dollar
35 thresholds, rounded to the nearest hundred dollar, and transmit them
36 to the office of the code reviser for publication in the Washington
37 State Register at least one month before the new dollar thresholds
38 are to take effect;

39 (viii) Operation, maintenance, or construction of canals,
40 waterways, drains, reservoirs, or other facilities that now exist or

1 are hereafter created or developed as a part of an irrigation system
2 for the primary purpose of making use of system waters, including
3 return flow and artificially stored groundwater for the irrigation of
4 lands;

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

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

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

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

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

20 (C) The activity does not involve the installation of a
21 structure, and upon completion of the activity the vegetation and
22 land configuration of the site are restored to conditions existing
23 before the activity;

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

28 (E) The activity is not subject to the permit requirements of RCW
29 90.58.550;

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

36 (xiii) The external or internal retrofitting of an existing
37 structure with the exclusive purpose of compliance with the Americans
38 with disabilities act of 1990 (42 U.S.C. Sec. 12101 et seq.) or to
39 otherwise provide physical access to the structure by individuals
40 with disabilities."

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1 On page 1, line 4 of the title, after "disabilities;" strike the
2 remainder of the title and insert "and amending RCW 90.58.030."

EFFECT: Exempts the retrofitting of existing "structures" for the exclusive purpose of complying with the Americans with disabilities act from the definition of substantial development, rather than the retrofitting of existing "buildings" for the same purpose.

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