
HOUSE BILL 2747

State of Washington

64th Legislature

2016 Regular Session

By Representatives Scott, Young, Manweller, McCaslin, Holy, Shea, and Haler

Read first time 01/20/16. Referred to Committee on Environment.

1 AN ACT Relating to wetlands; and amending RCW 36.70A.030 and
2 90.58.030.

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

4 **Sec. 1.** RCW 36.70A.030 and 2012 c 21 s 1 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
10 land 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,
14 hay, 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
20 "plan" means a generalized coordinated land use policy statement of

1 the governing body of a county or city that is adopted pursuant to
2 this chapter.

3 (5) "Critical areas" include the following areas and ecosystems:

4 (a) Wetlands; (b) areas with a critical recharging effect on aquifers
5 used for potable water; (c) fish and wildlife habitat conservation
6 areas; (d) frequently flooded areas; and (e) geologically hazardous
7 areas. "Fish and wildlife habitat conservation areas" does not
8 include such artificial features or constructs as irrigation delivery
9 systems, irrigation infrastructure, irrigation canals, or drainage
10 ditches that lie within the boundaries of and are maintained by a
11 port district or an irrigation district or company.

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

13 (7) "Development regulations" or "regulation" means the controls
14 placed on development or land use activities by a county or city,
15 including, but not limited to, zoning ordinances, critical areas
16 ordinances, shoreline master programs, official controls, planned
17 unit development ordinances, subdivision ordinances, and binding site
18 plan ordinances together with any amendments thereto. A development
19 regulation does not include a decision to approve a project permit
20 application, as defined in RCW 36.70B.020, even though the decision
21 may be expressed in a resolution or ordinance of the legislative body
22 of the county or city.

23 (8) "Forest land" means land primarily devoted to growing trees
24 for long-term commercial timber production on land that can be
25 economically and practically managed for such production, including
26 Christmas trees subject to the excise tax imposed under RCW 84.33.100
27 through 84.33.140, and that has long-term commercial significance. In
28 determining whether forest land is primarily devoted to growing trees
29 for long-term commercial timber production on land that can be
30 economically and practically managed for such production, the
31 following factors shall be considered: (a) The proximity of the land
32 to urban, suburban, and rural settlements; (b) surrounding parcel
33 size and the compatibility and intensity of adjacent and nearby land
34 uses; (c) long-term local economic conditions that affect the ability
35 to manage for timber production; and (d) the availability of public
36 facilities and services conducive to conversion of forest land to
37 other uses.

38 (9) "Geologically hazardous areas" means areas that because of
39 their susceptibility to erosion, sliding, earthquake, or other
40 geological events, are not suited to the siting of commercial,

1 residential, or industrial development consistent with public health
2 or safety concerns.

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

8 (11) "Minerals" include gravel, sand, and valuable metallic
9 substances.

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

14 (13) "Public services" include fire protection and suppression,
15 law enforcement, public health, education, recreation, environmental
16 protection, and other governmental services.

17 (14) "Recreational land" means land so designated under RCW
18 36.70A.1701 and that, immediately prior to this designation, was
19 designated as agricultural land of long-term commercial significance
20 under RCW 36.70A.170. Recreational land must have playing fields and
21 supporting facilities existing before July 1, 2004, for sports played
22 on grass playing fields.

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

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

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

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

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

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

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

38 (g) That are consistent with the protection of natural surface
39 water flows and groundwater and surface water recharge and discharge
40 areas.

1 (16) "Rural development" refers to development outside the urban
2 growth area and outside agricultural, forest, and mineral resource
3 lands designated pursuant to RCW 36.70A.170. Rural development can
4 consist of a variety of uses and residential densities, including
5 clustered residential development, at levels that are consistent with
6 the preservation of rural character and the requirements of the rural
7 element. Rural development does not refer to agriculture or forestry
8 activities that may be conducted in rural areas.

9 (17) "Rural governmental services" or "rural services" include
10 those public services and public facilities historically and
11 typically delivered at an intensity usually found in rural areas, and
12 may include domestic water systems, fire and police protection
13 services, transportation and public transit services, and other
14 public utilities associated with rural development and normally not
15 associated with urban areas. Rural services do not include storm or
16 sanitary sewers, except as otherwise authorized by RCW 36.70A.110(4).

17 (18) "Urban governmental services" or "urban services" include
18 those public services and public facilities at an intensity
19 historically and typically provided in cities, specifically including
20 storm and sanitary sewer systems, domestic water systems, street
21 cleaning services, fire and police protection services, public
22 transit services, and other public utilities associated with urban
23 areas and normally not associated with rural areas.

24 (19) "Urban growth" refers to growth that makes intensive use of
25 land for the location of buildings, structures, and impermeable
26 surfaces to such a degree as to be incompatible with the primary use
27 of land for the production of food, other agricultural products, or
28 fiber, or the extraction of mineral resources, rural uses, rural
29 development, and natural resource lands designated pursuant to RCW
30 36.70A.170. A pattern of more intensive rural development, as
31 provided in RCW 36.70A.070(5)(d), is not urban growth. When allowed
32 to spread over wide areas, urban growth typically requires urban
33 governmental services. "Characterized by urban growth" refers to land
34 having urban growth located on it, or to land located in relationship
35 to an area with urban growth on it as to be appropriate for urban
36 growth.

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

39 (21) "Wetland" or "wetlands" means areas that are inundated or
40 saturated by (~~surface water or~~) emergent groundwater at a frequency

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

14 **Sec. 2.** RCW 90.58.030 and 2014 c 23 s 1 are each amended to read
15 as follows:

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

18 (1) Administration:

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

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

21 (c) "Hearings board" means the shorelines hearings board
22 established by this chapter;

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

26 (e) "Person" means an individual, partnership, corporation,
27 association, organization, cooperative, public or municipal
28 corporation, or agency of the state or local governmental unit
29 however designated.

30 (2) Geographical:

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

33 (b) "Floodway" means the area, as identified in a master program,
34 that either: (i) Has been established in federal emergency management
35 agency flood insurance rate maps or floodway maps; or (ii) consists
36 of those portions of a river valley lying streamward from the outer
37 limits of a watercourse upon which flood waters are carried during
38 periods of flooding that occur with reasonable regularity, although
39 not necessarily annually, said floodway being identified, under

1 normal condition, by changes in surface soil conditions or changes in
2 types or quality of vegetative ground cover condition, topography, or
3 other indicators of flooding that occurs with reasonable regularity,
4 although not necessarily annually. Regardless of the method used to
5 identify the floodway, the floodway shall not include those lands
6 that can reasonably be expected to be protected from flood waters by
7 flood control devices maintained by or maintained under license from
8 the federal government, the state, or a political subdivision of the
9 state;

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

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

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

35 (ii) Any city or county may also include in its master program
36 land necessary for buffers for critical areas, as defined in chapter
37 36.70A RCW, that occur within shorelines of the state, provided that
38 forest practices regulated under chapter 76.09 RCW, except
39 conversions to nonforest land use, on lands subject to the provisions

1 of this subsection (2)(d)(ii) are not subject to additional
2 regulations under this chapter;

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

11 (f) "Shorelines of statewide significance" means the following
12 shorelines of the state:

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

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

20 (A) Nisqually Delta—from DeWolf Bight to Tatsolo Point,

21 (B) Birch Bay—from Point Whitehorn to Birch Point,

22 (C) Hood Canal—from Tala Point to Foulweather Bluff,

23 (D) Skagit Bay and adjacent area—from Brown Point to Yokeko
24 Point, and

25 (E) Padilla Bay—from March Point to William Point;

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

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

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

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

36 (B) Any east of the crest of the Cascade range downstream of a
37 point where the annual flow is measured at two hundred cubic feet per
38 second or more, or those portions of rivers east of the crest of the

1 Cascade range downstream from the first three hundred square miles of
2 drainage area, whichever is longer;

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

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

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

22 (3) Procedural terms:

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

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

35 (c) "Master program" shall mean the comprehensive use plan for a
36 described area, and the use regulations together with maps, diagrams,
37 charts, or other descriptive material and text, a statement of
38 desired goals, and standards developed in accordance with the
39 policies enunciated in RCW 90.58.020. "Comprehensive master program
40 update" means a master program that fully achieves the procedural and

1 substantive requirements of the department guidelines effective
2 January 17, 2004, as now or hereafter amended;

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

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

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

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

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

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

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

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

1 State Register at least one month before the new dollar thresholds
2 are to take effect;

3 (viii) Operation, maintenance, or construction of canals,
4 waterways, drains, reservoirs, or other facilities that now exist or
5 are hereafter created or developed as a part of an irrigation system
6 for the primary purpose of making use of system waters, including
7 return flow and artificially stored groundwater for the irrigation of
8 lands;

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

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

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

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

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

24 (C) The activity does not involve the installation of a
25 structure, and upon completion of the activity the vegetation and
26 land configuration of the site are restored to conditions existing
27 before the activity;

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

32 (E) The activity is not subject to the permit requirements of RCW
33 90.58.550;

34 (xii) The process of removing or controlling an aquatic noxious
35 weed, as defined in RCW 17.26.020, through the use of an herbicide or
36 other treatment methods applicable to weed control that are
37 recommended by a final environmental impact statement published by

1 the department of agriculture or the department jointly with other
2 state agencies under chapter 43.21C RCW.

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