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## Environment Committee

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### HB 1588

**Brief Description:** Ensuring that development regulations do not impede the protection of structures from wildfires.

**Sponsors:** Representatives Shea, Short, Kretz, McCaslin, Taylor, Griffey, Condotta and Buys.

#### Brief Summary of Bill

- Authorizes the removal of vegetation from critical areas designated under the Growth Management Act in order to address a wildfire-related safety risk to a structure, with certain limitations.
- Exempts the removal of vegetation to protect structures from wildfire from substantial development permitting requirements under the Shoreline Management Act (SMA).
- Requires SMA shoreline master programs of local governments to allow for the removal of vegetation to protect structures from wildfires, with certain limitations.

**Hearing Date:** 2/9/17

**Staff:** Jacob Lipson (786-7196).

#### **Background:**

##### Growth Management Act: Critical Areas.

The Growth Management Act (GMA) provides that all counties and cities are obligated to designate and adopt regulations using best available science to protect environmentally sensitive areas known as "critical areas". The Department of Commerce has adopted rules to help cities and counties assess what constitutes the best available science used as the basis for critical area regulations.

As defined by statute, critical areas include:

- wetlands;

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- aquifer recharge areas;
- fish and wildlife habitat conservation areas;
- frequently flooded areas; and
- geologically hazardous areas.

Wetlands are defined in the GMA based on an ability to support the prevalence of vegetation adapted for life in saturated soil conditions. Certain types of intentionally-created artificial wetlands, such as irrigation ditches, are excluded from the GMA's definition of wetlands. The Department of Ecology (ECY) has adopted guidelines based on best available science that is intended for use by local governments in their designation of wetlands under critical area ordinances.

#### Shoreline Management Act: Shoreline Master Programs and Substantial Development Permits.

The Shoreline Management Act of 1971 (SMA) governs uses of the shorelines of the state. With some exceptions, shorelines include all water areas of the state, the land underlying them, and their associated shorelands. The SMA provides for a cooperative regulatory approach between local governments and the state. At the local level, regulations related to the SMA are developed in mandatory city and county shoreline master programs (SMPs), which regulate land use activities in shoreline areas. At the state level, the ECY is charged with reviewing the locally adopted SMPs for compliance with statutory provisions and agency guidelines.

The SMPs must include specified elements, including measures to protect certain buildings of value and to minimize and prevent damages from floods. Each master program must also contain standards governing the protection of single-family residences and appurtenant structures from shoreline erosion.

Prior to undertaking any substantial development on shorelines of the state, the SMA requires a property owner or developer to first obtain a substantial development permit. A "substantial development" is any development with a total cost or fair market value exceeding \$6,416 (as adjusted for inflation by the Office of Financial Management in 2012) or any development that materially interferes with the normal public use of the water or shorelines of the state. Substantial development permits are reviewed by the local government and filed with the ECY.

Certain types of developments are not considered "substantial developments" under the SMA and are exempt from the requirement to obtain a substantial development permit. For example, the removal of aquatic noxious weeds and the normal maintenance or repair of existing structures are not considered substantial developments.

#### Wildfire Protection.

The Department of Natural Resources (DNR) is the agency of the state with the direct charge and responsibility over all matters pertaining to forest fire services in the state. The forest fire-related duties of the DNR include enforcing all forest fire-related laws, investigating the cause of forest fires, and accepting the empowerment to direct all fire suppression efforts. Rural fire districts and municipal fire districts are responsible wildland fire protection and suppression in areas for which they have been formed. Conservation districts also provide natural resource management

information and technical assistance to landowners, which may include wildfire protection efforts.

### Wildland Urban Interface Code.

The Wildland Urban Interface (WUI) Code is a model code developed and published by the International Code Council, Incorporated (ICC). The ICC is a nonprofit organization that develops and publishes model codes for building, construction, and design standards. Updates to the codes are developed and published on a three-year cycle.

The WUI Code establishes minimum regulations for land use and the built environment in designated WUI areas for the stated purpose of mitigating wildfire hazard. The WUI Code applies to the construction, alteration, movement, repair, maintenance, and use of any building, structure, or premises within the "WUI areas" of a jurisdiction. A "WUI area" is defined as the geographical areas where structures and other human development meets or intermingles with wildland or vegetative fuels.

In 2012, the State Building Code Council adopted the WUI code, with amendments, as an optional code that can be adopted and enforced by local governments. At least three counties in Washington - Clark, Kittitas, and Yakima - have adopted the WUI Code.

### **Summary of Bill:**

City or county regulations adopted to protect critical areas consistent with best available science must allow, in certain circumstances, for the removal of vegetation located in a critical area in order to defend structures from wildfires.

To protect structures, city and county critical area regulations must allow the removal of vegetation that:

- is not located in a wetland;
- presents a wildfire-related safety risk to the structure, as identified in guidance promoted by the DNR, fire department, conservation district, or local planning office; and
- is performed consistent with fire safety or wildfire preparedness practices recommended by the DNR, fire department, conservation district, or local planning office.

A person is not required to obtain a permit or provide advance notification prior to removing vegetation in a critical area. This process is not to be construed as adopting or providing new authority to adopt wildfire preparedness or prevention guidelines, including the Wildland Urban Interface (WUI) Code.

The removal of vegetation without a Shoreline Management Act (SMA) substantial development permit in order to protect a structure from wildfire is allowed under the same circumstances that authorize vegetation removal in critical areas: when the vegetation is not in a wetland and presents a wildfire risk to a structure, and its removal is performed consistent with recommended wildfire preparedness or fire safety practices. Likewise, master programs must allow for the removal of vegetation in order to protect a structure from wildfire under these same circumstances, and may not require a person to provide advance notification or obtain a permit to do so.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.