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HOUSE BILL 1588

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State of Washington                      65th Legislature                      2017 Regular Session

By Representatives Shea, Short, Kretz, McCaslin, Taylor, and Griffey

1            AN ACT Relating to ensuring that development regulations do not  
2            impede the protection of structures from wildfires; amending RCW  
3            90.58.030 and 90.58.100; and adding a new section to chapter 36.70A  
4            RCW.

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

6            NEW SECTION.    **Sec. 1.**    A new section is added to chapter 36.70A  
7            RCW to read as follows:

8            (1) For the purpose of defending structures from wildfire, city  
9            or county regulations to protect critical areas using best available  
10           science as required by RCW 36.70A.172 must also allow for the removal  
11           of vegetation located in a critical area, as long as:

12           (a) The vegetation is not located in an area designated as a  
13           wetland;

14           (b) The vegetation presents a wildfire-related safety risk to a  
15           structure, as identified in guidance promoted by the department of  
16           natural resources or the fire department, conservation district, or  
17           city or county planning office whose jurisdiction includes the  
18           property; and

19           (c) The removal of the vegetation is consistent with fire safety  
20           or wildfire preparedness practices recommended by the department of  
21           natural resources or the fire department, conservation district, or

1 city or county planning office whose jurisdiction includes the  
2 property.

3 (2) The removal of vegetation located in a critical area under  
4 this section must not require a person to obtain a permit or provide  
5 advance notification to the city or county.

6 (3) Nothing in this section may be construed as adopting or  
7 providing new authority for the adoption of wildfire preparedness or  
8 prevention guidelines, including but not limited to the Wildland  
9 Urban Interface Code published by the International Code Council,  
10 Inc.

11 **Sec. 2.** RCW 90.58.030 and 2016 c 193 s 1 are each amended to  
12 read as follows:

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

15 (1) Administration:

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

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

18 (c) "Hearings board" means the shorelines hearings board  
19 established by this chapter;

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

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

27 (2) Geographical:

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

30 (b) "Floodway" means the area, as identified in a master program,  
31 that either: (i) Has been established in federal emergency management  
32 agency flood insurance rate maps or floodway maps; or (ii) consists  
33 of those portions of a river valley lying streamward from the outer  
34 limits of a watercourse upon which flood waters are carried during  
35 periods of flooding that occur with reasonable regularity, although  
36 not necessarily annually, said floodway being identified, under  
37 normal condition, by changes in surface soil conditions or changes in  
38 types or quality of vegetative ground cover condition, topography, or  
39 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" means the comprehensive use plan for a  
31 described area, and the use regulations together with maps, diagrams,  
32 charts, or other descriptive material and text, a statement of  
33 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" means any development of which the  
2 total cost or fair market value exceeds five thousand dollars, or any  
3 development which materially interferes with the normal public use of  
4 the water or shorelines of the state. The dollar threshold  
5 established in this subsection (3)(e) must be adjusted for inflation  
6 by the office of financial management every five years, beginning  
7 July 1, 2007, based upon changes in the consumer price index during  
8 that time period. "Consumer price index" means, for any calendar  
9 year, that year's annual average consumer price index, Seattle,  
10 Washington area, for urban wage earners and clerical workers, all  
11 items, compiled by the bureau of labor and statistics, United States  
12 department of labor. The office of financial management must  
13 calculate the new dollar threshold and transmit it to the office of  
14 the code reviser for publication in the Washington State Register at  
15 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;

1        (xiv) The process of removing vegetation in order to protect  
2 structures from wildfire, consistent with the conditions enumerated  
3 in section 1(1) (a) through (c) of this act.

4        **Sec. 3.** RCW 90.58.100 and 2009 c 421 s 9 are each amended to  
5 read as follows:

6        (1) The master programs provided for in this chapter, when  
7 adopted or approved by the department shall constitute use  
8 regulations for the various shorelines of the state. In preparing the  
9 master programs, and any amendments thereto, the department and local  
10 governments shall to the extent feasible:

11        (a) Utilize a systematic interdisciplinary approach which will  
12 (~~insure~~) ensure the integrated use of the natural and social  
13 sciences and the environmental design arts;

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

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

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

23        (e) Utilize all available information regarding hydrology,  
24 geography, topography, ecology, economics, and other pertinent data;

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

28        (2) The master programs shall include, when appropriate, the  
29 following:

30        (a) An economic development element for the location and design  
31 of industries, projects of statewide significance, transportation  
32 facilities, port facilities, tourist facilities, commerce and other  
33 developments that are particularly dependent on their location on or  
34 use of the shorelines of the state;

35        (b) A public access element making provision for public access to  
36 publicly owned areas;

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

1 (d) A circulation element consisting of the general location and  
2 extent of existing and proposed major thoroughfares, transportation  
3 routes, terminals, and other public utilities and facilities, all  
4 correlated with the shoreline use element;

5 (e) A use element which considers the proposed general  
6 distribution and general location and extent of the use on shorelines  
7 and adjacent land areas for housing, business, industry,  
8 transportation, agriculture, natural resources, recreation,  
9 education, public buildings and grounds, and other categories of  
10 public and private uses of the land;

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

14 (g) An historic, cultural, scientific, and educational element  
15 for the protection and restoration of buildings, sites, and areas  
16 having historic, cultural, scientific, or educational values;

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

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

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

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

28 (5) Each master program shall contain provisions to allow for the  
29 varying of the application of use regulations of the program,  
30 including provisions for permits for conditional uses and variances,  
31 to insure that strict implementation of a program will not create  
32 unnecessary hardships or thwart the policy enumerated in RCW  
33 90.58.020. Any such varying shall be allowed only if extraordinary  
34 circumstances are shown and the public interest suffers no  
35 substantial detrimental effect. The concept of this subsection shall  
36 be incorporated in the rules adopted by the department relating to  
37 the establishment of a permit system as provided in RCW 90.58.140(3).

38 (6) Each master program shall contain standards governing the  
39 protection of single-family residences and appurtenant structures  
40 against damage or loss due to shoreline erosion. The standards shall

1 govern the issuance of substantial development permits for shoreline  
2 protection, including structural methods such as construction of  
3 bulkheads, and nonstructural methods of protection. The standards  
4 shall provide for methods which achieve effective and timely  
5 protection against loss or damage to single-family residences and  
6 appurtenant structures due to shoreline erosion. The standards shall  
7 provide a preference for permit issuance for measures to protect  
8 single-family residences occupied prior to January 1, 1992, where the  
9 proposed measure is designed to minimize harm to the shoreline  
10 natural environment.

11 (7) Each master program shall contain provisions to allow the  
12 removal of vegetation to protect structures from wildfire, consistent  
13 with the conditions enumerated in section 1(1) (a) through (c) of  
14 this act and without requiring the person removing the vegetation to  
15 obtain a permit or provide advance notification under this chapter.

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