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ENGROSSED SECOND SUBSTITUTE SENATE BILL 5292

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State of Washington

62nd Legislature

2012 Regular Session

By Senate Government Operations, Tribal Relations & Elections  
(originally sponsored by Senators Honeyford, Schoesler, Swecker,  
Holmquist Newbry, and Roach)

READ FIRST TIME 01/20/12.

1 AN ACT Relating to exempting certain structures that are  
2 constructed and maintained by irrigation districts and port districts  
3 from the definition of critical areas; and reenacting and amending RCW  
4 36.70A.030.

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

6 **Sec. 1.** RCW 36.70A.030 and 2009 c 565 s 22 are each reenacted and  
7 amended to read as follows:

8 Unless the context clearly requires otherwise, the definitions in  
9 this section apply throughout this chapter.

10 (1) "Adopt a comprehensive land use plan" means to enact a new  
11 comprehensive land use plan or to update an existing comprehensive land  
12 use plan.

13 (2) "Agricultural land" means land primarily devoted to the  
14 commercial production of horticultural, viticultural, floricultural,  
15 dairy, apiary, vegetable, or animal products or of berries, grain, hay,  
16 straw, turf, seed, Christmas trees not subject to the excise tax  
17 imposed by RCW 84.33.100 through 84.33.140, finfish in upland  
18 hatcheries, or livestock, and that has long-term commercial  
19 significance for agricultural production.

1 (3) "City" means any city or town, including a code city.

2 (4) "Comprehensive land use plan," "comprehensive plan," or "plan"  
3 means a generalized coordinated land use policy statement of the  
4 governing body of a county or city that is adopted pursuant to this  
5 chapter.

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

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

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

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

1 timber production; and (d) the availability of public facilities and  
2 services conducive to conversion of forest land to other uses.

3 (9) "Geologically hazardous areas" means areas that because of  
4 their susceptibility to erosion, sliding, earthquake, or other  
5 geological events, are not suited to the siting of commercial,  
6 residential, or industrial development consistent with public health or  
7 safety concerns.

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

12 (11) "Minerals" include gravel, sand, and valuable metallic  
13 substances.

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

18 (13) "Public services" include fire protection and suppression, law  
19 enforcement, public health, education, recreation, environmental  
20 protection, and other governmental services.

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

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

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

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

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

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

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

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

5 (g) That are consistent with the protection of natural surface  
6 water flows and groundwater and surface water recharge and discharge  
7 areas.

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

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

24 (18) "Urban governmental services" or "urban services" include  
25 those public services and public facilities at an intensity  
26 historically and typically provided in cities, specifically including  
27 storm and sanitary sewer systems, domestic water systems, street  
28 cleaning services, fire and police protection services, public transit  
29 services, and other public utilities associated with urban areas and  
30 normally not associated with rural areas.

31 (19) "Urban growth" refers to growth that makes intensive use of  
32 land for the location of buildings, structures, and impermeable  
33 surfaces to such a degree as to be incompatible with the primary use of  
34 land for the production of food, other agricultural products, or fiber,  
35 or the extraction of mineral resources, rural uses, rural development,  
36 and natural resource lands designated pursuant to RCW 36.70A.170. A  
37 pattern of more intensive rural development, as provided in RCW  
38 36.70A.070(5)(d), is not urban growth. When allowed to spread over

1 wide areas, urban growth typically requires urban governmental  
2 services. "Characterized by urban growth" refers to land having urban  
3 growth located on it, or to land located in relationship to an area  
4 with urban growth on it as to be appropriate for urban growth.

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

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

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