Merrill, Hannah

From: pearl hewett [redacted]
Sent: Saturday, March 09, 2013 9:18 AM
To: zSMP
Cc: Karl Spees; harry bell; Jo Anne Estes; notac@olypen.com; [redacted]; Keith Olson; Randy Dutton; connie beauvias; [redacted]; Sandy Rains; Delane Hewett; Vi; Windy Boulden; Misty Rains; Dawn Rains; mary pierce pfaff; Jay Petersen; Frank M Penwell; marv chastain; [redacted]; Lois Perry; Sue Forde; Miller, Sheila Roark; Steve Gray; Chapman, Mike; McEntire, Jim; [redacted]; Don; joni howard
Subject: Washington State rulings on property rights

This is my SMP comment
On Recent Washington State rulings on property rights
Pearl Rains Hewett Trustee
George C. Rains Sr. Estate
Member SMP Update Committee

With regard to what legal protection may be afforded to the 3300 private property owners negatively affected by the Clallam County SMP Update.

Pacific Legal Foundation

Recent Washington State rulings on property rights

Swinomish Indian Tribes and Washington Environmental Council vs. Skagit County

The tribes and the WEC argued that Growth Management Act's **Best Available Science** requires mandatory buffers and the owners of existing farms must plant 200 ft buffers on all their streams. This would, of course, have put a lot of farmers out of business. In a Sep 17, 2007 9 to 1 decision (Susan Owens a former tribal lawyer dissented) – **The Washington State Supreme Court said:**

- **Local governments** may balance the numerous goals of the GMA and have broad discretion in developing regulations tailored to local circumstances.
- **Local governments** may consider local circumstances and justifiably depart from best available science (BAS) when local conditions show the need to do so.
- The requirement to "include BAS" means that it must be considered and the record must show that it was considered, but **there is no mandate** to follow exclusively what is suggested by BAS.
- The GMA requires a **local government to** "protect" environmental conditions, **but does not require "enhancement"** of those conditions.
- The GMA **does not require local governments to establish mandatory riparian buffers.**

Ray and Julie Biggers, et al vs. City of Bainbridge Island

The City of Bainbridge Island had imposed a moratorium on the development of private property in shoreline areas. They kept extending this moratorium over a period of several years. Several citizens filed suit saying they had been illegally denied permits for more than three years.

In an October 11, 2007 decision, **the state Supreme Court agreed** – affirming both the trial court and Court of Appeals decision. In the majority opinion Jim Johnson stated that there is no state statutory authority for the City's moratoria or for their multiple extensions and that this **usurpation of state powers by the local government** disregards article 17, Section 1 of the State Constitution which expressly provides that shorelines are owned by the state, subject only to state regulation

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Futurewise, et al vs. City of Anacortes, et al

The petitioners (city of Anacortes) argued that the authority to regulate shoreline critical areas has always been under the Shorelines Management Act and not under the Growth Management. In support of this, petitioners note that the Legislature passed an RCW, in 2003, that rejected a Growth Management Hearings Board decision allowing a local government to regulate shorelines under the GMA (prior to that hearing board decision, there was no legal authority to regulate shorelines under GMA). In a July 31, 2008 five to four decision, the **Washington State Supreme Court** held that **the legislature meant what it said**, Critical areas within the jurisdiction of the SMA are governed only by the SMA. On June 10, 2009 the state Supreme Court declined to reconsider their July 31, 2008 decision on Futurewise v. Anacortes. The Court action upheld their July 31, 2008 decision and reinstates a 2005 Western Washington Growth Management Hearings Board decision interpreting a 2003 law **(ESHB 1933)** that amended the state Shoreline Management Act and Growth Management Acts.

The complete text of the ENGROSSED SUBSTITUTE HOUSE BILL (ESHB) 1933 is the bottom line on this comment.

Citizens' Alliance for Property Rights v. Sims

Citizens' Alliance for Property Rights challenged King County Ordinance 15053 that **forced all rural area property owners seeking a clearing and grading permit to set aside 50-65% of their property as a "resource area.**" The purpose was to reduce sedimentation in streams and promote forest cover to protect and restore the environment. The set- aside requirement was automatically imposed on all rural lots, whether or not their development would have any effect on a stream or river environment. The trial court upheld the ordinance but the Court of Appeals, on July 7, 2008, unanimously concluded that because **the set aside requirement was imposed in a uniform and present manner and without regard to the circumstances on the regulated lots, it violated State law.** In August, 2008, King County filed a petition for review to the **Washington State Supreme Court.** On March 3, 2009, a panel of five Justices of the Washington State Supreme Court unanimously voted to deny the County's petition. The Court of Appeals decision stands.

Olympic Stewardship Foundation v. Jefferson County (12-587)

Pacific Legal Foundation substantially prevailed in their Growth Management appeal in a 51-page decision entered by the growth management hearings board on November 19, 2008. This case involved two main issues:

The growth board agreed with PLF that after two precedent-setting Supreme Court cases (Biggers and Futurewise) that shoreline areas may only be regulated under the shoreline management act, and not the Growth Management Act.

Regarding the adoption and regulation of channel migration zones as critical areas for the most part, the board agreed with PLF and found that the CMZ maps and several of the protection regulations failed to comply with the GMA. The board remanded the ordinance to the county to bring its regulations into compliance.

The board, however, concluded that the CMZ's potential future can be regulated as a critical area subject to the GMA, arguing that ample land should be set aside and protected for its potential future value as a critical area in the event that, at some future time, a river may change its course.

The result is that, in some areas, up to 4,000 feet of property on each side of a river, may be subject to no build zones. This precedent, if allowed to stand, could easily be extended to include all property as being a potential future critical area. This theory flies in the face of the earlier decisions and is ripe for appeal.

Gold Star Resorts, Inc. v. Futurewise, No. 80810-4

Futurewise, an anti-growth organization, challenged Whatcom County's adoption of a comprehensive plan update that included several rural areas that were more intensely developed than those typically found in rural areas in its rural element. These areas of more intense development included existing resort and recreation areas, suburban enclaves, and transportation corridors.

Futurewise argued for a "bright-line" maximum rural density rule only allowing densities less than one dwelling per five acres in rural areas. The problem for Futurewise was that in Thurston County v. Western Wash. Growth Mgmt. Hearings Bd., 164 Wn.2d 329, 358 (2008), the State Supreme Court held that the Growth Boards lack authority to adopt and apply "bright-line" rules establishing maximum allowable densities. So, Futurewise adjusted its argument to try to skirt the Thurston County decision, arguing that the growth board decisions (that established the "bright-line" rules) should be considered as providing evidence that any density more intense that one dwelling per five acres is not urban in nature.

The growth board entered a decision adopting Futurewise's argument, expressly disavowing that it was applying a "bright-line" rule. The Court of Appeals affirmed the growth board's decision. Whatcom County's attorney conceded that the densities did not comply with the board's "bright-line" rule and gave up on the appeal, leaving the burden of defending existing development rights on one property owner who took the case to the state Supreme Court.

In a 9-0 decision, the **Supreme Court agreed with the property owner** that the growth boards lack authority to establish "bright-line" density standards, and reversed the court of appeals and growth board decisions.

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1933
58th Legislature
2003 Regular Session
Passed by the House April 25, 2003
Yeas 98 Nays 0
Speaker of the House of Rep
resentatives
Passed by the Senate April 9, 2003
Yeas 45 Nays 0
President of the Senate
CERTIFICATE
I, Cynthia Zehnder, Chief Clerk of
the House of Representatives of the
State of Washington, do hereby
certify that the attached is
ENGROSSED
SUBSTITUTE HOUSE BILL
1933 as passed by the House of
Representatives and the Senate on
the dates hereon set forth.

Chief Clerk
Approved
Governor of the State of Washington
FILED
Secretary of State
State of Washington

ENGROSSED SUBSTITUTE HOUSE BILL 1933

AS AMENDED BY THE SENATE
Passed Legislature
-
2003 Regular Session
State of Washington
58th Legislature
2003 Regular
Session
By
House Committee on Local Government (originally sponsored by
Representatives Berkey, Kessler, Cairnes, Buck, Sullivan, Orcutt,
Hatfield, Jarrett, Miloscia, Gombosky, Grant, DeBolt, Quall,
Woods, Schoesler, Conway, Lovick, Clibborn, Edwards,
Schindler,
McCoy, Eickmeyer and Alexander)
READ FIRST TIME 03/05/03.
AN ACT Relating to the integration of shoreline management policies with the growth management act; amending RCW 90.58.030, 90.58.090, 90.58.190, and 36.70A.480; and creating a new section.
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:
NEW SECTION.
Sec.1.
(1) The legislature finds that the final
decision and order in Everett Shorelines Coalition v. City of Everett
and Washington State Department Of Ecology
, Case No. 02-3- 0009c, issued on
January 9, 2003, by the central Puget Sound growth management hearings board was a case of first impression interpreting the addition of the shoreline management act into the growth management act, and that the board considered the appeal and issued its final order and decision without the benefit of shorelines guidelines to provide guidance on the implementation of the shoreline management act and the adoption of shoreline master programs.
(2) This act is intended to affirm the legislature's intent that:
(a) The shoreline management act be read, interpreted, applied, and implemented as a whole consistent with decisions of the shoreline hearings board and Washington courts prior to the decision of the central Puget Sound growth management hearings board in Everett Shorelines Coalition v. City of Everett and Washington State Department of Ecology

(b) The goals of
the growth management act, including the goals and
policies of the shoreline management act, set forth in RCW 36.70A.020 and

included in RCW 36.70A.020 by RCW 36.70A.480, continue to be listed without an order of priority; and

(c) Shorelines of statewide significance may include critical areas as defined by RCW 36.70A.030(5), but that **shorelines of statewide significance are not critical areas simply because they are shorelines of statewide significance.**

(3) The legislature intends that critical areas within the jurisdiction of the shoreline management act shall be governed by the shoreline management act and that critical areas outside the jurisdiction of the shoreline management act shall be governed by the growth management act. The legislature further intends that the quality of information currently required by the shoreline management act to be applied to the protection of critical areas within shorelines of the state shall not be limited or changed by the provisions of the growth management act.

Sec. 2. RCW 90.58.030 and 2002 c 230 s 2 are each amended to read as follows: As used in this chapter, unless the context otherwise requires, the following definitions and concepts apply:

(1) Administration:

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

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

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

(d) "Person" means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or local governmental unit however designated;

(e) "Hearing board" means the shoreline hearings board established by this chapter.

(2) Geographical:

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

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

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

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

(e) "Shorelines of statewide significance" means the following

shorelines of the state:
(i) The area between the ordinary high water mark and the western boundary of the state from Cape Disappointment on the south to Cape Flattery on the north, including harbors, bays, estuaries, and inlets;
(ii) Those areas of Puget Sound and adjacent salt waters and the Strait of Juan de Fuca between the ordinary high water mark and the line of extreme low tide as follows:
(A) Nisquall y Delta
-
-
from DeWolf Bight to Tatsolo Point,
(B) Birch Bay-from Point Whitehorn to Birch Point,
(C) Hood Canal--from Tala Point to Foulweather Bluff,
(D) Skagit Bay and adjacent area--from Brown Point to Yokeko Point, and
(E) Padilla Bay--from March Point to William Point;
(iii) Those areas of Puget Sound and the Strait of Juan de Fuca and adjacent salt waters north to the Canadian line and lying seaward from the line of extreme low tide;
(iv) Those lakes, whether natural, artificial, or a combination thereof, with a surface acreage of one thousand acres or more measured at the ordinary high water mark;
(v) Those natural rivers or segments thereof as follows:
(A) Any west of the crest of the Cascade range downstream of a point where the mean annual flow is measured at one thousand cubic feet per second or more,
(B) Any east of the crest of the Cascade range downstream of a point where the annual flow is measured at two hundred cubic feet per second or more, or those portions of rivers east of the crest of the Cascade range downstream from the first three hundred square miles of drainage area, whichever is longer;
(vi) Those shorelands associated with (i), (ii), (iv), and (v) of this subsection (2)(e);
(f) "Shorelands" or "shoreland areas" means those lands extending **landward for two hundred feet** in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas **landward two hundred feet** from such floodways; and all wetlands and river delt as associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter; the same to be designated as to location by the department of ecology.
(i) Any county or city may determine that portion of a one hundred-year-flood plain to be included in its master program as long as such portion includes**, as a minimum**, the floodway and the adjacent land extending landward two hundred feet there from
.
(ii) Any city or county may also include in its master program land necessary for buffers for critical areas, as defined in chapter 36.70A RCW, that occur within shorelines of the state, provided that forest practices regulated under chapter 76.09 RCW, except conversions to nonforest land use, on lands subject to the provisions of this subsection

(2)(f)(ii) are not subject to additional regulations under this chapter
;
(g) "Floodway" means those portions of the area of a river valley
lying streamward from the outer limits of a watercourse upon which flood
waters are carried during periods of flooding that occur with reasonable
regularity, although not necessarily annually, said floodway being
identified, under normal condition, by changes in surface soil conditions
or changes in types or quality of vegetative ground cover condition.
The **floodway shall not include** those lands that can reasonably be expected to
be protected from flood waters by flood control devices maintained by or
maintained under license from the federal government, the state, or a
political subdivision of the state;
(h) "Wetlands" means areas that are inundated or saturated by surface
water or ground water at a frequency and duration sufficient to support,
and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in
saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.
Wetlands do not include those artificial wetlands intentionally created
from nonwetland sites, including, but not limited to, irrigation and
drainage ditches, grass-lined swales, canals, detention facilities,
wastewater treatment facilities, farm ponds, and landscape amenities, or
those wetlands created after July 1, 1990, **that were unintentionally**
created as a result of the construction of a road, street, or highway
.
Wetlands may include those artificial **wetlands intentionally created** from
nonwetland areas to mitigate the conversion of wetlands.
(3) Procedural terms:
(a) "Guidelines" means those standards adopted to implement the
policy of this chapter for regulation of use of the shorelines of the
state prior to adoption of master programs. Such standards shall also
provide criteria to local governments and the department in developing
master programs;
(b) "Master program" shall mean the comprehensive use plan for a
described area, and the use regulations together with maps, diagrams,
charts, or other descriptive material and text, a statement of desired
goals, and standards developed in accordance with the policies enunciated
in RCW 90.58.020;
(c) "State master program" is the cumulative total of all master
programs approved or adopted by the department of ecology;
(d) "Development" means a use consisting of the construction or
exterior alteration of structures; dredging; drilling; dumping; filling;
removal of any sand, gravel, or minerals; bulkheading; driving of piling;
placing of obstructions; or any project of a permanent or temporary
nature which interferes with the normal public use of the surface of the
waters overlying lands subject to this chapter at any state of water
level;
(e) "Substantial development" shall mean any development of which the
total cost or fair market value exceeds five thousand dollars, or any
development which materially interferes with the normal public use of the
water or shorelines of the state. The dollar threshold established in
this subsection (3)(e) must be adjusted for inflation by the office of
financial management every five years, beginning July 1, 2007, based upon

changes in the consumer price index during that time peri
od. "Consumer price index" means, for any calendar year, that year's annual average
consumer price index, Seattle, Washington area, for urban wage earners
and clerical workers, all items, compiled by the bureau of labor and
statistics, United States department of labor. The office of financial
management must calculate the new dollar threshold and transmit it to the
office of the code reviser for publication in the Washington State Register at least one month before the new
dollar threshold is to take effect. The following shall not be considered substantial developments for the purpose
of this chapter:
(i) Normal maintenance or repair of existing structures or
developments, including damage by accident, fire, or elements;
(ii) Construction of the norma
l protective bulkhead common to single
family residences;
(iii) Emergency construction necessary to protect property from
damage by the elements;
(iv) Construction and practices normal or necessary for farming,
irrigation, and ranching activities, includ
ing agricultural service roads
and utilities on shorelands, and the construction and maintenance of
irrigation structures including but not limited to head gates, pumping
facilities, and irrigation channels. A feedlot of any size, all
processing plants, o
ther activities of a commercial nature, alteration of
the contour of the shorelands by leveling or filling other than that
which results from normal cultivation, shall not be considered normal or
necessary farming or ranching activities. A feedlot shall b
e an
enclosure or facility used or capable of being used for feeding livestock
hay, grain, silage, or other livestock feed, but shall not include land
for growing crops or vegetation for livestock feeding and/or grazing, nor
shall it include normal livesto
ck wintering operations;
(v) Construction or modification of navigational aids such as channel
markers and anchor buoys;
(vi) Construction on shorelands by an owner, lessee, or contract
purchaser of a single family residence for his own use or for the us
e of
his or her family, which residence does not exceed a height of thirty
-
five feet above average grade level and which meets all requirements of
the state agency or local government having jurisdiction thereof, other
than requirements imposed pursuant to
this chapter;
(vii) Construction of a dock, including a community dock, designed
for pleasure craft only, for the private noncommercial use of the owner,
lessee, or contract purchaser of single and multiple family residences.
This exception applies if e
ither: (A) In salt waters, the fair market
value of the dock does not exceed two thousand five hundred dollars; or
(B) in fresh waters, the fair market value of the dock does not exceed

ten thousand dollars, but if subsequent construction having a fair ma
rket
value exceeding two thousand five hundred dollars occurs within five
years of completion of the prior construction, the subsequent
construction shall be considered a substantial development for the
purpose of this chapter;
(viii) Operation, maintenan
ce, or construction of canals, waterways,
drains, reservoirs, or other facilities that now exist or are hereafter
created or developed as a part of an irrigation system for the primary
purpose of making use of system waters, including return flow and
artif
icially stored ground water for the irrigation of lands;
(ix) The marking of property lines or corners on state owned lands,
when such marking does not significantly interfere with normal public use
of the surface of the water;
(x) Operation and maintena
nce of any system of dikes, ditches,
drains, or other facilities existing on September 8, 1975, which were
created, developed, or utilized primarily as a part of an agricultural
drainage or diking system;
(xi) Site exploration and investigation activities
that are
prerequisite to preparation of an application for development
authorization under this chapter, if:
(A) The activity does not interfere with the normal public use of the
surface waters;
(B) The activity will have no significant adverse impact o
n the
environment including, but not limited to, fish, wildlife, fish or
wildlife habitat, water quality, and aesthetic values;
(C) The activity does not involve the installation of a structure,
and upon completion of the activity the vegetation and land
configuration
of the site are restored to conditions existing before the activity;
(D) A private entity seeking development authorization under this
section first posts a performance bond or provides other evidence of
financial responsibility to the local
jurisdiction to ensure that the
site is restored to preexisting conditions; and
(E) The activity is not subject to the permit requirements of RCW
90.58.550;
(xii) The process of removing or controlling an aquatic noxious weed,
as defined in RCW 17.26.02
0, through the use of an herbicide or other
treatment methods applicable to weed control that are recommended by a
final environmental impact statement published by the department of
agriculture or the department jointly with other state agencies under
cha
pter 43.21C RCW.
Sec.

3.
RCW 90.58.090 and 1997 c 429 s 50 are each amended to read as follows:
(1) A master program, segment of a master program, or an amendment to a master program shall become effective when approved by the department.
Within the time period provided in RCW 90.58.080, each local government shall have submitted a master program, either totally or by segments, for all shorelines of the state within its jurisdiction to the department for review and approval.
(2) Upon receipt of a proposed master program or amendment, the department shall:
(a) Provide notice to and opportunity for written comment by all interested parties of record as a part of the local government review process for the proposal and to all persons, groups, and agencies that have requested in writing notice of proposed master programs or amendments generally or for a specific area, subject matter, or issue. The comment period shall be at least thirty days, unless the department determines that the level of complexity or controversy involved supports a shorter period;
(b) In the department's discretion, conduct a public hearing during the thirty-day comment period in the jurisdiction proposing the master program or amendment;
(c) Within fifteen days after the close of public comment, request the local government to review the issues identified by the public, interested parties, groups, and agencies and provide a written response as to how the proposal addresses the identified issues;
(d) Within thirty days after receipt of the local government response pursuant to (c) of this subsection, make written findings and conclusions regarding the consistency of the proposal with the policy of RCW 90.58.020 and the applicable guidelines, provide a response to the issues identified in (c) of this subsection, and either approve the proposal as submitted, recommend specific changes necessary to make the proposal approvable, or deny approval of the proposal in those instances where no alteration of the proposal appears likely to be consistent with the policy of RCW 90.58.020 and the applicable guidelines. The written findings and conclusions shall be provided to the local government, all interested persons, parties, groups, and agencies of record on the proposal;
(e) If the department recommends changes to the proposed master program or amendment, within thirty days after the department mails the

written findings and conclusions to the local government, the local government may:
(i) Agree to the proposed chan
ges. The receipt by the department of the written notice of agreement constitutes final action by the department approving the amendment; or
(ii) Submit an alternative proposal. If, in the opinion of the department, the alternative is consistent with th
e purpose and intent of the changes originally submitted by the department and with this chapter it shall approve the changes and provide written notice to all recipients of the written findings and conclusions. If the department determines the proposal i
s not consistent with the purpose and intent of the changes proposed by the department, the department may resubmit the proposal for public and agency review pursuant to this section or reject the proposal.
(3) The department shall approve the segment of a master program relating to shorelines unless it determines that the submitted segments are not consistent with the policy of RCW 90.58.020 and the applicable guidelines.
(4) The department shall approve the segment of a master program relating to critic
al areas as defined by RCW 36.70A.030(5) provided the master program segment is consistent with RCW 90.58.020 and applicable shoreline guidelines, and if the segment provides a level of protection of critical areas at least equal to that provided by the lo
cal government's critical areas ordinances adopted and thereafter amended pursuant to RCW 36.70A.060(2).
(5) The department shall approve those segments of the master program relating to shorelines of statewide significance only after determining the prog
ram provides the optimum implementation of the policy of this chapter to satisfy the statewide interest. If the department does not approve a segment of a local government master program relating to a shoreline of statewide significance, the department ma
y develop and by rule adopt an alternative to the local government's proposal.
((
(5)
))
(6) In the event a local government has not complied with the requirements of RCW 90.58.070 it may thereafter upon written notice to the department elect to adopt a mas
ter program for the shorelines within its jurisdiction, in which event it shall comply with the provisions established by this chapter for the adoption of a master program for such

shorelines.
Upon approval of such master program by the department it shal
l
supersede such master program as may have been adopted by the department
for such shorelines.
((
(6)
))
(7)
A master program or amendment to a master program takes
effect when and in such form as approved or adopted by the department.
Shoreline master pr
ograms that were adopted by the department prior to
July 22, 1995, in accordance with the provisions of this section then in
effect, shall be deemed approved by the department in accordance with the
provisions of this section that became effective on that
date. The
department shall maintain a record of each master program, the action
taken on any proposal for adoption or amendment of the master program,
and any appeal of the department's action. The department's approved
document of record constitutes the
official master program.
Sec.
4.
RCW 90.58.190 and 1995 c 347 s 311 are each amended to read
as follows:
(1) The appeal of the department's decision to adopt a master program
or amendment pursuant to RCW 90.58.070(2) or 90.58.0
90((
(4)
))
(5)
is
governed by RCW 34.05.510 through 34.05.598.
(2)(a) The department's decision to approve, reject, or modify a
proposed master program or amendment adopted by a local government
planning under RCW 36.70A.040 shall be appealed to the growth
management
hearings board with jurisdiction over the local government. The appeal
shall be initiated by filing a petition as provided in RCW 36.70A.250
through 36.70A.320.
(b) If the appeal to the growth management hearings board concerns
shorelines, th
e growth management hearings board shall review the
proposed master program or amendment
solely
for compliance with the
requirements of this chapter ((
and chapter 36.70A RCW
)), the policy of
RCW 90.58.020 and the applicable guidelines,

the internal consist
ency
provisions of RCW 36.70A.070, 36.70A.040(4), 35.63.125, and 35A.63.105,
and chapter 43.21C RCW as it relates to the adoption of master programs
and amendments under chapter 90.58 RCW.
(c) If the appeal to the growth management hearings board concerns
a
shoreline of statewide significance, the board shall uphold the decision
by the department unless the board, by clear and convincing evidence,
determines that the decision of the department is inconsistent with the
policy of RCW 90.58.020 and the applic
able guidelines.
(d) The appellant has the burden of proof in all appeals to the
growth management hearings board under this subsection.
(e) Any party aggrieved by a final decision of a growth management
hearings board under this subsection may appeal th
e decision to superior
court as provided in RCW 36.70A.300.
(3)(a) The department's decision to approve, reject, or modify a
proposed master program or master program amendment by a local government
not planning under RCW 36.70A.040 shall be appealed to t
he shorelines
hearings board by filing a petition within thirty days of the date of the
department's written notice to the local government of the department's
decision to approve, reject, or modify a proposed master program or
master program amendment as
provided in RCW 90.58.090(2).
(b) In an appeal relating to shorelines, the shorelines hearings
board shall review the proposed master program or master program
amendment and, after full consideration of the presentations of the local
government and the de
partment, shall determine the validity of the local
government's master program or amendment in light of the policy of RCW
90.58.020 and the applicable guidelines.
(c) In an appeal relating to shorelines of statewide significance,
the shorelines hearings
board shall uphold the decision by the department
unless the board determines, by clear and convincing evidence that the
decision of the department is inconsistent with the policy of RCW
90.58.020 and the applicable guidelines.
(d) Review by the shoreline
s hearings board shall be considered an
adjudicative proceeding under chapter 34.05 RCW, the Administrative
Procedure Act. The aggrieved local government shall have the burden of
proof in all such reviews.
(e) Whenever possible, the review by the shoreli
nes hearings board
shall be heard within the county where the land subject to the proposed
master program or master program amendment is primarily located. The
department and any local government aggrieved by a final decision of the
hearings board may app

eal the decision to superior court as provided in
chapter 34.05 RCW.
(4) A master program amendment shall become effective after the
approval of the department or after the decision of the shorelines
hearings board to uphold the master program or master p
rogram amendment,
provided that the board may remand the master program or master program
adjustment to the local government or the department for modification
prior to the final adoption of the master program or master program
amendment.
Sec.
5.
RCW 36.70A.480 and 1995 c 347 s 104 are each amended to read
as follows:
(1) For shorelines of the state, the goals and policies of the
shoreline management act as set forth in RCW 90.58.020 are added as one
of the goals of this chapter
as set forth in RCW 36.70A.020
without
creating an order of priority among the fourteen goals
. The goals and
policies of a shoreline master program for a county or city approved
under chapter 90.58 RCW shall be considered an element of the county or
city'
s comprehensive plan. All other portions of the shoreline master
program for a county or city adopted under chapter 90.58 RCW, including
use regulations, shall be considered a part of the county or city's
development regulations.
(2) The shoreline master
program shall be adopted pursuant to the
procedures of chapter 90.58 RCW rather than the
goals, policies, and
procedures set forth in this chapter for the adoption of a comprehensive
plan or development regulations.
(3) The policies, goals, and provision
s of chapter 90.58 RCW and
applicable guidelines shall be the sole basis for determining compliance
of a shoreline master program with this chapter except as the shoreline
master program is required to comply with the internal consistency
provisions of RCW
36.70A.070, 36.70A.040(4), 35.63.125, and 35A.63.105.
(a) As of the date the department of ecology approves a local
government's shoreline master program adopted under applicable shoreline
guidelines, the protection of critical areas as defined by RCW
36
.70A.030(5) within shorelines of the state shall be accomplished only
through the local government's shoreline master program and shall not be
subject to the procedural and substantive requirements of this chapter,
except as provided in subsection (6) of t
his section.
(b) Critical areas within shorelines of the state that have been

identified as meeting the definition of critical areas as defined by RCW 36.70A.030(5), and that are subject to a shoreline master program adopted under applicable shoreline gui
delines shall not be subject to the procedural and substantive requirements of this chapter, except as provided in subsection (6) of this section. Nothing in this act is intended to affect whether or to what extent agricultural activities, as defined in R
CW 90.58.065, are subject to chapter 36.70A RCW.
(c) The provisions of RCW 36.70A.172 shall not apply to the adoption or subsequent amendment of a local government's shoreline master program and shall not be used to determine compliance of a local governm
ent's shoreline master program with chapter 90.58 RCW and applicable guidelines. Nothing in this section, however, is intended to limit or change the quality of information to be applied in protecting critical areas within shorelines of the state, as requ
ired by chapter 90.58 RCW and applicable guidelines.
(4) Shoreline master programs shall provide a level of protection to critical areas located within shorelines of the state that is at least equal to the level of protection provided to critical areas by the local government's critical area ordinances adopted and thereafter amended pursuant to RCW 36.70A.060(2).
(5) Shorelines of the state shall not be considered critical areas under this chapter except to the extent that specific areas located within sh
orelines of the state qualify for critical area designation based on the definition of critical areas provided by RCW 36.70A.030(5) and have been designated as such by a local government pursuant to RCW 36.70A.060(2).
(6) If a local jurisdiction's master program does not include land necessary for buffers for critical areas that occur within shorelines of the state, as authorized by RCW 90.58.030(2)(f), then the local jurisdiction shall continue to regulate those critical areas and their required buffers p
ursuant to RCW 36.70A.060(2).

END