

NO. 35696-1-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

FUTUREWISE; EVERGREEN ISLANDS; and SKAGIT AUDUBON
SOCIETY,

Respondents,

v.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS
BOARD, an agency of the State of Washington; and CITY OF
ANACORTES,

Appellants,

and

WASHINGTON PUBLIC PORTS ASSOCIATION;
WASHINGTON STATE DEPARTMENT OF COMMUNITY, TRADE
AND ECONOMIC DEVELOPMENT; and WASHINGTON STATE
DEPARTMENT OF ECOLOGY,

Intervenors.

**BRIEF OF INTERVENOR-RESPONDENTS WASHINGTON
STATE DEPARTMENT OF COMMUNITY, TRADE AND
ECONOMIC DEVELOPMENT AND WASHINGTON STATE
DEPARTMENT OF ECOLOGY**

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I. INTRODUCTION

In 2005, the City of Anacortes adopted a new critical areas ordinance under the Growth Management Act (GMA), RCW 36.70A. Futurewise, Evergreen Islands, and Skagit Audubon (petitioners) challenged the ordinance before the Western Washington Growth Management Hearings Board (Board). The petitioners included arguments that the new critical areas ordinance did not adequately protect the City's marine shorelines. In response, the City asserted that ESHB 1933 (Laws of 2003, ch. 321) transferred protection of critical areas in shorelines of the state to local shoreline master programs adopted under the Shoreline Management Act (SMA), RCW 90.58, on the effective date of ESHB 1933. The City suggested that it did not need to address critical areas in shorelines until it updated its shoreline master program, and it argued that the Board was precluded from reviewing shoreline portions of the ordinance for compliance with the GMA.

The Board rejected the City's argument. The Board concluded the amendment to RCW 46.70A.480(3) in ESHB 1933 transferred jurisdiction over shoreline critical areas to the SMA as of the date the amendment took effect in 2003. It then reasoned that because critical areas protection in shorelines now is under the SMA, rather than the GMA, the amended critical areas ordinance must be considered a *de facto* amendment to the

shoreline master program. The Board therefore required the City to submit the ordinance to the Department of Ecology (Ecology) for review and approval under the SMA.

The Board erred twice. First, it misconstrued RCW 36.70A.480(3) as immediately eliminating local governments' authority to update any shoreline protection in critical area ordinances. Then, to solve the "problem" created by that flawed conclusion, the Board treated the City's critical areas ordinance as a shoreline master program amendment, even though it was uncontested that the ordinance was neither written nor processed as an amendment to the City's shoreline master program.

RCW 36.70A.480(3)(a), as amended in ESHB 1933, transfers the protection of shoreline critical areas to a local shoreline master program "[a]s of the date the department of ecology approves a local government's shoreline master program adopted under applicable shoreline guidelines." The reference to adoption under "applicable shoreline guidelines" contemplates the date of a future Ecology review and approval of the City's master program, after the adoption of RCW 36.70A.480(3)(a), and under the Department of Ecology's 2003 shoreline guidelines.

This construction of RCW 36.70A.480(3)(a) is confirmed by the other SMA legislation adopted by the 2003 Legislature, which set deadlines for local governments to adopt or update shoreline master

programs under the new Ecology shoreline guidelines. *See* RCW 90.58.080 (adopted by SSB 6012, Laws of 2003, ch. 262).

Pursuant to RCW 90.58.080(2)(a)(iv), Anacortes is under no legal obligation to submit a master program update to Ecology until 2012. However, until it does so and has its update approved by Ecology, its critical area ordinance continues to apply in the shoreline. The City here did not act under its statutory deadline for adopting an updated shoreline master program; it simply adopted an updated critical areas ordinance to comply with the statutory deadline in the GMA for updating critical areas ordinances. The Board erred by concluding that the City's ordinance required review and approval by Ecology under the SMA.

II. STATEMENT OF THE ISSUES

Did the Board erroneously interpret or apply the law by construing RCW 36.70A.480(3)(a) as requiring the City of Anacortes to submit its critical areas ordinance adopted under the GMA to Ecology for review and approval under the SMA?

Did the Board erroneously interpret or apply the law by construing RCW 36.70A.480(3)(a) as transferring protection of critical areas from the GMA to the SMA immediately, rather than "as of the date the department of ecology approves a local government's shoreline master program adopted under applicable shoreline guidelines"?

Did the Board erroneously interpret or apply the law by requiring the City of Anacortes to update its shoreline master program before the deadline established for its master program update in RCW 90.58.080?

III. STATEMENT OF THE CASE

In April 2005, the City of Anacortes adopted Ordinance 2702 to update its critical areas regulations, as required in RCW 36.70A.130. That this ordinance was adopted under the Growth Management Act is apparent on its face. For example, the ordinance is entitled “An Ordinance Adopting Critical Area Regulations for the City in Compliance With RCW 36.70A” CP 332. The recitals in the ordinance cite the GMA’s deadline for updating critical areas regulations, the City’s use of WAC 365-190 (guidelines adopted for use in designating critical areas under the GMA), the inclusion of best available science (as required in RCW 36.70A.172(1)), and references to critical areas protections contained in prior plans and regulations adopted by the City.¹ CP 332. Although the ordinance references the Shoreline Management Act and ESHB 1933 in two of its recitals, the ordinance does not amend, or purport to amend, the City’s shoreline master program; accordingly, the City did

¹ A narrative introduction to the ordinance further emphasizes that the ordinance is directed toward fulfillment of the GMA’s requirements. CP 334-35.

not send it to Ecology for review and approval as a shoreline master program amendment.

The Growth Management Hearings Board nevertheless concluded the Ordinance was a *de facto* amendment of the City's shoreline master program to the extent it regulated critical areas within a shoreline.² The Board reached this conclusion based on its reading of RCW 36.70A.480 as amended by ESHB 1933 in 2003. *Evergreen Islands v. Anacortes*, WWGMHB No. 05-2-0016, Final Decision & Order, at 25-31 (Dec. 27, 2005) (Board Decision) (CP 264-71). ESHB 1933 added the following language to RCW 36.70A.480:

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 this section.

RCW 36.70A.480(3)(a).

Citing legislative intent, the Board held the City could regulate critical areas within shorelines only through its shoreline master program.

² The SMA applies generally to all "shorelines of the state," which include all marine waters; streams, rivers, and lakes of specified sizes; and "shorelands." RCW 90.58.040; 030(2)(c), (d). "Shorelands" include upland areas within 200 feet from shorelines, and floodways, floodplains, and associated wetlands and river deltas. RCW 90.580.030(2)(f).

Board Decision at 26-27 (CP 265-66).³ On that premise, the Board concluded Ordinance 2702 must be considered an amendment of the City's shoreline master program—even though on its face it was not such an amendment—which must be reviewed and approved by Ecology under the SMA, because it regulated critical areas in the shoreline. Board Decision at 28-29 (CP 267-68). The Board ruled the changes to the critical areas regulations affecting shorelines were not ripe for review until they had been reviewed by Ecology under the SMA. *Id.* at 31 (CP 270).

The petitioners appealed to Superior Court, and the State Agencies⁴ intervened to argue that the Board erred in interpreting RCW 36.70A.480(3). The Superior Court reversed the Board as to its interpretation of RCW 36.70A.480(3) and remanded for further proceedings. RP 66-69; CP 422-25.

The issue for this Court is the Board's erroneous conclusion that new or amended critical areas regulations that affect shorelines now must be submitted to Ecology for review and approval as shoreline master program amendments. This Court should affirm the Superior Court and remand to the Board holding (1) that RCW 36.70A.480(3)(a) applies to

³ The pertinent pages of the Board's Decision are attached to Anacortes' opening brief.

⁴ Washington State Department of Community, Trade and Economic Development, and Washington State Department of Ecology

shoreline master programs adopted or updated under the applicable shoreline guidelines after the 2003 amendments in ESHB 1933; and (2) that until a shoreline master program is approved by Ecology consistent with RCW 36.70A.480(3)(a) and RCW 90.58.090(4), updates to critical areas ordinances are reviewable for compliance with the requirements of the GMA.

IV. STANDARD OF REVIEW

The issues before this Court are purely legal; no factual disputes are at issue here. Judicial review of a decision of a Growth Management Hearings Board is conducted under the Administrative Procedure Act (APA), RCW 34.05. *Thurston Cy. v. Cooper Point Ass'n*, 148 Wn.2d 1, 7, 57 P.3d 1156 (2002). Pursuant to RAP 10.3(h), the State Agencies contend they are entitled to relief because the Board wrongly concluded that the City was required to submit its ordinance to Ecology for review as a shoreline master program amendment. This review is available under RCW 34.05.570(3)(d) (the reviewing court shall grant relief from the Board's order if it determines that the Board has "erroneously interpreted or applied the law").

In applying RCW 34.05.570(3)(d), the Court reviews the Board's legal conclusions de novo, giving substantial weight to the Board's interpretation of the GMA, but the Court is not bound by the Board's

interpretation and has the final say as to statutory interpretation. *King Cy. v. Cent. Puget Sound Growth Mgmt. Hrgs. Bd.*, 142 Wn.2d 543, 553, 14 P.3d 133 (2000). This Court sits in the same position as the Superior Court, reviewing the record that was before the Board. *Thurston Cy.*, 148 Wn.2d at 7. The Court is not bound by the Superior Court's decision, although it may find it persuasive. The State Agencies, although they prevailed in Superior Court, still have the burden of demonstrating error in the Board's decision. *Id.*; RCW 34.05.570(1)(a); RAP 10.3(h).

V. ARGUMENT

In this case, the Board concluded as a matter of law that an amendment to the City of Anacortes' critical areas ordinance adopted under the Growth Management Act (GMA) was a *de facto* amendment to the City's shoreline master program that must be submitted to Ecology for approval under the Shoreline Management Act (SMA). The Board's conclusion was premised on an erroneous interpretation of RCW 36.70A.480(3)(a).

A. Background to ESHB 1933

ESHB 1933 (Laws of 2003, ch. 321)⁵ amended both the SMA and the GMA in 2003 in response to a decision issued by the Central Puget

⁵ A copy of ESHB 1933 is at CP 51-65. For the Court's convenience, a copy also is attached as **Appendix A**.

Sound Growth Management Hearings Board. To provide context before turning to the language and effect of ESHB 1933, this section of the brief provides overviews of the SMA and the GMA, the Legislature's integration of the two Acts in 1995, and the Growth Management Hearings Board decision that precipitated the enactment of ESHB 1933.

**1. Overview of the Shoreline Management Act,
RCW 90.58**

The Shoreline Management Act was enacted by citizen initiative in 1971, to “prevent the inherent harm in an uncoordinated and piecemeal development of the state’s shorelines.” RCW 90.58.020. Each county and city containing “shorelines of the state”⁶ must adopt a shoreline master program that follows the current shoreline guidelines, which are adopted by Ecology and codified in WAC 173-26. RCW 90.58.080. Ecology provides local governments with funding and technical assistance to support their development of shoreline master programs. RCW 90.58.050; .080(6); .250. Each local master program or master program amendment must be reviewed and approved by Ecology before it takes effect. RCW 90.58.090.

Most local governments adopted master programs many years ago, under shoreline guidelines originally adopted in 1972. Recognizing the

⁶ See footnote 2, above.

need for updated shoreline master programs, the 1995 Legislature required that Ecology adopt comprehensively updated shoreline guidelines and then periodically review and update them. Laws of 1995, ch. 347, § 304 (amending RCW 90.58.060). Ecology responded by adopting new shoreline guidelines, which finally took effect in December 2003 after a successful challenge to an earlier revision. *See Association of Wash. Bus. v. Dep't of Ecology*, SHB No. 00-037, Order Granting and Denying Appeal (Aug. 27, 2001).⁷

To accommodate the expense and effort required of local governments and Ecology to update and approve shoreline master programs, the 2003 Legislature enacted a staggered schedule for counties and cities to update their master programs. RCW 90.58.080(4) (as amended by SSB 6012, § 2).⁸ The purpose of the updates is to assure that shoreline master programs comply with the new shoreline guidelines and are consistent with local comprehensive plans and development regulations adopted under the GMA. *Id.*

⁷ Available at <http://www.eho.wa.gov/FinalOrders.asp?Year=2001> (last visited May 7, 2007).

⁸ Laws of 2003, ch. 262, § 2. A copy of SSB 6012 is in the record at CP 67-73. For the Court's convenience, a copy also is attached as **Appendix B**. The 2007 Legislature modified the deadlines established in SSB 6012, but that modification is not material to this case. *See* Laws of 2007, ch. 170 (extending the deadlines by one year on a case-by-case basis as approved by Ecology).

2. **Overview of the Growth Management Act, RCW 36.70A**

The Growth Management Act was enacted in 1990 and 1991, in response to problems associated with an increase in population in this state, particularly in the Puget Sound area, including increased traffic congestion, school overcrowding, urban sprawl, and loss of rural lands. *Skagit Surveyors & Engineers, LLC v. Friends of Skagit Cy.*, 135 Wn.2d 542, 546-47, 958 P.2d 962 (1998). In contrast to the SMA, which covers only shorelines of the state, the GMA imposes a series of jurisdiction-wide obligations on most counties and cities (including the City of Anacortes), requiring the designation and protection of critical areas, the designation and conservation of natural resource lands, the protection of rural character and rural communities, provision for urban growth and development, transportation concurrency, and other comprehensive planning obligations. *See* RCW 36.70A.020 to .177; .200 to .215; .350 to .481; .510 to .540. These obligations are carried out primarily through local adoption of comprehensive plans and implementing development regulations. *See generally* RCW 36.70A.040. Unlike shoreline master programs, which take effect only upon Ecology's approval, a comprehensive plan or development regulation adopted under

the GMA takes effect and is presumed valid upon adoption. RCW 36.70A.320(1).

3. Legislative Integration of the Shoreline Management Act and Growth Management Act

In 1995, the Legislature partially integrated shoreline planning and regulation under the SMA into the GMA: (1) it added the SMA's goals and policies as an additional GMA goal⁹; (2) it designated the goals and policies in a shoreline master program as an element of a comprehensive plan under the GMA¹⁰—thereby bringing master programs within the consistency requirement in RCW 36.70A.070 and .040¹¹; (3) it designated all other portions of the shoreline master program as development regulations under the GMA¹²; and (4) it transferred jurisdiction for appeals of certain shoreline master program from the Shoreline Hearings Board to the Growth Management Hearings Boards.¹³ In separate legislation, the 1995 Legislature also amended the GMA's definition of "development regulations" to include the controls placed on development or land use

⁹ Laws of 1995, ch. 347, § 104 (codified as RCW 36.70A.480).

¹⁰ *Id.*

¹¹ RCW 36.70A.070 requires that a comprehensive plan "shall be an internally consistent document and all elements shall be consistent with the future land use map." RCW 36.70A.040(3), (4), and (5) all require that counties and cities adopt "development regulations that are consistent with and implement the comprehensive plan.

¹² Laws of 1995, ch. 347, § 104 (codified as RCW 36.70A.480).

¹³ *Id.*, § 108 (amending RCW 36.70A.280); § 311 (amending RCW 90.58.190).

activities in shoreline master programs,¹⁴ while making it clear that shorelands regulations still must be consistent with the SMA and the shoreline guidelines.¹⁵

In 2002, in a case of first impression, the Central Puget Sound Growth Management Hearings Board was called upon to resolve a dispute involving the interaction between the GMA's critical areas protection requirements and the SMA's requirements governing shorelines of statewide significance. The Board attempted to harmonize the SMA and the GMA by treating shorelines of statewide significance designated under the SMA as critical areas subject to the GMA's goals and requirements. *Everett Shorelines Coalition v. City of Everett*, CPSGMHB No. 02-3-0009c, Corrected Final Decision & Order (Jan. 9, 2003) (CP 190-239).

4. ESHB 1933 (Laws of 2003, ch. 321)

The 2003 Legislature enacted ESHB 1933 in response to the *Everett Shorelines* decision. ESHB 1933 contains five sections.¹⁶

Section 1 is an uncodified intent section, attached to RCW 90.58.030 (in the SMA). After noting the absence of shoreline

¹⁴ Laws of 1995, ch. 382, § 9 (amending RCW 36.70A.030(7)).

¹⁵ *Id.*, § 13 (codified as RCW 36.70A.481).

¹⁶ See **Appendix A**, attached to this brief.

guidelines¹⁷ to guide the *Everett Shorelines* Board's interpretation of the legislative integration of the SMA into the GMA, the Legislature expressed its intent that the SMA govern critical areas in shorelines and the GMA govern all other critical areas.

Section 2 amended RCW 90.58.030 (in the SMA) to allow an expansion of shoreline jurisdiction where necessary to provide buffers for critical areas lying within a shoreline of the state.

Section 3 amended RCW 90.58.090 (in the SMA), which governs Ecology's approval of new and amended shoreline master programs. Section 3 mandates that before Ecology may approve a critical areas segment of a master program, it must determine specifically that the segment is consistent with RCW 90.58.020 and provides protection for shoreline critical areas that is "at least equal to that provided by the local government's critical areas ordinances adopted and thereafter amended" under the GMA.

Section 4 amended RCW 90.58.190 (in the SMA), which governs appeals of new and amended shoreline master programs. Section 4 removed the authority of a Growth Management Hearings Board to review

¹⁷ As explained below at pages 23-25, the 1972 shoreline guidelines did not address critical areas and had been repealed prior to the *Everett Shorelines* case, the revised shoreline guidelines adopted in 2000 had been invalidated in 2001, and the 2003 shoreline guidelines (which are now in effect) had not yet been adopted. No shoreline guidelines were in effect when *Everett Shorelines* was decided.

a challenge to a new or amended shoreline master program for compliance with all the goals and requirements in the GMA, and instead limited review under the GMA to a review for internal consistency between the master program and local comprehensive plans and development regulations adopted under the GMA.

Section 5 amended RCW 36.70A.480 (in the GMA). Section 5 provides that shoreline master programs are to be adopted under the procedures in the SMA, rather than the GMA, except that critical areas in shorelines are to be designated using the definitions provided in the GMA. *See* § 5(2), (3), (5). Critical areas in shorelines are to be protected under a shoreline master program “[a]s of the date the department of ecology approves a local government’s shoreline master program adopted under applicable shoreline guidelines.” *See* § 5(3)(a). The shoreline master program must provide protection for shoreline critical areas that is “at least equal to that provided to critical areas by the local government’s critical areas ordinances adopted and thereafter amended” under the GMA. *See* § 5(4). However, shoreline critical areas and their buffers must be regulated under the GMA if the adopted master program does not include land necessary for the buffers. *See* § 5(6).¹⁸

¹⁸ Critical areas outside shorelines continue to be protected using critical areas ordinances adopted under the GMA. RCW 36.70A.060. This requirement of the GMA was left unchanged by ESHB 1933.

B. ESHB 1933 Does Not Require That Any New or Updated Critical Areas Regulation Affecting Shorelines Must Be Treated as a Shoreline Master Program Amendment

The Board interpreted the uncodified statement of legislative intent in ESHB 1933 to prohibit any future amendment under the GMA of any portion of a critical areas ordinance that regulates critical areas in shorelines. Board Decision at 27 (CP 266). Based on that interpretation, the Board then held that ESHB 1933 compels a legal conclusion: any amendment to a critical areas ordinance governing critical areas in shorelines is an amendment to the shoreline master program that must be reviewed by Ecology before it can take effect. *Id.* at 28-29 (CP 267-68).

The Board misinterpreted legislative intent to infer a statutory requirement not present in ESHB 1933. Nowhere in ESHB 1933 is there an affirmative requirement that an amendment to a critical areas ordinance is legally converted into a shoreline master program update if it affects critical areas in shorelines. Nor does ESHB 1933 prohibit updating part of a critical areas ordinance to comply with the GMA's update requirements, RCW 36.70A.130, when part of the critical areas ordinance affects shorelines. ESHB 1933 is not a bar that prohibits the update of a critical areas ordinance affecting shorelines until the local government's shoreline master program is updated under the schedule established in RCW 90.58.080. The Board's reliance on a single sentence in the

uncodified intent section of ESHB 1933 to reject a critical areas ordinance and compel its submittal to Ecology was legal error.

The Board's conclusion has the effect of mandating either that critical areas ordinances that affect shorelines be left untouched until the county or city begins the update process for shoreline master programs under the deadlines established in RCW 90.58.080, or that the county or city begin the master program update early. The following example shows the untenable impact this would have on local governments.

As amended in 2002, RCW 36.70A.130 requires Skagit County and the City of Anacortes to "take legislative action to review and, if needed, revise" their comprehensive plans and development regulations, including critical areas protection regulations, to ensure they comply with the requirements in the GMA. The deadline for taking the required action was December 1, 2005. RCW 36.70A.130(4)(b). However, the deadline for updating their shoreline master programs is not until 2012. RCW 90.58.080(2)(a)(iv). While some funding is available for counties and cities that wish to update their master programs early, the Legislature explicitly provided for funding a two-year update process preceding the deadline. RCW 90.58.080(6). The Board's conclusion would require Skagit County and the City of Anacortes to make an untenable choice: (1) decide not to amend their critical areas ordinance, at least as it applies

to shorelines, by the deadline established in the GMA, with the almost certain prospect of being found out of compliance with the GMA in a challenge to the Board; or (2) update their shoreline master programs several years before the deadline established by SSB 6012 and several years before funding is provided to support the updates and to support Ecology's technical assistance and review of the updates.

It is not just Skagit County and the City of Anacortes that are in this position: every single county and city in the state is required to update its critical areas ordinance under RCW 36.70A.130 before it is required to update its shoreline master program under RCW 90.58.080. For most counties and cities, the update requirements do not synchronize until 2011 or thereafter. *Compare* RCW 36.70A.130(4) and RCW 90.58.080(2).

The critical error in the Board's order was its conclusion that any amendment to a critical areas ordinance that affects shorelines now must be adopted as a shoreline master program amendment. This conclusion is not supported by the plain language of ESHB 1933, especially when that bill is read together with SSB 6012. The Board's erroneous conclusion effectively converts permissive language in SSB 6012—allowing shoreline master program updates in advance of the deadlines imposed in

that bill, subject to whatever funding might be available from Ecology¹⁹— into a mandate imposed on any local government attempting to comply with the GMA update deadlines in RCW 36.70A.130. The Board has created a mandate not found in statute; nowhere in the amendments enacted in ESHB 1933 or SSB 6012 does it say that any local government must update any part of its shoreline master program prior to the schedule established in RCW 90.58.080.

C. ESHB 1933 Transfers Authority Over Shoreline Critical Areas to a Shoreline Master Program as of the Date the Department of Ecology Approves the Shoreline Master Program

1. RCW 36.70A.480(3)(a) Is Not Ambiguous

The Board found RCW 36.70A.480(3)(a) to be ambiguous, apparently based on the parties’ disagreement. Board Decision at 26 (CP 265). Ambiguity is not shown by disagreement among parties, but by assessing “plain meaning”:

A statutory provision’s plain meaning is to be discerned from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole. A provision that remains susceptible to more than one reasonable interpretation after such an inquiry is ambiguous and a court may then appropriately employ tools of statutory construction, including legislative history, to discern its meaning.

¹⁹ “Nothing in this subsection (2) shall preclude a local government from developing or amending its master program prior to the dates established by this subsection (2).” SSB 6012, § 2(2)(b) (amending RCW 90.58.080).

Tingey v. Haisch, 159 Wn.2d 652, 152 P.3d 1020, 1023, ¶ 8 (2007) (citations omitted). A statute is ambiguous if it is susceptible to two or more reasonable interpretations, but it is not ambiguous merely because different interpretations are conceivable. *Cerrillo v. Esparza*, 158 Wn.2d 194, 201, ¶ 8, 142 P.3d 155.

It is true that a court's objective in construing a statute is to determine the Legislature's intent, but "if the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent." *Tingey*, 152 P.3d at 1023, ¶ 8 (quoting *State v. Jacobs*, 154 Wn.2d 596, 115 P.3d 281 (2005), and *Department of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002)).

When RCW 36.70A.480(3)(a) is read in context, the plain meaning is clear and unambiguous. Under RCW 36.70A.480(3)(a) the transfer of authority over shoreline critical areas occurs only after (1) the county or city adopts or amends a shoreline master program under the applicable shoreline guidelines, and (2) Ecology approves the new or amended master program. Under RCW 90.58.090(4), also added by ESHB 1933, Ecology may approve the critical areas segment of a new or amended shoreline master program only if it determines (1) that the segment is consistent with RCW 90.58.020 and the "applicable shoreline guidelines,"

and (2) that the segment provides a level of protection “at least equal to that provided by the local government’s critical areas ordinances.”

2. The Reference to “Applicable Shoreline Guidelines” in RCW 36.70A.480(3)(a) Confirms the State Agency’s Construction

The phrase “applicable shoreline guidelines” used throughout the SMA and in RCW 36.70A.480 refers to the shoreline guidelines adopted by Ecology under RCW 90.58.060. Local governments must follow the shoreline guidelines when developing and adopting their shoreline master programs. RCW 90.58.080. Under RCW 36.70A.480(3)(a), the protection of shoreline critical areas is not transferred until a shoreline master program has been “adopted under applicable shoreline guidelines” and approved by Ecology as consistent with those guidelines. As explained in the following paragraphs, this reference to “applicable shoreline guidelines” means those in effect on or subsequent to the effective date of ESHB 1933.

When ESHB 1933 was enacted in 2003, no shoreline guidelines were in effect (their absence was acknowledged in ESHB 1933, § 1(1)). Ecology had first adopted shoreline guidelines in 1972, which were not comprehensively updated thereafter. Legislation in 1995 required Ecology to “periodically review and adopt” its shoreline guidelines “[a]t least once every five years.” Laws of 1995, ch. 347, § 304 (amending

RCW 90.58.060). In response, Ecology adopted new guidelines in 2000, which were challenged, but the Shoreline Hearings Board invalidated them. *Association of Wash. Bus. v. Dep't of Ecology*, SHB No. 00-037, Order Granting and Denying Appeal (Aug. 27, 2001).²⁰ Ecology then worked with the challengers to develop new shoreline guidelines that were mutually acceptable. The resulting new guidelines were adopted in December 2003, after the enactment of ESHB 1933.

The language in RCW 36.70A.480(3)(a) is prospective: “As of the date the department of ecology approves a local government’s shoreline master program adopted under applicable shoreline guidelines...” (emphasis added). It does not say, “As of the date the department of ecology approved a local government’s shoreline master program” or “approved a local government’s shoreline master program adopted under the shoreline guidelines adopted in 1972.” The words used in RCW 36.70A.480(3)(a) are unambiguously prospective.

Because RCW 36.70A.480(3)(a) is prospective, its reference to “applicable shoreline guidelines” does not refer to approval under the 1972 guidelines repealed in 2000, or to the 2000 guidelines invalidated in 2001. RCW 36.70A.480(3)(a) refers to the shoreline guidelines pending at the time ESHB 1933 was considered and enacted—the 2003 shoreline

²⁰ See footnote 7, above.

guidelines in WAC 173-26. Any other understanding of ESHB 1933 would require the court to add language to RCW 36.70A.480(3)(a), language which is not found anywhere else in the statute.²¹

Further support for this prospective understanding is found in the enactment of SSB 6012,²² passed by the 2003 Legislature contemporaneously with ESHB 1933. SSB 6012 implemented the timing and funding legislation called for in the settlement of the litigation over the 2000 shoreline guidelines that led to the adoption and publication of

²¹ The City suggests that because the Legislature did not adopt an earlier draft of ESHB 1933 that “tied the transfer to the 2003 Guidelines,” ESHB 1933 cannot be read as referencing the 2003 shoreline guidelines. Anacortes Op. Br. at 11-12. Even if the enacted statute were ambiguous, there is little reason to give any weight to the earlier draft:

Successive drafts of a statute are not stages in its development. They are separate things of which we can only say that they followed each other in a definite sequence, and that one was not the other. But that fact gives us little information about the final form, since we never really know why one gave way to any other. There were doubtless many reasons, some of them likely enough to be personal, arbitrary, and capricious—the fondness of the draftsman for a special locution, his repugnance to another, a misconception of the associations of some word, a chance combination, and often enough a mere inadvertence. That is not to say that some conclusions, principally negative ones, can not be drawn from the legislative history of a statute. But in the end, all that we know is that the final form displaced the others, and that fact is not disputed.

Hama Hama Co. v. Shoreline Hrgs. Bd., 85 Wn.2d 441, 449-50, 536 P.2d 157 (1975) (quoting Max Radin, *Statutory Construction*, 43 Harv. L. Rev. 863, 873 (1930)).

²² See footnote 8, above.

the 2003 shoreline guidelines. 2003 Final Legislative Report, 58th Wash. Leg., at 282.²³

Despite the prospective language in RCW 36.70A.480(3)(a), the City argues that if a city or county has a shoreline master program approved by Ecology at any time, then ESHB 1933 transferred jurisdiction over shoreline critical areas from the city or county's critical areas regulations to that shoreline master program as of July 27, 2003, the effective date of ESHB 1933. Anacortes Op. Br. at 12. The Board properly rejected that argument, recognizing that it would require retroactive application of ESHB 1933. As the Board correctly explained,

“A legislative enactment is presumed to apply prospectively only and will not be held to apply retrospectively unless such legislative intent is clearly expressed.... Such a clear expression of retroactive application is not apparent in ESHB 1933.

Board Decision at 27-28 (CP 266-67).²⁴

An automatic transfer of jurisdiction on the effective date of the bill would place the protection of shoreline critical areas under shoreline master programs that had been approved years—sometimes decades—

²³ The Final Bill Report for SSB 6012 referenced the settlement and noted that no shoreline guidelines were in effect in 2003. 2003 Final Legislative Report, 58th Wash. Leg., at 282. SSB 6012 amended RCW 90.58.080 to impose prospective deadlines for updating shoreline master programs to bring them into compliance with the 2003 shoreline guidelines.

²⁴ The Board cited *Puyallup v. Pac. Nw. Bell Tel. Co.*, 98 Wn.2d 443, 450, 656 P.2d 1035 (1982), and *Margula v. Benton Franklin Title*, 131 Wn.2d 171, 930 P.2d 307 (1997), for the judicial presumption against legislative retroactivity.

earlier. This construction also makes no grammatical sense because RCW 36.70A.480(3)(a) references future approval. Under the City's theory, on July 27, 2003, the protection of its shoreline critical areas transferred automatically to its 2000 shoreline master program as of the date Ecology approved the 2000 master program. In other words, jurisdiction transferred in 2000, even though no one knew it until ESHB 1933 was enacted in 2003, and even though Anacortes' 2000 master program did not even mention critical areas and provided no specific protection for them.²⁵

RCW 36.70A.480(3)(a) is not retroactive. It transfers protection of shoreline critical areas to a shoreline master program as of the date Ecology approves the master program under the 2003 shoreline guidelines, and this Court should so hold.

3. The City's Argument Is Inconsistent With the Statutory Requirement That Shoreline Critical Areas Receive Protection "At Least Equal to That Provided by the Local Government's Critical Areas Ordinances"

The Board correctly rejected the City's retroactivity argument for another reason, finding that retroactive application would contradict

²⁵ Excerpts of the City's 2000 shoreline master program are at CP 322-24. Although the body of the City's master program is not in the record, the figure at CP 324 is illustrative, showing no designated critical area anywhere within the shoreline jurisdiction and no other reference to critical areas protection.

RCW 36.70A.480(4) (added by ESHB 1933). Board Decision at 28

(CP 267). That subsection provides:

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 by critical areas by the local government's critical areas ordinances adopted and thereafter amended pursuant to RCW 36.70A.060(2).

This standard cannot be satisfied by a shoreline master program adopted years before ESHB 1933. Before ESHB 1933, Ecology did not review shoreline master programs to determine whether they provided a level of protection of critical areas “at least equal to that provided by the local government's critical areas ordinance.” That criterion did not exist in statute until enacted in ESHB 1933. *See* RCW 90.58.090(4); RCW 36.70A.480(4) (both added by ESHB 1933). The Legislature could not reasonably have expected that Ecology's past approval of a master program under former statutory standards would meet this standard.

In short, the twin mandates in ESHB 1933—that shoreline master programs provide a level of protection to shoreline critical areas “that is at least equal” to the level of protection provided by the local government's critical areas regulations adopted under the GMA (RCW 36.70A.480(4)), and that Ecology assess whether the master program provides such

protection before approving it (RCW 90.58.090(4))—are prospective mandates.

4. No Other Statutory Provision Specifies When the Protection of Critical Areas in Shorelines Is Transferred to a Shoreline Master Program

RCW 36.70A.480(3)(a) is the only provision amended in ESHB 1933 that specifies timing. The City nevertheless attempts to extract a different timing requirement from other language in ESHB 1933 that would mandate immediate transfer of jurisdiction.

The City points to subsections (b) and (c) in RCW 36.70A.480(3). Anacortes Op. Br. at 10. Subsection (b) provides that shoreline critical areas “that are subject to a shoreline master program adopted under applicable shoreline guidelines” are not subject to the GMA’s procedural and substantive requirements. This subsection does not immediately transfer jurisdiction to a shoreline master program. Read naturally, it states that the GMA’s provisions no longer govern after the transfer of jurisdiction has been made. Similarly, subsection (c) states that the GMA’s best available science requirement does not apply to a new or subsequently amended master program; it says nothing about the timing of the jurisdictional transfer. Accordingly, neither of these subsections support the City.

The City also relies on uncodified intent language in ESHB 1933, § 1 (“The legislature intends that critical areas within the jurisdiction of the shoreline management act shall be governed by the shoreline management act ...”). Anacortes Op. Br. at 9, 16, 19. That language specifies outcome, not timing or the details for accomplishing that outcome. As the Superior Court explained, had the Legislature intended an immediate transfer of jurisdiction,

the statute would have provided for that, and it would have had language like, “effective immediately.” Instead, you have this language in [ESHB 1933 section] 5(3)(a), which says, “As of the date the Department of Ecology approves a local government’s shoreline master program,” et cetera, et cetera. As of that date, that is the effective date, essentially, of these provisions.

That date was not defined as a specific calendar day, because it was dependent upon a shoreline master program being submitted to the Department of Ecology and then adopted or approved.”

RP 68.²⁶

WPPA argues that the SMA is “the proper statute to guide protection of shoreline critical areas because the SMA codifies long-standing common law that recognizes both the use of and protection of

²⁶ The City suggests in a footnote that a “preliminary ruling” in Division I of the Court of Appeals “held that ESHB 1933 had the immediate effect of removing shoreline management from GMA procedures.” Anacortes Op. Br. at 10 n.25. The cited decision is a Commissioner’s ruling granting a stay; it is not published and may not be cited as precedent. RAP 10.4(2)(h). Even if the ruling were precedential, the Commissioner merely dropped a passing reference to ESHB 1933 without any supporting analysis or authority.

shoreline resources.” WPPA Op. Br. at 7-9. WPPA’s argument is anachronistic, as the SMA never referenced critical areas until ESHB 1933. Moreover, WPPA’s argument does nothing to resolve the issue now before this Court. The issue here is when and under what circumstances critical areas protection in shorelines will be provided by a shoreline master program rather than a critical area ordinance.

5. The Board Erred by Creating a Mandate for Early Update of Shoreline Master Programs When the Legislature Intended Early Updates to Be Voluntary

The Board concluded that Ecology may review and approve an updated critical areas segment of a shoreline master program before the entire master program is updated. Board Decision at 29 (CP 268). The City defends this conclusion, arguing that ESHB 1933 does not contain language requiring all segments in a master program to be amended and approved before jurisdiction of shoreline critical areas is transferred. Anacortes Op. Br. at 5-6.

The question in this case, however, is not whether Ecology may approve a limited amendment of a shoreline master program. The question is whether local governments must obtain Ecology approval of amendments to their critical areas ordinances. Under its shoreline guidelines, Ecology normally does not accept limited, or “segmented,” master program amendments. *See* WAC 173-26-201. However,

regardless of whether Ecology may approve such amendments, there simply is no language in statute that mandates that local governments submit their critical areas ordinances to Ecology. The fact that Anacortes itself never submitted its critical areas ordinance to Ecology for approval as a master program amendment, and the fact that other jurisdictions have not done so either, are evidence that such submittal is not required. *See Hood Canal Env'tl. Council v. Kitsap Cy.*, CPSGMHB No. 06-3-0012c, Final Decision & Order (Aug. 28, 2006) (rejecting Western Board's interpretation of ESHB 1933).

As explained above, the plain language of RCW 36.70A.480(3) transfers the protection of shoreline critical areas “[a]s of the date the department of ecology approves a local government’s shoreline master program adopted under applicable shoreline guidelines” (emphasis added). It does not say, “As of the date the department of ecology approves a critical areas segment of a local government’s shoreline master program. Nor does it say, “As of the date the department of ecology approves any amendment to a local government’s shoreline master program.” Indeed, this statutory language does not mandate any particular action by local government at any particular time.

VI. CONCLUSION

The Board erred in concluding (1) that ESHB 1933 (2003) immediately transferred the protection of shoreline critical areas to shoreline master programs; and (2) that RCW 36.70A.480(3) therefore requires that Anacortes submit its updated critical areas ordinance to the Department of Ecology for approval as a shoreline master program amendment.

This Court should affirm the Superior Court's order partially reversing the Growth Management Hearings Board and remand to the Board for further proceedings.

RESPECTFULLY SUBMITTED this 21st day of May, 2007.

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Appendix A

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1933

Chapter 321, Laws of 2003

58th Legislature
2003 Regular Session

SHORELINE MANAGEMENT

EFFECTIVE DATE: 7/27/03

Passed by the House April 25, 2003
Yeas 98 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 9, 2003
Yeas 45 Nays 0

BRAD OWEN

President of the Senate

Approved May 15, 2003.

GARY F. LOCKE

Governor of the State of Washington

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.

CYNTHIA ZEHNDER

Chief Clerk

FILED

May 15, 2003 - 3:53 p.m.

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.

1 AN ACT Relating to the integration of shoreline management policies
2 with the growth management act; amending RCW 90.58.030, 90.58.090,
3 90.58.190, and 36.70A.480; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that the final
6 decision and order in *Everett Shorelines Coalition v. City of Everett*
7 and *Washington State Department Of Ecology*, Case No. 02-3-0009c, issued
8 on January 9, 2003, by the central Puget Sound growth management
9 hearings board was a case of first impression interpreting the addition
10 of the shoreline management act into the growth management act, and
11 that the board considered the appeal and issued its final order and
12 decision without the benefit of shorelines guidelines to provide
13 guidance on the implementation of the shoreline management act and the
14 adoption of shoreline master programs.

15 (2) This act is intended to affirm the legislature's intent that:

16 (a) The shoreline management act be read, interpreted, applied, and
17 implemented as a whole consistent with decisions of the shoreline
18 hearings board and Washington courts prior to the decision of the

1 central Puget Sound growth management hearings board in *Everett*
2 *Shorelines Coalition v. City of Everett and Washington State Department*
3 *of Ecology*;

4 (b) The goals of the growth management act, including the goals and
5 policies of the shoreline management act, set forth in RCW 36.70A.020
6 and included in RCW 36.70A.020 by RCW 36.70A.480, continue to be listed
7 without an order of priority; and

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

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

21 **Sec. 2.** RCW 90.58.030 and 2002 c 230 s 2 are each amended to read
22 as follows:

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

25 (1) Administration:

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

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

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

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

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

37 (2) Geographical:

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

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

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

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

25 (e) "Shorelines of statewide significance" means the following
26 shorelines of the state:

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

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

33 (A) Nisqually Delta--from DeWolf Bight to Tatsolo Point,

34 (B) Birch Bay--from Point Whitehorn to Birch Point,

35 (C) Hood Canal--from Tala Point to Foulweather Bluff,

36 (D) Skagit Bay and adjacent area--from Brown Point to Yokeko Point,
37 and

38 (E) Padilla Bay--from March Point to William Point;

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

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

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

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

11 (B) Any east of the crest of the Cascade range downstream of a
12 point where the annual flow is measured at two hundred cubic feet per
13 second or more, or those portions of rivers east of the crest of the
14 Cascade range downstream from the first three hundred square miles of
15 drainage area, whichever is longer;

16 (vi) Those shorelands associated with (i), (ii), (iv), and (v) of
17 this subsection (2)(e);

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

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

30 (ii) Any city or county may also include in its master program land
31 necessary for buffers for critical areas, as defined in chapter 36.70A
32 RCW, that occur within shorelines of the state, provided that forest
33 practices regulated under chapter 76.09 RCW, except conversions to
34 nonforest land use, on lands subject to the provisions of this
35 subsection (2)(f)(ii) are not subject to additional regulations under
36 this chapter;

37 (g) "Floodway" means those portions of the area of a river valley
38 lying streamward from the outer limits of a watercourse upon which

1 flood waters are carried during periods of flooding that occur with
2 reasonable regularity, although not necessarily annually, said floodway
3 being identified, under normal condition, by changes in surface soil
4 conditions or changes in types or quality of vegetative ground cover
5 condition. The floodway shall not include those lands that can
6 reasonably be expected to be protected from flood waters by flood
7 control devices maintained by or maintained under license from the
8 federal government, the state, or a political subdivision of the state;

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

22 (3) Procedural terms:

23 (a) "Guidelines" means those standards adopted to implement the
24 policy of this chapter for regulation of use of the shorelines of the
25 state prior to adoption of master programs. Such standards shall also
26 provide criteria to local governments and the department in developing
27 master programs;

28 (b) "Master program" shall mean the comprehensive use plan for a
29 described area, and the use regulations together with maps, diagrams,
30 charts, or other descriptive material and text, a statement of desired
31 goals, and standards developed in accordance with the policies
32 enunciated in RCW 90.58.020;

33 (c) "State master program" is the cumulative total of all master
34 programs approved or adopted by the department of ecology;

35 (d) "Development" means a use consisting of the construction or
36 exterior alteration of structures; dredging; drilling; dumping;
37 filling; removal of any sand, gravel, or minerals; bulkheading; driving
38 of piling; placing of obstructions; or any project of a permanent or

1 temporary nature which interferes with the normal public use of the
2 surface of the waters overlying lands subject to this chapter at any
3 state of water level;

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

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

22 (ii) Construction of the normal protective bulkhead common to
23 single family residences;

24 (iii) Emergency construction necessary to protect property from
25 damage by the elements;

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

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

12 (vii) Construction of a dock, including a community dock, designed
13 for pleasure craft only, for the private noncommercial use of the
14 owner, lessee, or contract purchaser of single and multiple family
15 residences. This exception applies if either: (A) In salt waters, the
16 fair market value of the dock does not exceed two thousand five hundred
17 dollars; or (B) in fresh waters, the fair market value of the dock does
18 not exceed ten thousand dollars, but if subsequent construction having
19 a fair market value exceeding two thousand five hundred dollars occurs
20 within five years of completion of the prior construction, the
21 subsequent construction shall be considered a substantial development
22 for the purpose of this chapter;

23 (viii) Operation, maintenance, or construction of canals,
24 waterways, drains, reservoirs, or other facilities that now exist or
25 are hereafter created or developed as a part of an irrigation system
26 for the primary purpose of making use of system waters, including
27 return flow and artificially stored ground water for the irrigation of
28 lands;

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

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

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

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

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

6 (C) The activity does not involve the installation of a structure,
7 and upon completion of the activity the vegetation and land
8 configuration of the site are restored to conditions existing before
9 the activity;

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

14 (E) The activity is not subject to the permit requirements of RCW
15 90.58.550;

16 (xii) The process of removing or controlling an aquatic noxious
17 weed, as defined in RCW 17.26.020, through the use of an herbicide or
18 other treatment methods applicable to weed control that are recommended
19 by a final environmental impact statement published by the department
20 of agriculture or the department jointly with other state agencies
21 under chapter 43.21C RCW.

22 **Sec. 3.** RCW 90.58.090 and 1997 c 429 s 50 are each amended to read
23 as follows:

24 (1) A master program, segment of a master program, or an amendment
25 to a master program shall become effective when approved by the
26 department. Within the time period provided in RCW 90.58.080, each
27 local government shall have submitted a master program, either totally
28 or by segments, for all shorelines of the state within its jurisdiction
29 to the department for review and approval.

30 (2) Upon receipt of a proposed master program or amendment, the
31 department shall:

32 (a) Provide notice to and opportunity for written comment by all
33 interested parties of record as a part of the local government review
34 process for the proposal and to all persons, groups, and agencies that
35 have requested in writing notice of proposed master programs or
36 amendments generally or for a specific area, subject matter, or issue.

1 The comment period shall be at least thirty days, unless the department
2 determines that the level of complexity or controversy involved
3 supports a shorter period;

4 (b) In the department's discretion, conduct a public hearing during
5 the thirty-day comment period in the jurisdiction proposing the master
6 program or amendment;

7 (c) Within fifteen days after the close of public comment, request
8 the local government to review the issues identified by the public,
9 interested parties, groups, and agencies and provide a written response
10 as to how the proposal addresses the identified issues;

11 (d) Within thirty days after receipt of the local government
12 response pursuant to (c) of this subsection, make written findings and
13 conclusions regarding the consistency of the proposal with the policy
14 of RCW 90.58.020 and the applicable guidelines, provide a response to
15 the issues identified in (c) of this subsection, and either approve the
16 proposal as submitted, recommend specific changes necessary to make the
17 proposal approvable, or deny approval of the proposal in those
18 instances where no alteration of the proposal appears likely to be
19 consistent with the policy of RCW 90.58.020 and the applicable
20 guidelines. The written findings and conclusions shall be provided to
21 the local government, all interested persons, parties, groups, and
22 agencies of record on the proposal;

23 (e) If the department recommends changes to the proposed master
24 program or amendment, within thirty days after the department mails the
25 written findings and conclusions to the local government, the local
26 government may:

27 (i) Agree to the proposed changes. The receipt by the department
28 of the written notice of agreement constitutes final action by the
29 department approving the amendment; or

30 (ii) Submit an alternative proposal. If, in the opinion of the
31 department, the alternative is consistent with the purpose and intent
32 of the changes originally submitted by the department and with this
33 chapter it shall approve the changes and provide written notice to all
34 recipients of the written findings and conclusions. If the department
35 determines the proposal is not consistent with the purpose and intent
36 of the changes proposed by the department, the department may resubmit
37 the proposal for public and agency review pursuant to this section or
38 reject the proposal.

1 (3) The department shall approve the segment of a master program
2 relating to shorelines unless it determines that the submitted segments
3 are not consistent with the policy of RCW 90.58.020 and the applicable
4 guidelines.

5 (4) The department shall approve the segment of a master program
6 relating to critical areas as defined by RCW 36.70A.030(5) provided the
7 master program segment is consistent with RCW 90.58.020 and applicable
8 shoreline guidelines, and if the segment provides a level of protection
9 of critical areas at least equal to that provided by the local
10 government's critical areas ordinances adopted and thereafter amended
11 pursuant to RCW 36.70A.060(2).

12 (5) The department shall approve those segments of the master
13 program relating to shorelines of statewide significance only after
14 determining the program provides the optimum implementation of the
15 policy of this chapter to satisfy the statewide interest. If the
16 department does not approve a segment of a local government master
17 program relating to a shoreline of statewide significance, the
18 department may develop and by rule adopt an alternative to the local
19 government's proposal.

20 ~~((+5+))~~ (6) In the event a local government has not complied with
21 the requirements of RCW 90.58.070 it may thereafter upon written notice
22 to the department elect to adopt a master program for the shorelines
23 within its jurisdiction, in which event it shall comply with the
24 provisions established by this chapter for the adoption of a master
25 program for such shorelines.

26 Upon approval of such master program by the department it shall
27 supersede such master program as may have been adopted by the
28 department for such shorelines.

29 ~~((+6+))~~ (7) A master program or amendment to a master program takes
30 effect when and in such form as approved or adopted by the department.
31 Shoreline master programs that were adopted by the department prior to
32 July 22, 1995, in accordance with the provisions of this section then
33 in effect, shall be deemed approved by the department in accordance
34 with the provisions of this section that became effective on that date.
35 The department shall maintain a record of each master program, the
36 action taken on any proposal for adoption or amendment of the master
37 program, and any appeal of the department's action. The department's
38 approved document of record constitutes the official master program.

1 **Sec. 4.** RCW 90.58.190 and 1995 c 347 s 311 are each amended to
2 read as follows:

3 (1) The appeal of the department's decision to adopt a master
4 program or amendment pursuant to RCW 90.58.070(2) or 90.58.090 (~~(+4)~~)
5 (5) is governed by RCW 34.05.510 through 34.05.598.

6 (2)(a) The department's decision to approve, reject, or modify a
7 proposed master program or amendment adopted by a local government
8 planning under RCW 36.70A.040 shall be appealed to the growth
9 management hearings board with jurisdiction over the local government.
10 The appeal shall be initiated by filing a petition as provided in RCW
11 36.70A.250 through 36.70A.320.

12 (b) If the appeal to the growth management hearings board concerns
13 shorelines, the growth management hearings board shall review the
14 proposed master program or amendment solely for compliance with the
15 requirements of this chapter (~~and chapter 36.70A RCW~~), the policy of
16 RCW 90.58.020 and the applicable guidelines, the internal consistency
17 provisions of RCW 36.70A.070, 36.70A.040(4), 35.63.125, and 35A.63.105,
18 and chapter 43.21C RCW as it relates to the adoption of master programs
19 and amendments under chapter 90.58 RCW.

20 (c) If the appeal to the growth management hearings board concerns
21 a shoreline of statewide significance, the board shall uphold the
22 decision by the department unless the board, by clear and convincing
23 evidence, determines that the decision of the department is
24 inconsistent with the policy of RCW 90.58.020 and the applicable
25 guidelines.

26 (d) The appellant has the burden of proof in all appeals to the
27 growth management hearings board under this subsection.

28 (e) Any party aggrieved by a final decision of a growth management
29 hearings board under this subsection may appeal the decision to
30 superior court as provided in RCW 36.70A.300.

31 (3)(a) The department's decision to approve, reject, or modify a
32 proposed master program or master program amendment by a local
33 government not planning under RCW 36.70A.040 shall be appealed to the
34 shorelines hearings board by filing a petition within thirty days of
35 the date of the department's written notice to the local government of
36 the department's decision to approve, reject, or modify a proposed
37 master program or master program amendment as provided in RCW
38 90.58.090(2).

1 (b) In an appeal relating to shorelines, the shorelines hearings
2 board shall review the proposed master program or master program
3 amendment and, after full consideration of the presentations of the
4 local government and the department, shall determine the validity of
5 the local government's master program or amendment in light of the
6 policy of RCW 90.58.020 and the applicable guidelines.

7 (c) In an appeal relating to shorelines of statewide significance,
8 the shorelines hearings board shall uphold the decision by the
9 department unless the board determines, by clear and convincing
10 evidence that the decision of the department is inconsistent with the
11 policy of RCW 90.58.020 and the applicable guidelines.

12 (d) Review by the shorelines hearings board shall be considered an
13 adjudicative proceeding under chapter 34.05 RCW, the Administrative
14 Procedure Act. The aggrieved local government shall have the burden of
15 proof in all such reviews.

16 (e) Whenever possible, the review by the shorelines hearings board
17 shall be heard within the county where the land subject to the proposed
18 master program or master program amendment is primarily located. The
19 department and any local government aggrieved by a final decision of
20 the hearings board may appeal the decision to superior court as
21 provided in chapter 34.05 RCW.

22 (4) A master program amendment shall become effective after the
23 approval of the department or after the decision of the shorelines
24 hearings board to uphold the master program or master program
25 amendment, provided that the board may remand the master program or
26 master program adjustment to the local government or the department for
27 modification prior to the final adoption of the master program or
28 master program amendment.

29 **Sec. 5.** RCW 36.70A.480 and 1995 c 347 s 104 are each amended to
30 read as follows:

31 (1) For shorelines of the state, the goals and policies of the
32 shoreline management act as set forth in RCW 90.58.020 are added as one
33 of the goals of this chapter as set forth in RCW 36.70A.020 without
34 creating an order of priority among the fourteen goals. The goals and
35 policies of a shoreline master program for a county or city approved
36 under chapter 90.58 RCW shall be considered an element of the county or
37 city's comprehensive plan. All other portions of the shoreline master

1 program for a county or city adopted under chapter 90.58 RCW, including
2 use regulations, shall be considered a part of the county or city's
3 development regulations.

4 (2) The shoreline master program shall be adopted pursuant to the
5 procedures of chapter 90.58 RCW rather than the goals, policies, and
6 procedures set forth in this chapter for the adoption of a
7 comprehensive plan or development regulations.

8 (3) The policies, goals, and provisions of chapter 90.58 RCW and
9 applicable guidelines shall be the sole basis for determining
10 compliance of a shoreline master program with this chapter except as
11 the shoreline master program is required to comply with the internal
12 consistency provisions of RCW 36.70A.070, 36.70A.040(4), 35.63.125, and
13 35A.63.105.

14 (a) As of the date the department of ecology approves a local
15 government's shoreline master program adopted under applicable
16 shoreline guidelines, the protection of critical areas as defined by
17 RCW 36.70A.030(5) within shorelines of the state shall be accomplished
18 only through the local government's shoreline master program and shall
19 not be subject to the procedural and substantive requirements of this
20 chapter, except as provided in subsection (6) of this section.

21 (b) Critical areas within shorelines of the state that have been
22 identified as meeting the definition of critical areas as defined by
23 RCW 36.70A.030(5), and that are subject to a shoreline master program
24 adopted under applicable shoreline guidelines shall not be subject to
25 the procedural and substantive requirements of this chapter, except as
26 provided in subsection (6) of this section. Nothing in this act is
27 intended to affect whether or to what extent agricultural activities,
28 as defined in RCW 90.58.065, are subject to chapter 36.70A RCW.

29 (c) The provisions of RCW 36.70A.172 shall not apply to the
30 adoption or subsequent amendment of a local government's shoreline
31 master program and shall not be used to determine compliance of a local
32 government's shoreline master program with chapter 90.58 RCW and
33 applicable guidelines. Nothing in this section, however, is intended
34 to limit or change the quality of information to be applied in
35 protecting critical areas within shorelines of the state, as required
36 by chapter 90.58 RCW and applicable guidelines.

37 (4) Shoreline master programs shall provide a level of protection
38 to critical areas located within shorelines of the state that is at

1 least equal to the level of protection provided to critical areas by
2 the local government's critical area ordinances adopted and thereafter
3 amended pursuant to RCW 36.70A.060(2).

4 (5) Shorelines of the state shall not be considered critical areas
5 under this chapter except to the extent that specific areas located
6 within shorelines of the state qualify for critical area designation
7 based on the definition of critical areas provided by RCW 36.70A.030(5)
8 and have been designated as such by a local government pursuant to RCW
9 36.70A.060(2).

10 (6) If a local jurisdiction's master program does not include land
11 necessary for buffers for critical areas that occur within shorelines
12 of the state, as authorized by RCW 90.58.030(2)(f), then the local
13 jurisdiction shall continue to regulate those critical areas and their
14 required buffers pursuant to RCW 36.70A.060(2).

Passed by the House April 25, 2003.

Passed by the Senate April 9, 2003.

Approved by the Governor May 15, 2003.

Filed in Office of Secretary of State May 15, 2003.

Appendix B

CP000000000066

CERTIFICATION OF ENROLLMENT
SUBSTITUTE SENATE BILL 6012

Chapter 262, Laws of 2003

58th Legislature
2003 Regular Session

SHORELINE MANAGEMENT

EFFECTIVE DATE: 7/27/03

Passed by the Senate April 26, 2003
YEAS 44 NAYS 5

BRAD OWEN

President of the Senate

Passed by the House April 17, 2003
YEAS 61 NAYS 37

FRANK CHOPP

Speaker of the House of Representatives

Approved May 14, 2003.

GARY F. LOCKE

Governor of the State of Washington

CERTIFICATE

I, Milton H. Doumit, Jr.,
Secretary of the Senate of the
State of Washington, do hereby
certify that the attached is
SUBSTITUTE SENATE BILL 6012 as
passed by the Senate and the House
of Representatives on the dates
hereon set forth.

MILTON H. DOUMIT JR.

Secretary

FILED

May 14, 2003 - 10:16 a.m.

Secretary of State
State of Washington

SUBSTITUTE SENATE BILL 6012

AS AMENDED BY THE HOUSE

Passed Legislature - 2003 Regular Session

State of Washington 58th Legislature 2003 Regular Session

By Senate Committee on Land Use & Planning (originally sponsored by
Senators Mulliken, T. Sheldon and Morton)

READ FIRST TIME 03/05/03.

1 AN ACT Relating to shoreline management; and amending RCW
2 90.58.060, 90.58.080, and 90.58.250.

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

4 **Sec. 1.** RCW 90.58.060 and 1995 c 347 s 304 are each amended to
5 read as follows:

6 (1) The department shall periodically review and adopt guidelines
7 consistent with RCW 90.58.020, containing the elements specified in RCW
8 90.58.100 for:

9 (a) Development of master programs for regulation of the uses of
10 shoreline; and

11 (b) Development of master programs for regulation of the uses of
12 shorelines of statewide significance.

13 (2) Before adopting or amending guidelines under this section, the
14 department shall provide an opportunity for public review and comment
15 as follows:

16 (a) The department shall mail copies of the proposal to all cities,
17 counties, and federally recognized Indian tribes, and to any other
18 person who has requested a copy, and shall publish the proposed

1 guidelines in the Washington state register. Comments shall be
2 submitted in writing to the department within sixty days from the date
3 the proposal has been published in the register.

4 (b) The department shall hold at least four public hearings on the
5 proposal in different locations throughout the state to provide a
6 reasonable opportunity for residents in all parts of the state to
7 present statements and views on the proposed guidelines. Notice of the
8 hearings shall be published at least once in each of the three weeks
9 immediately preceding the hearing in one or more newspapers of general
10 circulation in each county of the state. If an amendment to the
11 guidelines addresses an issue limited to one geographic area, the
12 number and location of hearings may be adjusted consistent with the
13 intent of this subsection to assure all parties a reasonable
14 opportunity to comment on the proposed amendment. The department shall
15 accept written comments on the proposal during the sixty-day public
16 comment period and for seven days after the final public hearing.

17 (c) At the conclusion of the public comment period, the department
18 shall review the comments received and modify the proposal consistent
19 with the provisions of this chapter. The proposal shall then be
20 published for adoption pursuant to the provisions of chapter 34.05 RCW.

21 (3) The department may (~~propose~~) adopt amendments to the
22 guidelines not more than once each year. (~~At least once every five~~
23 ~~years the department shall conduct a review of the guidelines pursuant~~
24 ~~to the procedures outlined in subsection (2) of this section)) Such
25 amendments shall be limited to: (a) Addressing technical or procedural
26 issues that result from the review and adoption of master programs
27 under the guidelines; or (b) issues of guideline compliance with
28 statutory provisions.~~

29 **Sec. 2.** RCW 90.58.080 and 1995 c 347 s 305 are each amended to
30 read as follows:

31 (1) Local governments shall develop or amend(~~, within twenty four~~
32 ~~months after the adoption of guidelines as provided in RCW 90.58.060,~~)
33 a master program for regulation of uses of the shorelines of the state
34 consistent with the required elements of the guidelines adopted by the
35 department in accordance with the schedule established by this section.

36 (2)(a) Subject to the provisions of subsections (5) and (6) of this

1 section, each local government subject to this chapter shall develop or
2 amend its master program for the regulation of uses of shorelines
3 within its jurisdiction according to the following schedule:

4 (i) On or before December 1, 2005, for the city of Port Townsend,
5 the city of Bellingham, the city of Everett, Snohomish county, and
6 Whatcom county;

7 (ii) On or before December 1, 2009, for King county and the cities
8 within King county greater in population than ten thousand;

9 (iii) Except as provided by (a)(i) and (ii) of this subsection, on
10 or before December 1, 2011, for Clallam, Clark, Jefferson, King,
11 Kitsap, Pierce, Snohomish, Thurston, and Whatcom counties and the
12 cities within those counties;

13 (iv) On or before December 1, 2012, for Cowlitz, Island, Lewis,
14 Mason, San Juan, Skagit, and Skamania counties and the cities within
15 those counties;

16 (v) On or before December 1, 2013, for Benton, Chelan, Douglas,
17 Grant, Kittitas, Spokane, and Yakima counties and the cities within
18 those counties; and

19 (vi) On or before December 1, 2014, for Adams, Asotin, Columbia,
20 Ferry, Franklin, Garfield, Grays Harbor, Klickitat, Lincoln, Okanogan,
21 Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman
22 counties and the cities within those counties.

23 (b) Nothing in this subsection (2) shall preclude a local
24 government from developing or amending its master program prior to the
25 dates established by this subsection (2).

26 (3)(a) Following approval by the department of a new or amended
27 master program, local governments required to develop or amend master
28 programs on or before December 1, 2009, as provided by subsection
29 (2)(a)(i) and (ii) of this section, shall be deemed to have complied
30 with the schedule established by subsection (2)(a)(iii) of this section
31 and shall not be required to complete master program amendments until
32 seven years after the applicable dates established by subsection
33 (2)(a)(iii) of this section. Any jurisdiction listed in subsection
34 (2)(a)(i) of this section that has a new or amended master program
35 approved by the department on or after March 1, 2002, but before the
36 effective date of this section, shall not be required to complete
37 master program amendments until seven years after the applicable date
38 provided by subsection (2)(a)(iii) of this section.

1 (b) Following approval by the department of a new or amended master
2 program, local governments choosing to develop or amend master programs
3 on or before December 1, 2009, shall be deemed to have complied with
4 the schedule established by subsection (2)(a)(iii) through (vi) of this
5 section and shall not be required to complete master program amendments
6 until seven years after the applicable dates established by subsection
7 (2)(a)(iii) through (vi) of this section.

8 (4) Local governments shall conduct a review of their master
9 programs at least once every seven years after the applicable dates
10 established by subsection (2)(a)(iii) through (vi) of this section.
11 Following the review required by this subsection (4), local governments
12 shall, if necessary, revise their master programs. The purpose of the
13 review is:

14 (a) To assure that the master program complies with applicable law
15 and guidelines in effect at the time of the review; and

16 (b) To assure consistency of the master program with the local
17 government's comprehensive plan and development regulations adopted
18 under chapter 36.70A RCW, if applicable, and other local requirements.

19 (5) Local governments are encouraged to begin the process of
20 developing or amending their master programs early and are eligible for
21 grants from the department as provided by RCW 90.58.250, subject to
22 available funding. Except for those local governments listed in
23 subsection (2)(a)(i) and (ii) of this section, the deadline for
24 completion of the new or amended master programs shall be two years
25 after the date the grant is approved by the department. Subsequent
26 master program review dates shall not be altered by the provisions of
27 this subsection.

28 (6)(a) Grants to local governments for developing and amending
29 master programs pursuant to the schedule established by this section
30 shall be provided at least two years before the adoption dates
31 specified in subsection (2) of this section. To the extent possible,
32 the department shall allocate grants within the amount appropriated for
33 such purposes to provide reasonable and adequate funding to local
34 governments that have indicated their intent to develop or amend master
35 programs during the biennium according to the schedule established by
36 subsection (2) of this section. Any local government that applies for
37 but does not receive funding to comply with the provisions of

1 subsection (2) of this section may delay the development or amendment
2 of its master program until the following biennium.

3 (b) Local governments with delayed compliance dates as provided in
4 (a) of this subsection shall be the first priority for funding in
5 subsequent biennia, and the development or amendment compliance
6 deadline for those local governments shall be two years after the date
7 of grant approval.

8 (c) Failure of the local government to apply in a timely manner for
9 a master program development or amendment grant in accordance with the
10 requirements of the department shall not be considered a delay
11 resulting from the provisions of (a) of this subsection.

12 (7) Notwithstanding the provisions of this section, all local
13 governments subject to the requirements of this chapter that have not
14 developed or amended master programs on or after March 1, 2002, shall,
15 no later than December 1, 2014, develop or amend their master programs
16 to comply with guidelines adopted by the department after January 1,
17 2003.

18 **Sec. 3.** RCW 90.58.250 and 1971 ex.s. c 286 s 25 are each amended
19 to read as follows:

20 (1) The legislature intends to eliminate the limits on state
21 funding of shoreline master program development and amendment costs.
22 The legislature further intends that the state will provide funding to
23 local governments that is reasonable and adequate to accomplish the
24 costs of developing and amending shoreline master programs consistent
25 with the schedule established by RCW 90.58.080. Except as specifically
26 described herein, nothing in this act is intended to alter the existing
27 obligation, duties, and benefits provided by this act to local
28 governments and the department.

29 (2) The department is directed to cooperate fully with local
30 governments in discharging their responsibilities under this chapter.
31 Funds shall be available for distribution to local governments on the
32 basis of applications for preparation of master programs and the
33 provisions of RCW 90.58.080(7). Such applications shall be submitted
34 in accordance with regulations developed by the department. The
35 department is authorized to make and administer grants within
36 appropriations authorized by the legislature to any local government

1 within the state for the purpose of developing a master shorelines
2 program.

3 ~~((No grant shall be made in an amount in excess of the recipient's
4 contribution to the estimated cost of such program.))~~

Passed by the Senate April 26, 2003.

Passed by the House April 17, 2003.

Approved by the Governor May 14, 2003.

Filed in Office of Secretary of State May 14, 2003.

FILED
COURT OF APPEALS
DIVISION II

07 MAY 22 AM 11:32

STATE OF WASHINGTON
BY dn
DEPUTY

NO. 35696-1-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

CITY OF ANACORTES, et al.,

Appellants,

v.

FUTUREWISE, et al.

Respondents.

AMENDED
DECLARATION OF
SERVICE

I certify that I served a copy of the *Brief Of Intervenor-Respondents
Washington State Department Of Community, Trade And Economic
Development And Washington State Department Of Ecology* on all
parties or their counsel of record on the date below as follows:

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I certify under penalty of perjury under the laws of the state of
Washington that the foregoing is true and correct.

DATED this 21st day of May, 2007, at Olympia, WA.


LINDA HUMPHREY
Legal Assistant