80396-0

Case No. 35696-1-II

COURT OF APPEALS
OF THE STATE OF WASHINGTON, DIVISION II

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.

FILED
COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
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DEPUTY

BRIEF OF RESPONDENTS FUTUREWISE,
EVERGREEN ISLANDS, AND SKAGIT AUDUBON SOCIETY

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I. INTRODUCTION

At issue in this appeal is new legislation addressing important environmental protections for Washington shorelines. It is undisputed that the legislation at issue, ESHB 1933,[1] transfers responsibilities from the Growth Management Act[2] ("GMA") to the Shoreline Management Act[3] ("SMA"). At the request of three nonprofit groups and two Washington state agencies, the Superior Court gave effect to the legislature's intent as conveyed in the legislation's plain meaning and held that the transfer of authority from the GMA to the SMA only takes place after an updated Shoreline Master Program ("SMP") has been approved by the Department of Ecology.

Appellants the City of Anacortes and Washington Public Ports Association urge this Court to add new language into the legislation that would overrule mandates addressing the deliberate and staggered timelines for updating shoreline master programs. As justification for their efforts to persuade this Court to rewrite legislation, Appellants have undertaken exhaustive discussions of the City's "environmental

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[1] Engrossed Senate House Bill 1933 enacted as Session Laws Ch. 312, Laws of 2003. ESHB 1933 is attached hereto as Appendix A.

[2] *See* RCW 36.70A (The Growth Management Act).

[3] *See* RCW 90.58 ("Shoreline Management Act of 1971").

stewardship" and the "broader context" including historical environmental regulations. This Court must enforce the plain and unambiguous meaning of the legislation. Because Appellants' proposed rewrite is not appropriate and not supported by the legislative intent, it cannot be accepted.

The Superior Court's November 17, 2006 Final Judgment and Order ("November 17, 2006 Order") correctly decided the narrow legal issue before this Court, *i.e.*, protections for Washington shorelines continue to be governed by the GMA until the shoreline master programs are updated in the manner expressly required by the SMA. CP 451-54.[4] Moreover, this interpretation is consistent with legislative intent, as it guarantees there will be no gap in protections to Washington shorelines. For all of the reasons discussed herein, Respondents Futurewise, Evergreen Islands, and Skagit Audubon Society ("the Futurewise Parties") respectfully request that this Court affirm the Superior Court's November 17, 2006 Order and remand to the Western Washington Growth Management Hearings Board for further proceedings.

[4] The Superior Court's November 17, 2006 Order is attached hereto as Appendix B.

II. ISSUE PERTAINING TO APPELLANTS' ASSIGNMENTS OF ERROR

Whether responsibilities for protecting Washington shorelines continue to be governed by the GMA until the shoreline master programs are updated in the thoughtful and deliberate manner expressly required by the SMA.

III. STATEMENT OF THE CASE

A. General Background of Case

1. The City of Anacortes Shorelines

The City of Anacortes is located on Fidalgo Bay in the Puget Sound. The Legislation at issue in this case addresses environmental protections and regulations for miles of shoreline, including critical habitat, preserved forest lands, and industrial and tourist areas spanning the shorelines of the City of Anacortes.

2. The Washington State Legislature's 2003 Changes for Shoreline Regulations

The Washington State Legislature enacted ESHB 1933 to, *inter alia*, transfer shoreline protection responsibilities from the GMA to the SMA.[5] ESHB 1933 added a new requirement that shoreline master

[5] Overviews of the GMA, the SMA, and the interrelationship between the two statutory schemes, as well as the background of ESHB 1933 are set forth in the State Agencies' brief to this Court. The Futurewise Parties hereby incorporate these sections by reference.

programs protect critical areas as defined and designated in the GMA. ESHB 1933, §5(4); RCW 36.70A.480(4). During the same legislative session, SB 6012 was enacted to provide for staged implementation of shoreline master program updates by counties and cities.[6] SB 6012 mandated deliberate and staggered timelines for these updates based upon geographic location to better disburse funding, and to allow the Department of Ecology to provide technical assistance and detailed review on a priority basis so as to promote coordination and the most effective use of agency resources and funding dollars.[7] Significantly, ESHB 1933 and SB 6012 both became effective on the same day, July 27, 2003.

3. The City of Anacortes' Own Efforts to Regulate Its Shorelines

On April 18, 2005, the City of Anacortes repealed its own critical areas regulations and enacted a new stand-alone chapter of the Anacortes City Code that addressed the protections of critical areas, Chapter 17.70

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[6] Substitute Senate Bill 6012 enacted as Session Laws Ch. 262, Laws of 2003. SB 6012 is attached hereto as Appendix C.

[7] The Futurewise Parties hereby incorporate the portions of the State Agencies' response brief addressing the purposes of SB 6012, and the logistical requirements related thereto.

of the Anacortes City Code.[8] The new City Ordinance, among other things, exempted wetland buffer widths, provided inadequate wetland buffer widths for shoreline habitat areas, and provided no standards for forest habitat areas.[9]

B. Challenges to the City of Anacortes' New Ordinance

Three nonprofit organizations challenged the City of Anacortes' new environmental scheme as violating the GMA in proceedings before the Western Washington Growth Management Hearings Board and the Thurston County Superior Court. These efforts were joined by two state agencies.[10]

1. Brief Background of the Non-Profit Organizations

Futurewise, Evergreen Islands, and Skagit Audubon Society are nonprofit membership groups united in their efforts to protect the environment. Futurewise is a statewide public interest group working to promote healthy communities and cities while protecting farmland, forests and shorelines today and for future generations. Notably,

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[8] Ordinance 2702, codified as Chapter 17.70 of the Anacortes City Code, available at http://municipalcodes.lexisnexis.com/codes/anacortes/.

[9] While these provisions set forth in the Anacortes City Ordinance prompted this litigation at the outset, substantive review of such provisions is not currently at issue before this Court.

[10] The state agencies submitted an Amicus Brief to the Western Washington Growth Management Hearings Board, and were granted Intervenor status in the Thurston County Superior Court.

Futurewise is the only statewide group in Washington working to ensure that local governments manage growth responsibly.[11] Evergreen Islands' focus is to try to help assure the environmentally sensitive development of Fidalgo Island.[12] The Skagit Audubon Society is a Chapter of the National Audubon Society, and has a mission to conserve and restore natural ecosystems, focusing on birds, other wildlife and their habitats for the benefit of humanity and the earth's biological diversity.[13]

These three important nonprofit groups have joined efforts in this case to ensure that shorelines in the City of Anacortes and beyond are fully protected in accordance with important statewide interests. Throughout this brief, Futurewise, Evergreen Islands, and Skagit Audubon Society will be referred to collectively as "the Futurewise Parties."

2. Brief Background of the Washington State Department of Community, Trade and Economic Development and the Washington State Department of Ecology

Washington State Department of Community, Trade and Economic Development ("CTED") and the Washington State

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[11] *See* Futurewise's website: http://www.futurewise.org/about.

[12] *See* Evergreen Island's website: http://www.evergreenislands.org/about.shtml.

[13] *See* Skagit Audubon Society website: http://www.fidalgo.net/~audubon/Member.htm.

Department of Ecology ("Ecology") are agencies of the Washington state government. CTED's mission is to invest in Washington's communities, businesses and families to build a healthy and prosperous future.[14] Ecology's mission is to protect, preserve and enhance Washington's environment, and promote the wise management of our air, land and water. In order to move Washington forward in a global economy, Ecology's three goals are to prevent pollution, clean up pollution, and support sustainable communities and natural resources.[15] As stated above, the Department of Ecology plays an integral role in the shoreline master program updating process. CTED and Ecology are collectively referred to throughout this brief as "the State Agencies."

3. The City of Anacortes and the Washington Public Ports Association Opposed Efforts by the Futurewise Parties and the State Agencies

The City of Anacortes ("the City"), which enacted the provisions of the Anacortes City Code at issue, and the Washington Public Ports Association ("WPPA") participated in proceedings before the Western

[14] *See* CTED's website: http://www.cted.wa.gov/site/21/default.aspx.

[15] *See* Ecology's website: http://www.ecy.wa.gov/about.html.

Washington Growth Management Hearings Board and the Thurston County Superior Court.[16]

The position taken by the City and the WPPA is that ESHB 1933 should be read as if it immediately transferred shoreline protection responsibilities from the GMA to the SMA on ESHB's effective date. If this position were accepted, the necessary result would be a complete disregard of both the plain language of ESHB 1933 and SB 6012, which was enacted on the same day as ESHB 1933 to provide for staged implementation of shoreline master programs updates by counties and cities.

4. The Decisions of the Western Washington Growth Management Hearings Board and the Thurston County Superior Court

On December 27, 2005, the Western Washington Growth Management Hearings Board issued its Final Decision and Order. CP 269-315. The Board required the City of Anacortes to bring its new Ordinance into compliance with the GMA. CP 313. It, however, also addressed broader issues related to the timing and procedures for transfer

[16] WPPA was formed by the Legislature to promote the interests of the port community through effective government relations, ongoing education, and strong advocacy programs. *See* WPPA's website: http://www.washingtonports.org/. It submitted an Amicus Brief to the Western Washington Growth Management Hearings Board, and was granted Intervenor status in the Thurston County Superior Court.

to the SMA that are the subject of this instant appeal. Specifically, the Board added to ESHB 1933 a requirement that each new or amended protection of critical areas in shorelines is to be accomplished under the SMA without regard to the staged implementation of shoreline master program updates by counties and cities expressly provided for in SB 6012. CP 292-99. In other words, the Board concluded that an amendment to the City's critical areas ordinance under the GMA constitutes an amendment to the City's shoreline master program that must be approved by Ecology under the terms of the SMA. *Id.*

Futurewise and the State Agencies appealed to the Thurston County Superior Court, which properly confirmed the plain language of the legislation and the SMA, *i.e.*, that responsibilities for protecting Washington shorelines continue to be governed by the GMA until the shoreline master programs are updated in the orderly manner expressly required by SB 6012. CP 451-54.

IV. ARGUMENT

The narrow legal issue before this Court is one of statutory interpretation to ascertain <u>when</u> and <u>how</u> shoreline management responsibilities transfer to the SMA from the GMA under ESHB 1933. ESHB 1933 provides that the Shoreline Management Act shall govern

critical areas protections for shorelines as of the date an updated Shoreline Master Program for a given jurisdiction is approved by the Department of Ecology. ESHB 1933 was enacted at the same time as requirements that shoreline master programs be updated based upon a staggered timeline in SB 6012. Appellants allege that the Superior Court's conclusion was erroneous, and instead advocate for the addition of the word "immediate" into ESHB 1933 that would effectively overrule the contemporaneously enacted staggered timeline for shoreline master program updates. For all the reasons set forth herein, the Futurewise Parties respectfully request that this Court decline Appellants' invitation to rewrite legislation.

A. <u>This Court's Standard of Review is *De Novo*</u>

It is appropriate for this Court to defer to the Growth Management Hearings Board on questions of fact, and mixed questions of law and fact. *Lewis County v. Western Washington Growth Mgmt. Hearings Bd.*, 157 Wn.2d 488 n.8, 139 P.3d 1096 (2006).[17] Although this Court gives "substantial weight" to the Board's interpretation of the GMA, errors of law (including questions of statutory interpretation) are

[17] The standard of review set forth in the City's Opening Brief quotes the section of the Administrative Procedures Act pertaining to judicial review standards applicable in the superior court proceedings, as opposed to proceedings in higher courts. *See* City's Opening Br. at 8; *see also* RCW 34.05.594.

reviewed *de novo*. *See, e.g., United States. v. Hoffman*, 154 Wn.2d 730, 737, 116 P.3d 999 (2005); *Magula v. Dep't of Labor and Indus.*, 116 Wn. App. 966, 969, 69 P.3d 354 (2003) (citing *City of Redmond v. Central Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wn.2d 38, 45, 959 P.2d 1091 (1998)).

B. <u>Effect Must Be Given to the Plain Meaning of the Statutes in Deference to Legislative Intent</u>

"A court's objective in construing a statute is to determine the legislature's intent." *Tingey v. Haisch*, 159 Wn.2d. 652, 152 P.3d 1020, 1023 (2007); *see State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005). If the statute's meaning is plain, courts must give effect to that plain meaning as the expression of the legislature's intent. *Id.* Plain meaning is determined from the ordinary meaning of the language used in the context of the entire statute in which the particular provision is found, related statutory provisions, and the statutory scheme as a whole. *Id.* If, however, the statutory language is susceptible to more than one reasonable interpretation, it is ambiguous and such ambiguity must be resolved by resort to other indicia of legislative intent, including legislative history, and, if necessary, only then are principles of statutory construction applied to resolve any remaining ambiguity. *See id.*

C. The Plain Meaning of ESHB 1933 and SB 6012 Confirms That the GMA Continues to Regulate Shorelines Until the Staggered Shoreline Master Program Update is Complete

Considering the ordinary meaning of the language used in the context of the entire statute in which the particular provision is found, related statutory provisions, and the statutory scheme as a whole (including SB 6012, which became effective the same day), it is apparent that the Legislature's intent for ESHB 1933 was that the SMA was to regulate shorelines only after the shoreline master program updates were completed in the manner and timeframe contemporaneously provided for in SB 6012.

1. The Text of ESHB 1933 – Transferring From the GMA to the SMA After Ecology Approval

ESHB 1933 transfers responsibilities for regulating shoreline critical areas from the GMA to the SMA. ESHB 1933 states in relevant part as follows:

> 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.

ESHB 1933 § 1(3).

ESHB 1933 also contains a provision that requires the Department of Ecology to approve local governments' shoreline master program amendments. That provision makes reference to the date Ecology issues its approval, and expressly states that the protection of shoreline critical areas must be accomplished through the shoreline master program as of the approval date:

> 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.050(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 [addressing when local governments have not complied].

ESHB 1933 § 5(a) (emphasis added). Consequently, the protection of critical areas within shorelines do not become effective until the time that they are actually approved by Ecology.

2. The Text of SB 6012 – Providing Details About When and How SMA Updates Are to be Made

SB 6012 was enacted during the same legislative session and became effective on the same day as ESHB 1933 and provides express procedures and requirements for updates to the SMA. SB 6012 requires local governments to develop or amend a master program for regulation

of uses of the shorelines of the state in accordance with a highly detailed schedule. SB 6012 §2. Local governments are named expressly on a staggered timeline. SB 6012 §2(2)(a). For example, the City of Port Townsend must develop or amend by December 1, 2005, while Grays Harbor county is not required to do so until December 1, 2014. SB 6012 §2(2)(a)(i) & (vi). Cities within Skagit County, including the City of Anacortes, have until December 1, 2012, to develop or amend master programs. SB 6012 §2(2)(a)(iv). Notably, SB 2012 makes clear that local governments are permitted to undertake the process and seek Ecology approval prior to the deadlines set forth therein. SB 6012 §2(2)(b).

3. ESHB 1933 Must be Viewed in Appropriate Context With SB 6012 in Order to Provide for Consistent Shoreline Protections

It is undisputed that ESHB 1933 added a new requirement that shoreline master programs protect critical areas as defined and designated in the GMA. ESHB 1933, §5(4); RCW 36.70A.480(4). During the same legislative session, SB 6012 was enacted to provide for staged implementation of shoreline master program updates by counties

and cities.[18] Appellants' argument that ESHB 1933 should be interpreted to overrule the deliberate and specific instructions and timelines set forth in SB 6012 is simply untenable. To the contrary, these two interrelated pieces of legislation must be viewed together in the appropriate context.

SB 6012 mandated staggered timelines for these updates based upon geographic location to better disburse funding, and to allow the Department of Ecology to provide technical assistance and detailed review on a priority basis so as to promote coordination and the most effective use of resources. In some instances, significant amounts of time has been provided for certain counties and cities to develop or amend a master program for regulation of uses of the shorelines. In turn, Ecology is also on that same timeline and, in accordance with SB 6012, is expected to ration its resources in order to address various local governments' proposals in a thorough and timely manner. Given that the protection of critical areas within shorelines do not become effective until they are approved by Ecology, the legislation when read together

[18] Substitute Senate Bill 6012 enacted as Session Laws Ch. 262, Laws of 2003. SB 6012 is attached hereto as Appendix C.

makes clear that the process was intended to be thoughtful and addressed over time.

D. Even If There Was Ambiguity (Which There is Not), Other Indicia of Legislative Intent and Principles of Statutory Construction Confirm the Same Result

Appellants urge this Court to view historical environmental regulations and caselaw before deciding as a matter of law the appropriate legal interpretation of ESHB 1933. Because the ordinary meaning of the language used in the context of the entire statute in which the particular provision is found, related statutory provisions, and the statutory scheme as a whole provide clear evidence of the legislative intent, it is not appropriate for this Court to go beyond the plain meaning. *See Tingey*, 152 P.3d at 1023 (2007); *Jacobs*, 154 Wn.2d at 600. Indeed, ESHB 1933 is not ambiguous. Even if it could somehow be construed as being susceptible to more than one reasonable interpretation, the next step would be to resolve the ambiguity by resort to other indicia of legislative intent, including legislative history, and, if necessary, application of the principles of statutory construction. *Id.* As discussed herein, legislative history supports the Superior Court's interpretation of the narrow legal issue before this Court. Likewise, the principles of statutory construction support this reading as well.

1. Other Indicia of Legislative Intent

To require local governments and Ecology to rush through this process would defy this deliberately balanced protocol for meaningful review. Worse yet, if ESHB 1933 was determined to be immediately effective, this could leave a gap in protections for Washington shorelines. Contrary to the City's dismissive response to this argument, the protection gap is a very real concern. Although the local governments could attempt to update sooner, there is no guarantee they all will. As a further complication, even if all local governments did immediately update simultaneously, those updates would not become effective until approval is received from Ecology. Pending completion and approval (if protections were to immediately transfer from the GMA to the SMA), no protections whatsoever would be valid. This scenario is utterly inconsistent with legislative intent, and provides further support for the Superior Court's interpretation of the narrow legal issue before this Court.

2. Principles of Statutory Construction

"The legislature is presumed not to include unnecessary language when it enacts legislation." *McGinnis v. State*, 152 Wn.2d 639, 642, 99 P.3d 1240 (2004). "A fundamental canon of construction holds a

statute should not be interpreted so as to render one part inoperative." *Davis v. State ex rel. Dep't of Licensing*, 137 Wn.2d 957, 969, 977 P.2d 554 (1999); *see Judd v. Am. Tel. & Tel. Co.*, 152 Wn.2d 195, 202, 95 P.3d 337, 340 (2004) (confirming that no portion of a statute shall be rendered meaningless or superfluous through interpretation).

In accordance with well-established principles of statutory construction, this Court must decline to disregard the Legislature's staggered timelines set forth in SB 6012, and its frequently stated desire to provide consistent protections to shorelines throughout the state.

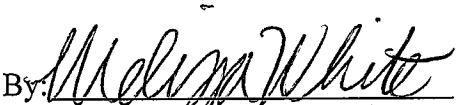
V. CONCLUSION

The Superior Court correctly interpreted the statutory provisions at issue herein when it concluded that responsibilities for protecting Washington shorelines continue to be governed by the GMA until the shoreline master programs are updated in the thoughtful and reasonable manner required by SB 6012. CP 451-54. This interpretation is in accordance with the legislative intent evident from the ordinary meaning of the language used in the context of the entire statute, related statutory provisions, and the statutory scheme as a whole.

This Court should decline Appellants' request to rewrite legislation, and instead affirm the Superior Court's November 17, 2006 Order.

DATED: May 21, 2007

COZEN O'CONNOR

By: 

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DIVISION II
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STATE OF WASHINGTON
BY _____
DEPUTY

DECLARATION OF SERVICE

Dava Z. Bowzer states:

I am a citizen of the United States of America and a resident of the State of Washington, I am over the age of 21 years, I am not a party to this action, and I am competent to be a witness herein.

On this 21st day of May, 2007, I caused to be filed via U.S. Mail, First Class Postage prepaid, with the Court of Appeals of the State of Washington, Division II, the foregoing Brief of Respondents Futurewise, Evergreen Islands, and Skagit Audubon Society. I also served copies of said document on the following parties as indicated below:

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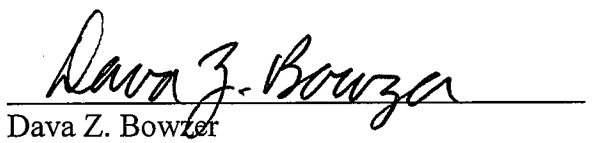
I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed at Seattle, Washington, this 21st day of May, 2007.



Dava Z. Bowzer

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APPENDIX

No. 35696-1-II, Court of Appeals of the State of Washington, Division II
Futurewise, Evergreen Islands, and Skagit Audubon Society, Respondents v. Western Washington Growth Management Hearings Board, and City of Anacortes, Appellants.

A	Engrossed Senate House Bill 1933 enacted as Session Laws Ch. 312, Laws of 2003
B	Final Judgment and Order, dated November 17, 2006 Re: Cause No. 06-2-00166-1 in the Thurston County Superior Court; *Futurewise, et al. v. Western Washington Growth Management Hearings Board, et al.*
C	Substitute Senate Bill 6012 enacted as Sessions Laws Ch. 262, Laws of 2003

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

SCANNED

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0-000000204

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

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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

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(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) Nisqually 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,

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(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 deltas 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 therefrom.

(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

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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

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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
1 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

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feeding and/or grazing, nor shall it include normal livestock 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 use 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 either (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 market 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, maintenance, 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 artificially 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 maintenance 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

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

(B) The activity will have no significant adverse impact on 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 26 020, 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 chapter 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

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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 changes 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 the 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 is 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

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(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 critical 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 local 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 program 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 may 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 master 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 shall 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 programs 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

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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 58 090((~~(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, the 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 consistency 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 applicable 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 the 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 the 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)

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(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 department, 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 shorelines 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 shorelines 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 appeal 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 program 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 <u>without creating an order of priority among the fourteen goals</u> 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

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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

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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

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FILED
SUPERIOR COURT
THURSTON CO. WASH

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BY 4
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STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT

FUTUREWISE, EVERGREEN ISLANDS and SKAGIT AUDUBON SOCIETY, Petitioners, and WASHINGTON STATE DEPARTMENT OF COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT and WASHINGTON STATE DEPARTMENT OF ECOLOGY, Intervenors, v WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD, an agency of the State of Washington, and CITY OF ANACORTES, Respondents and WASHINGTON PUBLIC PORTS ASSOCIATION, Intervenor	NO 06-2-00166-1 FINAL JUDGMENT AND ORDER

SCANNED

ATTORNEY GENERAL OF WASHINGTON
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RC

1 INTRODUCTION

1.1 This matter came before the Court on an appeal filed by Petitioners Futurewise, Evergreen Islands, and Skagit Audubon Society of a Final Decision and Order issued by the Western Washington Growth Management Hearings Board (Board) on December 27, 2005, in *Evergreen Islands Futurewise and Skagit Audubon Society v City of Anacortes*, WWGMHB Case No 05-2-0016

1.2 The only issue before the Court relates to ESHB 1933 (Laws of 2003, ch 321), which amended the Growth Management Act ("GMA"), chapter 36 70A RCW, and the Shoreline Management Act ("SMA"), chapter 90 58 RCW The parties dispute when ESHB 1933 transfers shoreline critical area regulation from the GMA to the SMA

2 PARTIES

2.1 Petitioners are Futurewise, Evergreen Islands, and Skagit Audubon Society

2.2 Respondent City of Anacortes appeared to defend the Board's decision

2.3 The Court granted two motions to intervene, in a stipulated order entered May 14, 2006 The Washington State Department of Community, Trade and Economic Development ("CTED") and the Washington State Department of Ecology ("Ecology") intervened in support of Petitioners, and the Washington Public Ports Association ("WPPA") intervened in support of Respondent

2.4 Respondent Board is a nominal party to this appeal and did not participate before the Court

3 PROCEEDINGS

3.1 The Court heard oral argument on October 13, 2006, and reviewed the records and files herein, including

- Futurewise's, Evergreen Islands', and Skagit Audubon Society's Petitioners' Brief,
- State Agencies' Opening Brief,
- City of Anacortes' Brief,

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- Brief of Respondent Washington Public Ports Association,
- Petitioners' Reply Brief, and
- State Agencies' Reply Brief

4 ORDER

Based on the foregoing, it is accordingly ORDERED, ADJUDGED and DECREED as follows

4 1 Shoreline critical area regulation is transferred from the GMA to SMA when a county's or city's Shoreline Master Program update is approved by the Department of Ecology under its 2003 SMA Guidelines consistent with RCW 90 58 090(4) and RCW 36 70A 480

4 2 Until the Washington State Department of Ecology has approved an updated Shoreline Master Program consistent with RCW 90 58 090(4) and RCW 36 70A 480, the Growth Management Hearings Board continues to have jurisdiction to review Critical Areas Ordinances, including any provisions that apply to critical areas located within shorelines jurisdiction, for compliance with the procedural and substantive requirements of the GMA

4 3 The Board's conclusion with respect to ESHB 1933, found on page 31, lines 1-8, and conclusion of law H, of its Final Decision and Order is reversed The City's adoption of regulations in Ordinance 2702 that apply to critical areas in the shoreline does not constitute an amendment to Anacortes' shoreline master program and does not need to be approved by Ecology

4 4 The parties have agreed to the form of this Final Judgment and Order as reflecting the determination of the Court By agreeing to this Order, no party waives any of its claims or defenses or right to appeal

4 5 The matter is remanded to the Board for further proceedings consistent with this Order

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DATED this 17 day of November, 2006

THE HONORABLE CHRIS WICKHAM

PRESENTED BY

ROB MCKENNA
ATTORNEY GENERAL OF WASHINGTON

ALAN D COPSEY, WSBA No 23305
THOMAS J YOUNG, WSBA No 17366
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Attorneys for Intervenors Washington State Department of Community, Trade and Economic Development and Department of Ecology

APPROVED AS TO FORM, NOTICE OF PRESENTATION WAIVED

per email authorization

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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

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

Approved May 14, 2003

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May 14, 2003 - 10 16 a m

GARY L LOCKE

Governor of the State of Washington

Secretary of State
State of Washington

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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 shorelines, 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

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

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

(c) At the conclusion of the public comment period, the department shall review the comments received and modify the proposal consistent with the provisions of this chapter The proposal shall then be published for adoption pursuant to the provisions of chapter 34 05 RCW

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

Sec 2 RCW 90 58 080 and 1995 c 347 s 305 are each amended to read as follows

(1) Local governments shall develop or amend((~~, within twenty four months after the adoption of guidelines as provided in RCW 90 58 060,~~)) a master program for regulation of uses of the shorelines of the state consistent with the required elements of the guidelines adopted by the department in accordance with the schedule established by this section

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

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

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

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

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

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

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

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

(b) 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)

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

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

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

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

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

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

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

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

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

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

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

Sec 3 RCW 90 58 250 and 1971 ex s c 286 s 25 are each amended to read as follows

(1) The legislature intends to eliminate the limits on state funding of shoreline master program development and amendment costs The legislature further intends that the state will provide funding to local governments that is reasonable and adequate to accomplish the costs of developing and amending shoreline master programs consistent with the schedule established by RCW 90 58 080 Except as specifically described herein, nothing in this act is intended to alter the existing obligation, duties, and benefits provided by this act to local governments and the department

(2) The department is directed to cooperate fully with local governments in discharging their responsibilities under this chapter Funds shall be available for distribution to local governments on the basis of applications for preparation of master programs and the provisions of RCW 90 58 080(7) Such applications shall be submitted in accordance with regulations developed by the department The department is authorized to make and administer grants within appropriations authorized by the legislature to any local government

within the state for the purpose of developing a master shorelines program

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

Passed by the Senate April 26, 2003
Passed by the House April 17, 2003
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