

Integrating Shoreline and Critical Area regulations

The Departments of Ecology and Commerce requested legislation (Engrossed House Bill 1653) during the 2009 legislative session to clarify how local governments are to regulate shoreline areas. Governor Gregoire signed the bill into law on March 18, 2010.

The Problem

Local governments adopt regulations to protect shoreline habitat under two different statutes:

- The Shoreline Management Act (through Shoreline regulations)
- The Growth Management Act (through Critical Area regulations)

In 2003, the Legislature adopted Engrossed Substitute House Bill (ESHB) 1933, to clarify and streamline local regulations in the shoreline area. Unfortunately, as we have implemented ESHB 1933, several parts have proven to be unclear or outdated.

- **All parties agree that the intent of ESHB 1933 was to simplify regulations by giving Shoreline regulations “sole jurisdiction” in shoreline areas.** But the legislation was not clear on **when** this shift to “sole jurisdiction” occurs. This lack of clarity is causing much confusion and lengthy court processes.
- **In July 2008, the State Supreme Court issued a decision interpreting ESHB 1933** (See *Futurewise v. Western Washington Growth Management Hearings Board*). This decision throws into question the validity of 170 local Critical Area Ordinances. Failure to clarify the original intent of the bill could result in a gap in shoreline habitat protection.
- **There was concern that critical area regulations could make existing shoreline uses “nonconforming”** – even if they are recognized as preferred uses under the Shoreline regulations. This is a particular concern for existing water-dependent shoreline uses such as boatyards.

WHY IT MATTERS

Clear regulations on shoreline development are vital to protecting Washington's shoreline habitat.

Existing legislation has caused confusion on how local governments are to integrate various regulations that apply in shoreline areas.

The proposed bill will clarify which regulations apply in the shoreline area under different circumstances.

This will prevent confusion and ensure the protection of shoreline habitat.

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www.ecy.wa.gov/programs/sea/sma/news/reconsider.html

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The Solution

The new legislation clarifies the intent of ESHB 1933 adopted in 2003. This will involve amending the Shoreline Management Act and the Growth Management Act as follows:

- **Clarify when “sole jurisdiction” transfers to Shoreline regulations.**
 - Each county and city must comprehensively update their Shoreline regulations in the next few years. The new law clarifies that the shift to sole jurisdiction occurs when Ecology approves the comprehensive update.
 - Before the comprehensive update, local governments may submit updated Critical Area regulations as an amendment to their current Shoreline Master Program. This action would trigger the shift of sole jurisdiction.
- **Shift the environmental standard for updating Shoreline regulations from “at least equal to the Critical Area Ordinance” to “meets No Net Loss.”**
 - This change recognizes that local governments already must meet the standard of No Net Loss [of ecological function] under Ecology's Guidelines for Shoreline regulation updates.
 - The “at least equal” test could be interpreted as requiring Shoreline regulations to set buffers that are, in every instance, the same or larger than those in Critical Areas regulations. However, the two sets of regulations may properly require buffers of different sizes. This is because updated Shoreline regulations are based on a scientific assessment of shoreline conditions, while most Critical Area regulations take a more general approach based on scientific literature.
 - The “at least equal” test could also create conflicts with the requirement that Shoreline regulations balance objectives for water-dependent uses, public access, and environmental protection.
- **Protect existing shoreline uses from becoming “nonconforming”** due to Critical Area regulations; at the same time, provide criteria to protect shoreline habitat when such uses are proposed for expansion or other changes.

How it will benefit Washington

- Cities and counties will have a clear path forward to guide development along our state's shorelines. They will be able to focus on meeting the No Net Loss standard, rather than on comparing Shoreline regulations with overlapping Critical Area regulations.
- Environmental protection will not be compromised due to unclear provisions in law.