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BIAW Backs WOTUS Repeal & New Rulemaking Action Provides Regulatory Certainty In All States

Olympia, WA The Building Industry Association of Washington (BIAW) is encouraged by the rule repeal announced by the Environmental Protection Agency (EPA) regarding waters of the United States (WOTUS). The repeal remedies legal and procedural deficiencies of a rule adopted in 2015 and addresses extensive litigation surrounding it.

“This change protects the water and environmental resources in this state through private, local and state means, as has been the case since the passage of the Clean Water Act (CWA),” stated BIAW Executive Vice President Greg Lane. “As Washingtonians, the home builders in our association want a clean environment and to hold polluters accountable under the law. This change maintains those protections, while also restoring more certainty in the land use process, which will also help control the cost of housing.”

The applicability of the rule has remained in flux due to a shifting set of preliminary injunctions, barring implementation of the rule in different states across the country. Currently, the 2015 rule is in effect in 22 states, including Washington. With the repeal, the regulation will apply in 49 states, the District of Columbia and the U.S. territories, providing consistency and certainty.

BIAW has weighed in on the rule-making, pointing out that on the legislative side, Washington has proactively protected waterways and wetlands with the passage of measures such as the Growth Management Act (GMA), Critical Areas Ordinances (CAO), and the State Environmental Policy Act (SEPA); adopted stringent forestry practices to protect lakes, rivers and streams; prevented water pollution with comprehensive regulatory controls; and protected fragile shorelines and aquatic life with the Shoreline Management Act.

“Private industry has continued to work to promote environmentally friendly practices as well,” continued Lane. “BIAW’s own education programs teach homebuilders state-of-the-art environmental building and water infiltration techniques that exceed industry regulation.”

BIAW testified originally that homebuilders in Washington have an interest in ensuring that the GMA is properly applied by jurisdictions and the courts of this state. By ambiguously expanding the definition of navigable waters, the 2015 rule both conflicted with and unnecessarily complicated enforcement of the state and local protections such as GMA, which was designed to lessen state administrative approval in favor of bottom-up economic and environmental planning from local governments.

“Top-down federal regulation is in direct conflict with such grassroots-orientated laws and can hinder actual protection of environmentally sensitive areas,” explained Lane. “BIAW will continue to weigh in on WOTUS as new rulemaking proceeds, but we are encouraged by the repeal of the 2015 rule as it will help control the cost of housing.”

A copy of BIAW’s original comments on the 2015 rulemaking can be found at:

https://www.epa.gov/sites/production/files/2015-06/documents/cwr_response_to_comments_1_general.pdf

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The Building Industry Association of Washington is the voice of the housing industry as the state’s largest trade association with nearly 8,200 member companies employing approximately 265,000 people. The association is dedicated to ensuring and enhancing the vitality of the building industry for the benefit of its members and the housing needs of the citizens. Learn more at www.biaw.com.