
HOUSE BILL 1597

State of Washington

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By Representatives Johnson, Koster, Chandler, Boldt, Sheldon, Mastin, Basich, McMorris, Thompson, Beeksma, Kremen, Hatfield, McMahan, Hymes, Honeyford, D. Schmidt, Skinner, Clements, Buck, Stevens, Mielke and Kessler

Read first time 02/01/95. Referred to Committee on Agriculture & Ecology.

1 AN ACT Relating to flood damage reduction; amending RCW 36.70A.060,
2 36.70A.070, 36.70A.170, 43.21C.020, 75.20.100, 75.20.103, 75.20.130,
3 79.90.150, 79.90.300, 86.15.030, 86.15.050, 86.15.160, 86.26.105,
4 90.58.180, 86.12.200, 90.58.030, and 47.28.140; adding new sections to
5 chapter 75.20 RCW; adding a new section to chapter 79.90 RCW; adding a
6 new section to chapter 43.17 RCW; adding a new section to chapter 86.26
7 RCW; creating new sections; repealing RCW 79.90.325; and declaring an
8 emergency.

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

10 NEW SECTION. **Sec. 1.** The legislature finds that river and stream
11 systems can threaten public and private property during flood events.
12 The legislature therefore declares that reducing flood damage through
13 the use of structural and nonstructural projects is in the public
14 interest and that it is the duty of the state to properly fund flood
15 control projects. Structural and nonstructural projects include but
16 are not limited to: Streambank stabilization, river channel
17 maintenance, land use restrictions, land buy-outs, flood easements, and
18 emergency notification.

1 **Sec. 2.** RCW 36.70A.060 and 1991 sp.s. c 32 s 21 are each amended
2 to read as follows:

3 (1) Each county that is required or chooses to plan under RCW
4 36.70A.040, and each city within such county, shall adopt development
5 regulations on or before September 1, 1991, to assure the conservation
6 of agricultural, forest, and mineral resource lands designated under
7 RCW 36.70A.170. Regulations adopted under this subsection may not
8 prohibit uses legally existing on any parcel prior to their adoption
9 and shall remain in effect until the county or city adopts development
10 regulations pursuant to RCW 36.70A.120. Such regulations shall assure
11 that the use of lands adjacent to agricultural, forest, or mineral
12 resource lands shall not interfere with the continued use, in the
13 accustomed manner and in accordance with best management practices, of
14 these designated lands for the production of food, agricultural
15 products, or timber, or for the extraction of minerals. Counties and
16 cities shall require that all plats, short plats, development permits,
17 and building permits issued for development activities on, or within
18 three hundred feet of, lands designated as agricultural lands, forest
19 lands, or mineral resource lands, contain a notice that the subject
20 property is within or near designated agricultural lands, forest lands,
21 or mineral resource lands on which a variety of commercial activities
22 may occur that are not compatible with residential development for
23 certain periods of limited duration.

24 (2) Each county and city shall adopt development regulations that
25 protect critical areas that are required to be designated under RCW
26 36.70A.170. For counties and cities that are required or choose to
27 plan under RCW 36.70A.040, such development regulations shall be
28 adopted on or before September 1, 1991. For the remainder of the
29 counties and cities, such development regulations shall be adopted on
30 or before March 1, 1992.

31 (3) Such counties and cities shall review these designations and
32 development regulations when adopting their comprehensive plans under
33 RCW 36.70A.040 and implementing development regulations under RCW
34 36.70A.120 and may alter such designations and development regulations
35 to insure consistency.

36 (4) Forest land and agricultural land located within urban growth
37 areas shall not be designated by a county or city as forest land or
38 agricultural land of long-term commercial significance under RCW

1 36.70A.170 unless the city or county has enacted a program authorizing
2 transfer or purchase of development rights.

3 (5) All development regulations developed under this section shall
4 be consistent with the flood plain management plan adopted by the
5 county under RCW 86.26.105.

6 **Sec. 3.** RCW 36.70A.070 and 1990 1st ex.s. c 17 s 7 are each
7 amended to read as follows:

8 The comprehensive plan of a county or city that is required or
9 chooses to plan under RCW 36.70A.040 shall consist of a map or maps,
10 and descriptive text covering objectives, principles, and standards
11 used to develop the comprehensive plan. The plan shall be an
12 internally consistent document and all elements shall be consistent
13 with the future land use map, and the comprehensive flood plain
14 management plan adopted by the county under RCW 86.26.105. A
15 comprehensive plan shall be adopted and amended with public
16 participation as provided in RCW 36.70A.140.

17 Each comprehensive plan shall include a plan, scheme, or design for
18 each of the following:

19 (1) A land use element designating the proposed general
20 distribution and general location and extent of the uses of land, where
21 appropriate, for agriculture, timber production, housing, commerce,
22 industry, recreation, open spaces, public utilities, public facilities,
23 and other land uses. The land use element shall include population
24 densities, building intensities, and estimates of future population
25 growth. The land use element shall provide for protection of the
26 quality and quantity of ground water used for public water supplies.
27 Where applicable, the land use element shall review drainage, flooding,
28 and storm water run-off in the area and nearby jurisdictions and
29 provide guidance for corrective actions to mitigate or cleanse those
30 discharges that pollute waters of the state, including Puget Sound or
31 waters entering Puget Sound.

32 (2) A housing element recognizing the vitality and character of
33 established residential neighborhoods that: (a) Includes an inventory
34 and analysis of existing and projected housing needs; (b) includes a
35 statement of goals, policies, and objectives for the preservation,
36 improvement, and development of housing; (c) identifies sufficient land
37 for housing, including, but not limited to, government-assisted
38 housing, housing for low-income families, manufactured housing,

1 multifamily housing, and group homes and foster care facilities; and
2 (d) makes adequate provisions for existing and projected needs of all
3 economic segments of the community.

4 (3) A capital facilities plan element consisting of: (a) An
5 inventory of existing capital facilities owned by public entities,
6 showing the locations and capacities of the capital facilities; (b) a
7 forecast of the future needs for such capital facilities; (c) the
8 proposed locations and capacities of expanded or new capital
9 facilities; (d) at least a six-year plan that will finance such capital
10 facilities within projected funding capacities and clearly identifies
11 sources of public money for such purposes; and (e) a requirement to
12 reassess the land use element if probable funding falls short of
13 meeting existing needs and to ensure that the land use element, capital
14 facilities plan element, and financing plan within the capital
15 facilities plan element are coordinated and consistent.

16 (4) A utilities element consisting of the general location,
17 proposed location, and capacity of all existing and proposed utilities,
18 including, but not limited to, electrical lines, telecommunication
19 lines, and natural gas lines.

20 (5) Counties shall include a rural element including lands that are
21 not designated for urban growth, agriculture, forest, or mineral
22 resources. The rural element shall permit land uses that are
23 compatible with the rural character of such lands and provide for a
24 variety of rural densities.

25 (6) A transportation element that implements, and is consistent
26 with, the land use element. The transportation element shall include
27 the following subelements:

28 (a) Land use assumptions used in estimating travel;

29 (b) Facilities and services needs, including:

30 (i) An inventory of air, water, and land transportation facilities
31 and services, including transit alignments, to define existing capital
32 facilities and travel levels as a basis for future planning;

33 (ii) Level of service standards for all arterials and transit
34 routes to serve as a gauge to judge performance of the system. These
35 standards should be regionally coordinated;

36 (iii) Specific actions and requirements for bringing into
37 compliance any facilities or services that are below an established
38 level of service standard;

1 (iv) Forecasts of traffic for at least ten years based on the
2 adopted land use plan to provide information on the location, timing,
3 and capacity needs of future growth;

4 (v) Identification of system expansion needs and transportation
5 system management needs to meet current and future demands;

6 (c) Finance, including:

7 (i) An analysis of funding capability to judge needs against
8 probable funding resources;

9 (ii) A multiyear financing plan based on the needs identified in
10 the comprehensive plan, the appropriate parts of which shall serve as
11 the basis for the six-year street, road, or transit program required by
12 RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW
13 35.58.2795 for public transportation systems;

14 (iii) If probable funding falls short of meeting identified needs,
15 a discussion of how additional funding will be raised, or how land use
16 assumptions will be reassessed to ensure that level of service
17 standards will be met;

18 (d) Intergovernmental coordination efforts, including an assessment
19 of the impacts of the transportation plan and land use assumptions on
20 the transportation systems of adjacent jurisdictions;

21 (e) Demand-management strategies.

22 After adoption of the comprehensive plan by jurisdictions required
23 to plan or who choose to plan under RCW 36.70A.040, local jurisdictions
24 must adopt and enforce ordinances which prohibit development approval
25 if the development causes the level of service on a transportation
26 facility to decline below the standards adopted in the transportation
27 element of the comprehensive plan, unless transportation improvements
28 or strategies to accommodate the impacts of development are made
29 concurrent with the development. These strategies may include
30 increased public transportation service, ride sharing programs, demand
31 management, and other transportation systems management strategies.
32 For the purposes of this subsection (6) "concurrent with the
33 development" shall mean that improvements or strategies are in place at
34 the time of development, or that a financial commitment is in place to
35 complete the improvements or strategies within six years.

36 The transportation element described in this subsection, and the
37 six-year plans required by RCW 35.77.010 for cities, RCW 36.81.121 for
38 counties, and RCW 35.58.2795 for public transportation systems, must be
39 consistent.

1 **Sec. 4.** RCW 36.70A.170 and 1990 1st ex.s. c 17 s 17 are each
2 amended to read as follows:

3 (1) On or before September 1, 1991, each county, and each city,
4 shall designate where appropriate:

5 (a) Agricultural lands that are not already characterized by urban
6 growth and that have long-term significance for the commercial
7 production of food or other agricultural products;

8 (b) Forest lands that are not already characterized by urban growth
9 and that have long-term significance for the commercial production of
10 timber;

11 (c) Mineral resource lands that are not already characterized by
12 urban growth and that have long-term significance for the extraction of
13 minerals; and

14 (d) Critical areas.

15 (2) In making the designations required by this section, counties
16 and cities shall consider the guidelines established pursuant to RCW
17 36.70A.050, and shall make such designations so that they are
18 consistent with the flood plain management plan adopted by the county
19 under RCW 86.26.105.

20 **Sec. 5.** RCW 43.21C.020 and 1971 ex.s. c 109 s 2 are each amended
21 to read as follows:

22 (1) The legislature, recognizing that ~~((man))~~ people depend~~((s))~~ on
23 ~~((his))~~ their biological and physical surroundings for food, shelter,
24 and other needs, and for cultural enrichment as well~~((r))~~, and
25 recognizing further the profound impact of ~~((man's))~~ human activity on
26 the interrelations of all components of the natural environment,
27 particularly the profound influences of population growth, high-density
28 urbanization, industrial expansion, resource utilization and
29 exploitation, and new and expanding technological advances, and
30 recognizing further the critical importance of restoring and
31 maintaining environmental quality to the overall welfare and
32 development of ~~((man))~~ people, declares that it is the continuing
33 policy of the state of Washington, in cooperation with federal and
34 local governments, and other concerned public and private
35 organizations, to use all practicable means and measures, including
36 financial and technical assistance, in a manner calculated to: (a)
37 Foster and promote the general welfare; (b) ~~((to))~~ create and maintain
38 conditions under which ~~((man))~~ people and nature can exist in

1 productive harmony; and (c) fulfill the social, economic, and other
2 requirements of present and future generations of Washington citizens.

3 (2) In order to carry out the policy set forth in this chapter, it
4 is the continuing responsibility of the state of Washington and all
5 agencies of the state to use all practicable means, consistent with
6 other essential considerations of state policy, to improve and
7 coordinate plans, functions, programs, and resources to the end that
8 the state and its citizens may:

9 (a) Fulfill the responsibilities of each generation as trustee of
10 the environment for succeeding generations;

11 (b) Assure for all people of Washington safe, healthful,
12 productive, and aesthetically and culturally pleasing surroundings;

13 (c) Attain the widest range of beneficial uses of the environment
14 without degradation, risk to health or safety, or other undesirable and
15 unintended consequences;

16 (d) Preserve important historic, cultural, and natural aspects of
17 our national heritage;

18 (e) Maintain, wherever possible, an environment which supports
19 diversity and variety of individual choice;

20 (f) Achieve a balance between population and resource use which
21 will permit high standards of living and a wide sharing of life's
22 amenities; ((and))

23 (g) Enhance the quality of renewable resources and approach the
24 maximum attainable recycling of depletable resources; and

25 (h) Provide for the prevention, minimization, and repair of flood
26 damage as defined in RCW 86.16.120.

27 (3) The legislature recognizes that each person has a fundamental
28 and inalienable right to a healthful environment and that each person
29 has a responsibility to contribute to the preservation and enhancement
30 of the environment.

31 NEW SECTION. Sec. 6. A new section is added to chapter 75.20 RCW
32 to read as follows:

33 Unless the context clearly requires otherwise, the definitions in
34 this section apply to RCW 75.20.100, 75.20.103, and 75.20.130.

35 (1) "Bed" means the land below the ordinary high water lines of
36 state waters. This definition does not include irrigation ditches,
37 canals, storm water run-off devices, or other artificial watercourses

1 except where they exist in a natural watercourse that has been altered
2 by humans.

3 (2) "Commercial" means any facility or building used for commerce,
4 including those used for agricultural or industrial purposes.

5 (3) "Emergency" means an immediate threat to life, public land, or
6 private property, or an immediate threat of serious environmental
7 degradation.

8 (4) "Streambank stabilization" includes but is not limited to log
9 and debris removal; bank protection including riprap, jetties, and
10 groins; gravel removal; and erosion control.

11 (5) "To construct any form of hydraulic project or perform other
12 work" does not include the act of driving across an established ford.
13 Driving across streams or on wetted stream beds at areas other than
14 established fords requires approval. Work within the ordinary high
15 water line of state waters to construct or repair a ford or crossing
16 requires approval.

17 NEW SECTION. **Sec. 7.** A new section is added to chapter 75.20 RCW
18 to read as follows:

19 The permitting department may impose the following conditions on
20 persons applying under RCW 75.20.100 or 75.20.103:

21 (1) The permittee shall establish an excavation line. "Excavation
22 line" means a line on the dry bed, parallel to the water's edge unless
23 otherwise stated, that changes with water level fluctuations.

24 (2) The permittee may not remove bed material from the water side
25 of the excavation line.

26 (3) The permittee shall begin excavating at the excavation line and
27 proceed toward the bank, perpendicular to the alignment of the
28 watercourse.

29 (4) The permittee shall keep the maximum distance of excavation
30 toward the bank from the excavation line approximately equal throughout
31 the excavation zone. "Excavation zone" means the area between the
32 excavation line and the bank.

33 (5) The permittee shall identify the excavation zone with boundary
34 markers.

35 (6) The permittee shall maintain a minimum one-half percent
36 gradient upward from the excavation line in the excavation zone.

37 (7) The permittee shall ensure that the excavation zone is free of
38 pits or potholes.

1 (8) The permittee shall not stockpile or spoil excavated materials
2 within the ordinary high water line except from June 15 to October 15.

3 (9) The permittee may not allow any equipment within the wetted
4 perimeter of the watercourse without specific permission.

5 (10) The permittee shall dispose of debris in the excavation zone
6 so it does not reenter the watercourse.

7 (11) The permittee may not perform gravel washing or crushing
8 operations below the ordinary high water line.

9 (12) The permittee shall be allowed to remove only that amount of
10 rock, sand, gravel, or silt which is naturally replenished on an annual
11 basis, except in instances where a lapse in material removal has
12 occurred. If such lapse has occurred, then an amount of material
13 equivalent to the amount estimated to have accumulated since the last
14 material removal operation, including debris and vegetation, may be
15 removed.

16 **Sec. 8.** RCW 75.20.100 and 1993 sp.s. c 2 s 30 are each amended to
17 read as follows:

18 (1) In the event that any person or government agency desires to
19 construct any form of hydraulic project or perform other work that will
20 use, divert, obstruct, or change the natural flow or bed of any of the
21 salt or fresh waters of the state, such person or government agency
22 shall, before commencing construction or work thereon and to ensure the
23 proper protection of fish life, secure the written approval of the
24 department as to the adequacy of the means proposed for the protection
25 of fish life. The hydraulic project approval authority of the
26 department shall be limited to construction or other work that occurs
27 at or below the mean higher high water line in salt water and estuaries
28 or at or below the ordinary high water line in fresh water. The
29 department shall neither deny nor condition a hydraulic project
30 approval on the basis of human or animal actions or environmental
31 conditions that occur above the higher high water line in salt water
32 and estuaries or above the ordinary high water line in fresh water.
33 The department may not limit, condition, or otherwise affect the
34 amount, timing, or delivery method of water diverted under chapter
35 90.03 RCW. This approval shall not be unreasonably withheld. Except
36 as provided in RCW 75.20.1001 ((and 75.20.1002)), the department shall
37 grant or deny approval within forty-five calendar days of the receipt
38 of a complete application and notice of compliance with any applicable

1 requirements of the state environmental policy act, made in the manner
2 prescribed in this section. The applicant may document receipt of
3 application by filing in person or by registered mail. A complete
4 application for approval shall contain general plans for the overall
5 project, complete plans and specifications of the proposed construction
6 or work within the mean higher high water line in salt water or within
7 the ordinary high water line in fresh water, and complete plans and
8 specifications for the proper protection of fish life. The forty-five
9 day requirement shall be suspended if ~~((+1))~~ (a) after ten working
10 days of receipt of the application, the applicant remains unavailable
11 or unable to arrange for a timely field evaluation of the proposed
12 project; ~~((+2))~~ (b) the site is physically inaccessible for
13 inspection; or ~~((+3))~~ (c) the applicant requests delay. Immediately
14 upon determination that the forty-five day period is suspended, the
15 department shall notify the applicant in writing of the reasons for the
16 delay. Approval is valid for a period of up to five years from date of
17 issuance. The permittee must demonstrate substantial progress on
18 construction of that portion of the project relating to the approval
19 within two years of the date of issuance. If the department denies
20 approval, the department shall provide the applicant, in writing, a
21 statement of the specific reasons why and how the proposed project
22 would adversely affect fish life. Protection of fish life shall be the
23 only ground upon which approval may be denied or conditioned.

24 (2) In making a decision as to whether fish life is protected, the
25 department shall determine if a project as proposed or modified:

26 (a) Improves fish life or habitat over the long term to compensate
27 for any potential short-term losses; or

28 (b)(i) Protects a residential, commercial, or industrial facility
29 or structure that the department determines is likely to incur
30 significant flood damage during the next flood season if the project is
31 not completed; and (ii) lessens the loss of fish life or habitat as
32 compared to a project resulting from an emergency request under this
33 section.

34 The department shall approve a project if it determines that the
35 project meets either (a) or (b) of this subsection.

36 (3) Chapter 34.05 RCW applies to any denial of project approval,
37 conditional approval, or requirements for project modification upon
38 which approval may be contingent. If any person or government agency
39 commences construction on any hydraulic works or projects subject to

1 this section without first having obtained written approval of the
2 department as to the adequacy of the means proposed for the protection
3 of fish life, or if any person or government agency fails to follow or
4 carry out any of the requirements or conditions as are made a part of
5 such approval, the person or director of the agency is guilty of a
6 gross misdemeanor. If any such person or government agency is
7 convicted of violating any of the provisions of this section and
8 continues construction on any such works or projects without fully
9 complying with the provisions hereof, such works or projects are hereby
10 declared a public nuisance and shall be subject to abatement as such.

11 ~~((For the purposes of this section and RCW 75.20.103, "bed" shall
12 mean the land below the ordinary high water lines of state waters.
13 This definition shall not include irrigation ditches, canals, storm
14 water run-off devices, or other artificial watercourses except where
15 they exist in a natural watercourse that has been altered by man.~~

16 ~~The phrase "to construct any form of hydraulic project or perform
17 other work" shall not include the act of driving across an established
18 ford. Driving across streams or on wetted stream beds at areas other
19 than established fords requires approval. Work within the ordinary
20 high water line of state waters to construct or repair a ford or
21 crossing requires approval.))~~

22 (4) In case of an emergency arising from weather or stream flow
23 conditions or other natural conditions, upon request the department,
24 through its authorized representatives, shall ~~((issue))~~ grant
25 immediately ~~((upon request))~~, oral approval for removing any
26 obstructions, repairing existing structures, restoring stream banks, or
27 ~~((to protect))~~ protecting property threatened by the stream or a change
28 in the stream flow without ~~((the necessity of obtaining))~~ requiring a
29 written approval prior to commencing work. Conditions of an oral
30 approval shall be reduced to writing within thirty days and complied
31 with as provided for in this section. Oral approval shall be granted
32 immediately upon request, for a stream crossing during an emergency
33 situation.

34 (5) In granting approval for projects submitted by local flood
35 control agencies, the department shall grant a special duration
36 hydraulic permit approval if the submitted project is a multiyear
37 maintenance program. The approval shall be granted for up to five
38 years, or the actual number of years covered by the maintenance
39 program.

1 (6) This section shall not apply to a project involving the repair
2 of an existing flood control reduction facility if the project is
3 determined by the county to be:

4 (a) Consistent with a currently approved comprehensive flood
5 control management plan; and

6 (b) Necessary to avoid flood damage during the next flood season.

7 (7) This section shall not apply to the construction of any form of
8 hydraulic project or other work which diverts water for agricultural
9 irrigation or stock watering purposes authorized under or recognized as
10 being valid by the state's water codes, or when such hydraulic project
11 or other work is associated with streambank stabilization to protect
12 farm and agricultural land as defined in RCW 84.34.020. These
13 irrigation or stock watering diversion and streambank stabilization
14 projects shall be governed by RCW 75.20.103.

15 **Sec. 9.** RCW 75.20.103 and 1993 sp.s. c 2 s 32 are each amended to
16 read as follows:

17 (1) In the event that any person or government agency desires to
18 construct any form of hydraulic project or other work that diverts
19 water for agricultural irrigation or stock watering purposes, or when
20 such hydraulic project or other work is associated with streambank
21 stabilization or flood damage reduction to protect farm and
22 agricultural land as defined in RCW 84.34.020, and when such
23 ((diversion or streambank stabilization)) hydraulic project will use,
24 divert, obstruct, or change the natural flow or bed of any river or
25 stream or will utilize any waters of the state or materials from the
26 stream beds, the person or government agency shall, before commencing
27 construction or work thereon and to ensure the proper protection of
28 fish life, secure a written approval from the department as to the
29 adequacy of the means proposed for the protection of fish life. The
30 hydraulic project approval authority of the department shall be limited
31 to construction or other work that occurs at or below the mean higher
32 high water line in salt water and estuaries or at or below the ordinary
33 high water line in fresh water. The department shall neither deny nor
34 condition a hydraulic project approval on the basis of human or animal
35 actions or environmental conditions that occur above the higher high
36 water line in salt water and estuaries or above the ordinary high water
37 line in fresh water. The department may not limit, condition, or
38 otherwise affect the amount, timing, or delivery method of water

1 diverted under chapter 90.03 RCW. This approval shall not be
2 unreasonably withheld. Except as provided in RCW 75.20.1001 (~~and~~
3 ~~75.20.1002~~), the department shall grant or deny the approval within
4 forty-five calendar days of the receipt of a complete application (~~and~~
5 ~~notice of compliance with any applicable requirements of the state~~
6 ~~environmental policy act,~~) made in the manner prescribed in this
7 section. The applicant may document receipt of application by filing
8 in person or by registered mail.

9 (2) A complete application for an approval shall:

10 (a) Contain general plans for the overall project, complete plans
11 and specifications of the proposed construction or work within ordinary
12 high water line, and complete plans and specifications for the proper
13 protection of fish life; and

14 (b) Not be required to include notice of compliance with any
15 applicable requirements of the state environmental policy act. Final
16 approval of a project may not be granted until any applicable
17 requirements of the state environmental policy act have been satisfied.

18 (3) The forty-five day requirement shall be suspended if (~~(1)~~):

19 (a) After ten working days of receipt of the application, the
20 applicant remains unavailable or unable to arrange for a timely field
21 evaluation of the proposed project; (~~(2)~~)

22 (b) The site is physically inaccessible for inspection; (~~or (3)~~)

23 (c) After forty-four days of receipt of a complete application, a
24 notice of compliance with the state environmental policy act has not
25 been issued; or

26 (d) The applicant requests delay.

27 (4) Immediately upon determination that the forty-five day period
28 is suspended, the department shall notify the applicant in writing of
29 the reasons for the delay.

30 (5) In making a decision as to whether fish life is protected, the
31 department shall determine if a project as proposed or modified:

32 (a) Improves fish life or habitat over the long term to compensate
33 for any potential short-term losses; or

34 (b)(i) Protects a residential, commercial, or industrial facility
35 or structure that the department determines is likely to incur
36 significant flood damage during the next flood season if the project is
37 not completed; and (ii) lessens the loss of fish life or habitat as
38 compared to a project resulting from an emergency request under this
39 section.

1 The department shall approve a project if it determines that the
2 project meets either (a) or (b) of this subsection.

3 (6) An approval shall remain in effect without need for periodic
4 renewal for projects that divert water for agricultural irrigation or
5 stock watering purposes and that involve seasonal construction or other
6 work. Approval for streambank stabilization projects shall remain in
7 effect without need for periodic renewal if the problem causing the
8 need for the streambank stabilization occurs on an annual or more
9 frequent basis. The permittee must notify the appropriate agency
10 before commencing the construction or other work within the area
11 covered by the approval.

12 (7) The permittee must demonstrate substantial progress on
13 construction of that portion of the project relating to the approval
14 within two years of the date of issuance. If the department denies
15 approval, the department shall provide the applicant, in writing, a
16 statement of the specific reasons why and how the proposed project
17 would adversely affect fish life. Protection of fish life shall be the
18 only ground upon which approval may be denied or conditioned.
19 Issuance, denial, conditioning, or modification shall be appealable to
20 the hydraulic appeals board established in RCW 43.21B.005 within thirty
21 days of the notice of decision. The burden shall be upon the
22 department to show that the denial or conditioning of an approval is
23 solely aimed at the protection of fish life.

24 (8) The department may, after consultation with the permittee,
25 modify an approval due to changed conditions. The modifications shall
26 become effective unless appealed to the hydraulic appeals board within
27 thirty days from the notice of the proposed modification. The burden
28 is on the department to show that changed conditions warrant the
29 modification in order to protect fish life.

30 (9) A permittee may request modification of an approval due to
31 changed conditions. The request shall be processed within forty-five
32 calendar days of receipt of the written request. A decision by the
33 department may be appealed to the hydraulic appeals board within thirty
34 days of the notice of the decision. The burden is on the permittee to
35 show that changed conditions warrant the requested modification and
36 that such modification will not impair fish life.

37 (10) If any person or government agency commences construction on
38 any hydraulic works or projects subject to this section without first
39 having obtained written approval of the department as to the adequacy

1 of the means proposed for the protection of fish life, or if any person
2 or government agency fails to follow or carry out any of the
3 requirements or conditions as are made a part of such approval, the
4 person or director of the agency is guilty of a gross misdemeanor. If
5 any such person or government agency is convicted of violating any of
6 the provisions of this section and continues construction on any such
7 works or projects without fully complying with the provisions hereof,
8 such works or projects are hereby declared a public nuisance and shall
9 be subject to abatement as such.

10 (11) In granting approval for projects submitted by local flood
11 control agencies, the department shall grant a special duration
12 hydraulic permit approval if the submitted project is a multiyear
13 maintenance program. The approval shall be granted for up to five
14 years, or the actual number of years covered by the maintenance
15 program.

16 (12) In case of an emergency arising from weather or stream flow
17 conditions or other natural conditions, the department, through its
18 authorized representatives, shall issue immediately upon request oral
19 approval for removing any obstructions, repairing existing structures,
20 restoring stream banks, or to protect property threatened by the stream
21 or a change in the stream flow without the necessity of obtaining a
22 written approval prior to commencing work. Conditions of an oral
23 approval shall be reduced to writing within thirty days and complied
24 with as provided for in this section. Oral approval shall be granted
25 immediately upon request, for a stream crossing during an emergency.

26 ~~((For purposes of this chapter, "streambank stabilization" shall~~
27 ~~include but not be limited to log and debris removal, bank protection~~
28 ~~(including riprap, jetties, and groins), gravel removal and erosion~~
29 ~~control.))~~

30 (13) This section shall not apply to a project involving the repair
31 of an existing flood control facility if the project is determined by
32 the county to be:

33 (a) Consistent with a previously approved comprehensive flood
34 control management plan; and

35 (b) Necessary to avoid flood damage during the next flood season.

36 **Sec. 10.** RCW 75.20.130 and 1993 sp.s. c 2 s 37 are each amended to
37 read as follows:

1 (1) There is hereby created within the environmental hearings
2 office under RCW 43.21B.005 the hydraulic appeals board of the state of
3 Washington.

4 (2) The hydraulic appeals board shall consist of three members:
5 The director of the department of ecology or the director's designee,
6 the director of the department of agriculture or the director's
7 designee, and the director or the director's designee of the department
8 whose action is appealed under subsection (6) of this section. A
9 decision must be agreed to by at least two members of the board to be
10 final.

11 (3) The board may adopt rules necessary for the conduct of its
12 powers and duties or for transacting other official business.

13 (4) The board shall make findings of fact and prepare a written
14 decision in each case decided by it, and that finding and decision
15 shall be effective upon being signed by two or more board members and
16 upon being filed at the hydraulic appeals board's principal office, and
17 shall be open to public inspection at all reasonable times.

18 (5) The board has exclusive jurisdiction to hear appeals arising
19 from the approval, denial, conditioning, or modification of a hydraulic
20 approval issued by the department under the authority granted in RCW
21 75.20.103 for the diversion of water for agricultural irrigation or
22 stock watering purposes or when associated with streambank
23 stabilization to protect farm and agricultural land as defined in RCW
24 84.34.020.

25 (6)(a) Any person aggrieved by the approval, denial, conditioning,
26 or modification of a hydraulic approval pursuant to RCW 75.20.103 may
27 seek review from the board by filing a request for the same within
28 thirty days of notice of the approval, denial, conditioning, or
29 modification of such approval.

30 (b) The review proceedings authorized in (a) of this subsection are
31 subject to the provisions of chapter 34.05 RCW pertaining to procedures
32 in adjudicative proceedings.

33 (c) If a review proceeding authorized in (a) of this subsection
34 finds for the aggrieved permit applicant, the applicant may be awarded
35 any legal and engineering costs involved in challenging the permit
36 decision.

37 NEW SECTION. Sec. 11. A new section is added to chapter 79.90 RCW
38 to read as follows:

1 (1) Use or modification, or both, of any river system must involve
2 basic hydraulic principles, as well as harmonize as much as possible
3 with existing aquatic ecosystems, and human needs.

4 (2) The department, commissioner, and board shall:

5 (a) Give priority consideration to the preservation of the
6 streamway environment with special attention given to preservation of
7 those areas considered aesthetically or environmentally unique;

8 (b) Encourage bank and island stabilization programs which rely
9 mainly on natural vegetative systems as holding elements;

10 (c) Encourage research to develop alternative methods of channel
11 control, utilizing natural systems of stabilization;

12 (d) Recognize natural plant and animal communities and other
13 features that provide an ecological balance to a streamway in
14 evaluating competing human uses and require protection from significant
15 human impact; and

16 (e) Recognize that hydraulic conditions may require the
17 installation of riprap or other similar measure to further protect
18 natural systems of stabilization.

19 (3) No person may remove normal stream depositions of logs,
20 uprooted tree snags, and stumps which abut on shorelands and do not
21 intrude on the navigational channel or reduce flow, or adversely
22 redirect a river course, and are not harmful to life and property
23 without the department's permission but the department must consider
24 the need to protect the resultant dependent aquatic systems.

25 (4) No person may fill indentations such as mudholes, eddies,
26 pools, and aeration drops without permission of the department.

27 (5) The department may permit river channel relocations only when
28 an overriding public benefit can be shown. Filling, grading,
29 lagooning, or dredging which would result in substantial detriment to
30 navigable waters by reason of erosion, sedimentation, or impairment of
31 fish and aquatic life are not authorized.

32 (6) No person may remove sand and gravel below the wetted perimeter
33 of navigable rivers unless authorized by a hydraulics permit issued by
34 either the department of fisheries or department of wildlife under RCW
35 75.20.100 and 75.20.103. These removals may be authorized for
36 maintenance and improvement of navigational channels or for creating
37 backwater channels for fish rearing or improvement of the flow capacity
38 of the channels.

1 (7) The department may allow sand and gravel removals above the
2 wetted perimeter of a navigable river which are not harmful to public
3 health and safety when any or all of the following situations exist:

4 (a) The removal is designed to create or improve a feature such as
5 a pond, wetland, or other habitat valuable for fish and wildlife;

6 (b) The removal provides recreational benefits;

7 (c) The removal will aid in reducing a detrimental accumulation of
8 aggregates in downstream lakes, reservoirs, and river beds;

9 (d) The removal will aid in reducing damage to private or public
10 land and property abutting a navigable river; or

11 (e) The removal will contribute to increased flood protection for
12 private or public land.

13 (8) The department may not allow sand and gravel removals above the
14 wetted perimeter of a navigable river when:

15 (a) The location of such material is below a dam and has inadequate
16 supplementary feeding of gravel or sand;

17 (b) Removal will cause unstable hydraulic conditions detrimental to
18 fish, wildlife, public health, and safety; or

19 (c) Removal will impact esthetics of nearby recreational
20 facilities.

21 (9) No person may perform bank dumping or junk revetment on aquatic
22 lands.

23 (10) The department shall condition sand and gravel removal leases
24 to allow removal of only that amount which is naturally replenished on
25 an annual basis, except in instances where a lapse in material removal
26 has occurred. If such a lapse has occurred, then an amount of material
27 equivalent to the amount estimated to have accumulated since the last
28 material removal operation, including debris and vegetation, may be
29 removed.

30 **Sec. 12.** RCW 79.90.150 and 1991 c 337 s 1 are each amended to read
31 as follows:

32 When gravel, rock, sand, silt or other material from any aquatic
33 lands is removed by any public agency or under public contract for
34 channel or harbor improvement, or flood control, use of such material
35 may be authorized by the department of natural resources for a public
36 purpose on land owned or leased by the state or any municipality,
37 county, or public corporation: PROVIDED, That when no public land site
38 is available for deposit of such material, its deposit on private land

1 with the landowner's permission is authorized and may be designated by
2 the department of natural resources to be for a public purpose. Prior
3 to removal and use, the state agency, municipality, county, or public
4 corporation contemplating or arranging such use shall first obtain
5 written permission from the department of natural resources. No
6 payment of royalty shall be required for such gravel, rock, sand, silt,
7 or other material used for such public purpose, but a charge will be
8 made if such material is subsequently sold or used for some other
9 purpose: PROVIDED, That the department may authorize such public
10 agency or private landowner to dispose of such material without charge
11 when necessary to implement disposal of material. No charge shall be
12 required for any use of the material obtained under the provisions of
13 this chapter when used solely on an authorized site. No charge shall
14 be required for any use of the material obtained under the provisions
15 of this chapter if the material is used for public purposes by local
16 governments. No charge may be required for removal or use of such
17 material if the removal of the material is determined by the local
18 government to be for flood control purposes. Public purposes include,
19 but are not limited to, construction and maintenance of roads, dikes,
20 and levies. Nothing in this section shall repeal or modify the
21 provisions of RCW 75.20.100 or eliminate the necessity of obtaining a
22 permit for such removal from other state or federal agencies as
23 otherwise required by law.

24 **Sec. 13.** RCW 79.90.300 and 1991 c 322 s 26 are each amended to
25 read as follows:

26 (1) The department of natural resources, upon application by any
27 person or when determined by the department to be in the best interest
28 of the state, may enter into a contract or lease providing for the
29 removal and sale of rock, gravel, sand, and silt, or other valuable
30 materials located within or upon beds of navigable waters, or upon any
31 tidelands or shorelands belonging to the state and providing for
32 payment to be made therefor by such royalty as the department may fix,
33 by negotiation, by sealed bid, or at public auction. If application is
34 made for the purchase of any valuable material situated within or upon
35 aquatic lands the department shall inspect and appraise the value of
36 the material in the application. The department may reduce or
37 eliminate royalties in areas prone to flooding. Removal of material
38 from within the ordinary high water mark must be construed as being

1 removed for flood control purposes. The department may include a
2 provision in contracts for the removal of rock, gravel, sand, or silt
3 that allows for payment to be made as the material is sold.

4 (2) The department shall actively seek to encourage through permit
5 requirements and adjusted fees the removal of accumulated materials
6 from rivers and streams where there is a flood damage reduction
7 benefit. The department shall develop policies to accomplish this
8 goal.

9 **Sec. 14.** RCW 86.15.030 and 1969 ex.s. c 195 s 2 are each amended
10 to read as follows:

11 Upon receipt of a petition asking that a zone be created, or upon
12 motion of the board, the board shall adopt a resolution which shall
13 describe the boundaries of such proposed zone; describe in general
14 terms the flood control needs or requirements within the zone; set a
15 date for public hearing upon the creation of such zone, which shall be
16 not more than thirty days after the adoption of such resolution.
17 Notice of such hearing and publication shall be had in the manner
18 provided in RCW 36.32.120(7).

19 At the hearing scheduled upon the resolution, the board shall
20 permit all interested parties to be heard. Thereafter, the board may
21 reject the resolution or it may modify the boundaries of such zone and
22 make such other corrections or additions to the resolutions as they
23 deem necessary to the accomplishment of the purpose of this chapter:
24 PROVIDED, That if the boundaries of such zone are enlarged, the board
25 shall hold an additional hearing following publication and notice of
26 such new boundaries: PROVIDED FURTHER, That the boundaries of any zone
27 shall generally follow the boundaries of the watershed area affected:
28 PROVIDED FURTHER, That the immediately preceding proviso shall in no
29 way limit or be construed to prohibit the formation of a county-wide
30 flood control zone district authorized to be created by RCW 86.15.025.

31 Within (~~ten~~) thirty days after final hearing on a resolution, the
32 board shall issue its (~~order~~) ordinance creating the flood control
33 zone district.

34 **Sec. 15.** RCW 86.15.050 and 1961 c 153 s 5 are each amended to read
35 as follows:

36 The board (~~of county commissioners of each county~~) shall be ex
37 officio, by virtue of their office, supervisors of the zones created in

1 each county. The supervisors of the district shall conduct the
2 business of the flood control zone district according to the regular
3 rules and procedures that it adopts.

4 **Sec. 16.** RCW 86.15.160 and 1986 c 278 s 60 are each amended to
5 read as follows:

6 For the purposes of this chapter the supervisors may authorize:

7 (1) An annual excess ad valorem tax levy within any zone or
8 participating zones when authorized by the voters of the zone or
9 participating zones under RCW 84.52.052 and 84.52.054;

10 (2) An assessment upon property, including state property,
11 specially benefited by flood control improvements or storm water
12 control improvements imposed under chapter 86.09 RCW;

13 (3) Within any zone or participating zones an annual ad valorem
14 property tax levy of not to exceed fifty cents per thousand dollars of
15 assessed value when the levy will not take dollar rates that other
16 taxing districts may lawfully claim and that will not cause the
17 combined levies to exceed the constitutional and/or statutory
18 limitations, and the additional levy, or any portion thereof, may also
19 be made when dollar rates of other taxing units is released therefor by
20 agreement with the other taxing units from their authorized levies
21 under chapter 39.67 RCW;

22 (4) A charge, under RCW 36.89.080 through 36.89.100, for the
23 furnishing of service to those who are receiving or will receive
24 benefits from storm water control facilities (~~and~~) or who are
25 contributing to an increase in surface water runoff. Except as
26 otherwise provided in RCW 90.03.525, any public entity and public
27 property, including the state and state property, shall be liable for
28 the charges to the same extent a private person and privately owned
29 property is liable for the charges, and in setting these rates and
30 charges, consideration may be made of in-kind services, such as stream
31 improvements or donation of property;

32 (5) The creation of local improvement districts and utility local
33 improvement districts, the issuance of improvement district bonds and
34 warrants, and the imposition, collection, and enforcement of special
35 assessments on all property, including any state-owned or other
36 publicly-owned property, specially benefited from improvements in the
37 same manner as provided for counties by chapter 36.94 RCW.

1 **Sec. 17.** RCW 86.26.105 and 1986 c 46 s 5 are each amended to read
2 as follows:

3 ~~((A comprehensive flood control management plan shall determine the
4 need for flood control work, consider alternatives to in stream flood
5 control work, identify and consider potential impacts of in stream
6 flood control work on the state's in stream resources, and identify the
7 river's meander belt or floodway.))~~ (1) A comprehensive flood control
8 management plan shall be completed and adopted ~~((within at least three
9 years of the certification that it is being prepared, as provided in
10 RCW 86.26.050))~~.

11 If ~~((after this three year period has elapsed))~~, by December 31,
12 1999, such a comprehensive flood control plan has not been completed
13 and adopted, grants for flood control maintenance projects shall not be
14 made to the county or municipal corporations in the county until a
15 comprehensive flood control plan is completed and adopted by the
16 appropriate local authority. These limitations on grants shall not
17 preclude allocations for emergency purposes made pursuant to RCW
18 86.26.060.

19 (2) A county with two or more presidentially declared flood
20 disasters within the most recent ten-year period shall complete a
21 comprehensive flood hazard management plan by December 31, 1999, or
22 within two years of a second presidentially declared flood disaster.

23 **Sec. 18.** RCW 90.58.180 and 1994 c 253 s 3 are each amended to read
24 as follows:

25 (1) Any person aggrieved by the granting, denying, or rescinding of
26 a permit on shorelines of the state pursuant to RCW 90.58.140 may seek
27 review from the shorelines hearings board by filing a request for the
28 same within thirty days of the date of filing as defined in RCW
29 90.58.140(6).

30 Concurrently with the filing of any request for review with the
31 board as provided in this section pertaining to a final order of a
32 local government, the requestor shall file a copy of his or her request
33 with the department and the attorney general. If it appears to the
34 department or the attorney general that the requestor has valid reasons
35 to seek review, either the department or the attorney general may
36 certify the request within thirty days after its receipt to the
37 shorelines hearings board following which the board shall then, but not
38 otherwise, review the matter covered by the requestor. The failure to

1 obtain such certification shall not preclude the requestor from
2 obtaining a review in the superior court under any right to review
3 otherwise available to the requestor. The department and the attorney
4 general may intervene to protect the public interest and insure that
5 the provisions of this chapter are complied with at any time within
6 fifteen days from the date of the receipt by the department or the
7 attorney general of a copy of the request for review filed pursuant to
8 this section. The shorelines hearings board shall initially schedule
9 review proceedings on such requests for review without regard as to
10 whether such requests have or have not been certified or as to whether
11 the period for the department or the attorney general to intervene has
12 or has not expired, unless such review is to begin within thirty days
13 of such scheduling. If at the end of the thirty day period for
14 certification neither the department nor the attorney general has
15 certified a request for review, the hearings board shall remove the
16 request from its review schedule.

17 (2) The department or the attorney general may obtain review of any
18 final order granting a permit, or granting or denying an application
19 for a permit issued by a local government by filing a written request
20 with the shorelines hearings board and the appropriate local government
21 within thirty days from the date the final order was filed as provided
22 in RCW 90.58.140(6).

23 (3) The review proceedings authorized in subsections (1) and (2) of
24 this section are subject to the provisions of chapter 34.05 RCW
25 pertaining to procedures in adjudicative proceedings. Judicial review
26 of such proceedings of the shorelines hearings board is governed by
27 chapter 34.05 RCW.

28 (4) If the review proceedings authorized in subsection (1) of this
29 section find for the requestor, the requestor may be awarded any legal
30 and engineering costs involved in challenging the permit decision.

31 (5) A local government may appeal to the shorelines hearings board
32 any rules, regulations, or guidelines adopted or approved by the
33 department within thirty days of the date of the adoption or approval.
34 The board shall make a final decision within sixty days following the
35 hearing held thereon.

36 If the board determines that the rule, regulation, or guideline:

37 (a) Is clearly erroneous in light of the policy of this chapter; or

38 (b) Constitutes an implementation of this chapter in violation of
39 constitutional or statutory provisions; or

1 (c) Is arbitrary and capricious; or

2 (d) Was developed without fully considering and evaluating all
3 material submitted to the department by the local government; or

4 (e) Was not adopted in accordance with required procedures;

5 the board shall enter a final decision declaring the rule, regulation,
6 or guideline invalid, remanding the rule, regulation, or guideline to
7 the department with a statement of the reasons in support of the
8 determination, and directing the department to adopt, after a thorough
9 consultation with the affected local government, a new rule,
10 regulation, or guideline. Unless the board makes one or more of the
11 determinations as hereinbefore provided, the board shall find the rule,
12 regulation, or guideline to be valid and enter a final decision to that
13 effect.

14 (~~(+5+)~~) (6) Rules, regulations, and guidelines shall be subject to
15 review in superior court, if authorized pursuant to RCW 34.05.570(2).
16 No review shall be granted by a superior court on petition from a local
17 government unless the local government shall first have obtained review
18 under subsection (~~(+4+)~~) (5) of this section and the petition for court
19 review is filed within three months after the date of final decision by
20 the shorelines hearings board.

21 NEW SECTION. **Sec. 19.** A new section is added to chapter 43.17 RCW
22 to read as follows:

23 Each appropriate agency shall actively seek to encourage through
24 permit requirements the removal of accumulated materials from rivers
25 and streams where there is a flood damage reduction benefit. Each
26 agency shall develop policies to accomplish this goal. Policies shall
27 be developed from a designed, open-channel hydraulic engineering
28 criteria to facilitate the natural downstream movement of detrimental
29 material.

30 **Sec. 20.** RCW 86.12.200 and 1991 c 322 s 3 are each amended to read
31 as follows:

32 The county legislative authority of any county may adopt a
33 comprehensive flood control management plan for any drainage basin that
34 is located wholly or partially within the county.

35 A comprehensive flood control management plan shall include the
36 following elements:

1 (1) Designation of areas that are susceptible to periodic flooding,
2 from inundation by bodies of water or surface water runoff, or both,
3 including the river's meander belt or floodway;

4 (2) Establishment of a comprehensive scheme of flood control
5 protection and improvements for the areas that are subject to such
6 periodic flooding, that includes: (a) Determining the need for, and
7 desirable location of, flood control improvements to protect or
8 preclude flood damage to structures, works, and improvements, based
9 upon a ~~((cost/benefit))~~ cost-benefit ratio between the expense of
10 providing and maintaining these improvements and the benefits arising
11 from these improvements; (b) establishing the level of flood protection
12 that each portion of the system of flood control improvements will be
13 permitted; (c) identifying alternatives to in-stream flood control
14 work; (d) identifying areas where flood waters could be directed during
15 a flood to avoid damage to buildings and other structures; ~~((and))~~ (e)
16 identifying areas where a river may migrate into a new channel and
17 developing options to prevent the creation of the new channel, and
18 identifying practices that will avoid long-term accretion of sediments;
19 and (f) identifying sources of revenue that will be sufficient to
20 finance the comprehensive scheme of flood control protection and
21 improvements;

22 (3) Establishing land use regulations that preclude the location of
23 structures, works, or improvements in critical portions of such areas
24 subject to periodic flooding, including a river's meander belt or
25 floodway, and permitting only flood-compatible land uses in such areas;

26 (4) Establishing restrictions on construction activities in areas
27 subject to periodic floods that require the flood proofing of those
28 structures that are permitted to be constructed or remodeled; and

29 (5) Establishing restrictions on land clearing activities and
30 development practices that exacerbate flood problems by increasing the
31 flow or accumulation of flood waters, or the intensity of drainage, on
32 low-lying areas. Land clearing activities do not include forest
33 practices as defined in chapter 76.09 RCW.

34 A comprehensive flood control management plan shall be subject to
35 the minimum requirements for participation in the national flood
36 insurance program, requirements exceeding the minimum national flood
37 insurance program that have been adopted by the department of ecology
38 for a specific flood plain pursuant to RCW 86.16.031, and rules adopted
39 by the department of ecology pursuant to chapter 86.16 RCW and RCW

1 86.26.050 relating to flood plain management activities. When a county
2 plans under chapter 36.70A RCW, it ((may)) must incorporate the portion
3 of its comprehensive flood control management plan relating to land use
4 restrictions in its comprehensive plan and development regulations
5 adopted pursuant to chapter 36.70A RCW.

6 **Sec. 21.** RCW 90.58.030 and 1987 c 474 s 1 are each amended to read
7 as follows:

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

10 (1) Administration:

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

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

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

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

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

22 (2) Geographical:

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

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

37 (c) "Shorelines of the state" are the total of all "shorelines" and
38 "shorelines of state-wide significance" within the state;

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

9 (e) "Shorelines of state-wide significance" means the following
10 shorelines of the state:

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

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

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

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

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

20 (D) Skagit Bay and adjacent area--from Brown Point to Yokeko Point,
21 and

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

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

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

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

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

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

38 (vi) Those wetlands associated with (i), (ii), (iv), and (v) of
39 this subsection (2)(e);

1 (f) "Wetlands" or "wetland areas" means those lands extending
2 landward for two hundred feet in all directions as measured on a
3 horizontal plane from the ordinary high water mark; floodways and
4 contiguous floodplain areas landward two hundred feet from such
5 floodways; and all marshes, bogs, swamps, and river deltas associated
6 with the streams, lakes, and tidal waters which are subject to the
7 provisions of this chapter; the same to be designated as to location by
8 the department of ecology(~~(:—PROVIDED, That)~~). However, any county or
9 city may determine that portion of a one-hundred-year-flood plain to be
10 included in its master program as long as such portion includes, as a
11 minimum, the floodway and the adjacent land extending landward two
12 hundred feet (~~(therefrom)~~);

13 (g) "Floodway" means those portions of the area of a river valley
14 lying streamward from the outer limits of a watercourse upon which
15 flood waters are carried during periods of flooding that occur with
16 reasonable regularity, although not necessarily annually, said floodway
17 being identified, under normal condition, by changes in surface soil
18 conditions or changes in types or quality of vegetative ground cover
19 condition. The floodway shall not include those lands that can
20 reasonably be expected to be protected from flood waters by flood
21 control devices maintained by or maintained under license from the
22 federal government, the state, or a political subdivision of the state.

23 (3) Procedural terms:

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

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

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

36 (d) "Development" means a use consisting of the construction or
37 exterior alteration of structures; dredging; drilling; dumping;
38 filling; removal of any sand, gravel, or minerals; bulkheading; driving
39 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 two thousand five hundred
6 dollars, or any development which materially interferes with the normal
7 public use of the water or shorelines of the state; except that the
8 following shall not be considered substantial developments for the
9 purpose of this chapter:

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

12 (ii) Reconstruction or improvements to dikes and levees if the
13 reconstruction or improvement is determined by a county to be
14 consistent with a flood control management plan developed under chapter
15 86.26 RCW;

16 (iii) Streambed maintenance including sediment removal, sediment
17 disposal, and streambank stabilization if performed to provide public
18 flood control benefit as determined by the appropriate county
19 legislative authority;

20 (iv) Construction of stream flow regulation, retention, or
21 detention facilities if consistent with a flood control management plan
22 developed under chapter 86.26 RCW;

23 (v) Construction of the normal protective bulkhead common to single
24 family residences;

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

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

1 vegetation for livestock feeding and/or grazing, nor shall it include
2 normal livestock wintering operations;

3 ~~((v))~~ (viii) Construction or modification of navigational aids
4 such as channel markers and anchor buoys;

5 ~~((vi))~~ (ix) Construction on wetlands by an owner, lessee, or
6 contract purchaser of a single family residence for his own use or for
7 the use of his 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))~~ (x) Construction of a dock, including a community dock,
13 designed for pleasure craft only, for the private noncommercial use of
14 the owner, lessee, or contract purchaser of single and multiple family
15 residences, the cost of which does not exceed two thousand five hundred
16 dollars;

17 ~~((viii))~~ (xi) Operation, maintenance, or construction of canals,
18 waterways, drains, reservoirs, or other facilities that now exist or
19 are hereafter created or developed as a part of an irrigation system
20 for the primary purpose of making use of system waters, including
21 return flow and artificially stored ground water for the irrigation of
22 lands;

23 ~~((ix))~~ (xii) The marking of property lines or corners on state
24 owned lands, when such marking does not significantly interfere with
25 normal public use of the surface of the water;

26 ~~((x))~~ (xiii) Operation and maintenance of any system of dikes,
27 ditches, drains, or other facilities existing on September 8, 1975,
28 which were created, developed, or utilized primarily as a part of an
29 agricultural drainage or diking system;

30 ~~((xi))~~ (xiv) Any action commenced prior to December 31, 1982,
31 pertaining to (A) the restoration of interim transportation services as
32 may be necessary as a consequence of the destruction of the Hood Canal
33 bridge, including, but not limited to, improvements to highways,
34 development of park and ride facilities, and development of ferry
35 terminal facilities until a new or reconstructed Hood Canal bridge is
36 open to traffic; and (B) the reconstruction of a permanent bridge at
37 the site of the original Hood Canal bridge.

1 **Sec. 22.** RCW 47.28.140 and 1991 c 322 s 29 are each amended to
2 read as follows:

3 When in the opinion of the governing authorities representing the
4 department and any agency, instrumentality, municipal corporation, or
5 political subdivision of the state of Washington, any highway, road, or
6 street will be benefited or improved by constructing, reconstructing,
7 locating, relocating, laying out, repairing, surveying, altering,
8 improving, or maintaining, or by the establishment adjacent to, under,
9 upon, within, or above any portion of any such highway, road, or street
10 of an urban public transportation system, by either the department or
11 any agency, instrumentality, municipal corporation, or political
12 subdivision of the state, and it is in the public interest to do so,
13 the authorities may enter into cooperative agreements wherein either
14 agrees to perform the work and furnish the materials necessary and pay
15 the cost thereof, including necessary engineering assistance, which
16 costs and expenses shall be reimbursed by the party whose
17 responsibility it was to do or perform the work or improvement in the
18 first instance. The work may be done by either day labor or contract,
19 and the cooperative agreement between the parties shall provide for the
20 method of reimbursement. In the case of some special benefit or
21 improvement to a state highway derived from (~~any project that assists~~
22 ~~in preventing or minimizing flood damages as defined in RCW 86.16.120~~
23 ~~or from~~) the construction of any public works project, including any
24 urban public transportation system, the department may contribute to
25 the cost thereof by making direct payment to the particular state
26 department, agency, instrumentality, municipal corporation, or
27 political subdivision on the basis of benefits received, but such
28 payment shall be made only after a cooperative agreement has been
29 entered into for a specified amount or on an actual cost basis prior to
30 the commencement of the particular public works project.

31 In the case of a special benefit or improvement to a state highway
32 derived from a project that assists in preventing or reducing flood
33 damages as defined in RCW 86.16.120, the department shall contribute to
34 the cost of the benefit or improvement by making direct payment to the
35 particular state department, agency, instrumentality, municipal
36 corporation, or political subdivision on the basis of contribution to
37 the problem or benefits received. The department may make payment only
38 after an agreement has been entered into between the department and the

1 appropriate state or local government entity. The department may not
2 make the contribution less than ten percent of the total project cost.

3 NEW SECTION. Sec. 23. A new section is added to chapter 86.26 RCW
4 to read as follows:

5 A flood protection project is work necessary to preserve, restore,
6 or improve either natural or human-made stream banks or flood control
7 facilities that repair or prevent flood damage as defined in RCW
8 86.16.120 including but not limited to damage by erosion, stream flow,
9 sheet runoff, or other damages by the sea or other bodies of water.

10 NEW SECTION. Sec. 24. The department of transportation shall
11 assess all areas within each county with two or more presidentially
12 declared flood disasters within the most recent ten-year period in
13 which road or bridge construction has impacted the flood plain and the
14 normal flow of flood waters. The department shall report its findings
15 and a plan for corrective action to the legislature by December 31,
16 1995. The plan for corrective action shall, to the greatest extent
17 practicable, emphasize planned renovation or reconstruction efforts for
18 the roads and bridges outlined in the assessment.

19 NEW SECTION. Sec. 25. A new section is added to chapter 75.20 RCW
20 to read as follows:

21 The departments of fish and wildlife, natural resources, and
22 ecology shall jointly develop a memorandum of understanding to
23 facilitate the consideration of projects that will aid in the
24 minimization or prevention of flood damage as defined in RCW 86.16.120.
25 To reduce the duplication of information required by a project's
26 permits, the departments must provide in their memorandum procedures to
27 share data to the extent practicable among themselves and with other
28 agencies that may be involved in approving or denying a permit
29 application. The departments' memorandum must provide a plan to
30 implement a comprehensive permit process that is streamlined and easily
31 understandable to permit applicants.

32 NEW SECTION. Sec. 26. RCW 79.90.325 and 1984 c 212 s 10 are each
33 repealed.

1 NEW SECTION. **Sec. 27.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of the
3 state government and its existing public institutions, and shall take
4 effect immediately.

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