
SENATE BILL 5952

State of Washington

54th Legislature

1995 Regular Session

By Senators Sheldon, A. Anderson, Hale, Winsley, Gaspard, Haugen, Drew, Loveland, Fraser, Spanel, Snyder, Palmer, Rasmussen and Bauer

Read first time 02/16/95. Referred to Committee on Ecology & Parks.

1 AN ACT Relating to improving coordination of shoreline management
2 with other planning and appeals processes; amending RCW 90.58.020,
3 90.58.030, 90.58.050, 90.58.060, 90.58.080, 90.58.090, 90.58.100,
4 90.58.120, 90.58.140, 90.58.180, 90.58.190, 34.05.461, 34.05.514,
5 36.70A.020, 36.70A.070, 36.70A.280, and 36.70A.320; reenacting and
6 amending RCW 36.70A.290; and repealing RCW 90.58.145.

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

8 **Sec. 1.** RCW 90.58.020 and 1992 c 105 s 1 are each amended to read
9 as follows:

10 The legislature finds that the shorelines of the state are among
11 the most valuable and fragile of its natural resources and that there
12 is great concern throughout the state relating to their utilization,
13 protection, restoration, and preservation. In addition it finds that
14 ever increasing pressures of additional uses are being placed on the
15 shorelines necessitating increased coordination in the management and
16 development of the shorelines of the state. The legislature further
17 finds that much of the shorelines of the state and the uplands adjacent
18 thereto are in private ownership; that unrestricted construction on the
19 privately owned or publicly owned shorelines of the state is not in the

1 best public interest; and therefore, coordinated planning is necessary
2 in order to protect the public interest associated with the shorelines
3 of the state while, at the same time, recognizing and protecting
4 private property rights consistent with the public interest. There is,
5 therefor, a clear and urgent demand for a planned, rational, and
6 concerted effort, jointly performed by federal, state, and local
7 governments, to prevent the inherent harm in an uncoordinated and
8 piecemeal development of the state's shorelines.

9 It is the policy of the state to provide for the management of the
10 shorelines of the state by planning for and fostering all reasonable
11 and appropriate uses. This policy is designed to insure the
12 development of these shorelines in a manner which, while allowing for
13 limited reduction of rights of the public in the navigable waters, will
14 promote and enhance the public interest. This policy contemplates
15 protecting against adverse effects to the public health, the land and
16 its vegetation and wildlife, and the waters of the state and their
17 aquatic life, while protecting generally public rights of navigation
18 and corollary rights incidental thereto.

19 The legislature declares that the interest of all of the people
20 shall be paramount in the management of shorelines of state-wide
21 significance. The department, in adopting guidelines for shorelines of
22 state-wide significance, and local government, in developing master
23 programs for shorelines of state-wide significance, shall give
24 preference to uses in the following order of preference which:

25 (1) Recognize and protect the state-wide interest over local
26 interest;

27 (2) Preserve the natural character of the shoreline;

28 (3) Result in long term over short term benefit;

29 (4) Protect the resources and ecology of the shoreline;

30 (5) Increase public access to publicly owned areas of the
31 shorelines;

32 (6) Increase recreational opportunities for the public in the
33 shoreline;

34 (7) Provide for any other element as defined in RCW 90.58.100
35 deemed appropriate or necessary.

36 In the implementation of this policy the public's opportunity to
37 enjoy the physical and aesthetic qualities of natural shorelines of the
38 state shall be preserved to the greatest extent feasible consistent
39 with the overall best interest of the state and the people generally.

1 To this end uses shall be preferred which are consistent with control
2 of pollution and prevention of damage to the natural environment, or
3 are unique to or dependent upon use of the state's shoreline.
4 Alterations of the natural condition of the shorelines of the state, in
5 those limited instances when authorized, shall be given priority for
6 single family residences and their appurtenant structures, ports,
7 shoreline recreational uses including but not limited to parks,
8 marinas, piers, and other improvements facilitating public access to
9 shorelines of the state, industrial and commercial developments which
10 are particularly dependent on their location on or use of the
11 shorelines of the state and other development that will provide an
12 opportunity for substantial numbers of the people to enjoy the
13 shorelines of the state. Alterations of the natural condition of the
14 shorelines and ((wetlands)) shorelands of the state shall be recognized
15 by the department. Shorelines and ((wetlands)) shorelands of the state
16 shall be appropriately classified and these classifications shall be
17 revised when circumstances warrant regardless of whether the change in
18 circumstances occurs through man-made causes or natural causes. Any
19 areas resulting from alterations of the natural condition of the
20 shorelines and ((wetlands)) shorelands of the state no longer meeting
21 the definition of "shorelines of the state" shall not be subject to the
22 provisions of chapter 90.58 RCW.

23 Permitted uses in the shorelines of the state shall be designed and
24 conducted in a manner to minimize, insofar as practical, any resultant
25 damage to the ecology and environment of the shoreline area and any
26 interference with the public's use of the water.

27 **Sec. 2.** RCW 90.58.030 and 1987 c 474 s 1 are each amended to read
28 as follows:

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

31 (1) Administration:

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

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

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

37 (d) "Person" means an individual, partnership, corporation,
38 association, organization, cooperative, public or municipal

1 corporation, or agency of the state or local governmental unit however
2 designated;

3 (e) "Hearing board" means the shoreline hearings board established
4 by this chapter.

5 (2) Geographical:

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

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

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

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

30 (e) "Shorelines of state-wide significance" means the following
31 shorelines of the state:

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

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

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

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

1 (C) Hood Canal--from Tala Point to Foulweather Bluff,
2 (D) Skagit Bay and adjacent area--from Brown Point to Yokeko Point,
3 and
4 (E) Padilla Bay--from March Point to William Point;
5 (iii) Those areas of Puget Sound and the Strait of Juan de Fuca and
6 adjacent salt waters north to the Canadian line and lying seaward from
7 the line of extreme low tide;
8 (iv) Those lakes, whether natural, artificial, or a combination
9 thereof, with a surface acreage of one thousand acres or more measured
10 at the ordinary high water mark;
11 (v) Those natural rivers or segments thereof as follows:
12 (A) Any west of the crest of the Cascade range downstream of a
13 point where the mean annual flow is measured at one thousand cubic feet
14 per second or more,
15 (B) Any east of the crest of the Cascade range downstream of a
16 point where the annual flow is measured at two hundred cubic feet per
17 second or more, or those portions of rivers east of the crest of the
18 Cascade range downstream from the first three hundred square miles of
19 drainage area, whichever is longer;
20 (vi) Those ~~((wetlands))~~ shorelands associated with (i), (ii), (iv),
21 and (v) of this subsection (2)(e);
22 (f) "~~((Wetlands))~~ Shorelands" or "~~((wetland))~~ shoreland areas"
23 means those lands extending landward for two hundred feet in all
24 directions as measured on a horizontal plane from the ordinary high
25 water mark; floodways and contiguous floodplain areas landward two
26 hundred feet from such floodways; and all ~~((marshes, bogs, swamps,))~~
27 wetlands and river deltas associated with the streams, lakes, and tidal
28 waters which are subject to the provisions of this chapter; the same to
29 be designated as to location by the department of ecology(~~(: PROVIDED,~~
30 ~~That))~~). Any county or city may determine that portion of a one-
31 hundred-year-flood plain to be included in its master program as long
32 as such portion includes, as a minimum, the floodway and the adjacent
33 land extending landward two hundred feet therefrom;
34 (g) "Floodway" means those portions of the area of a river valley
35 lying streamward from the outer limits of a watercourse upon which
36 flood waters are carried during periods of flooding that occur with
37 reasonable regularity, although not necessarily annually, said floodway
38 being identified, under normal condition, by changes in surface soil
39 conditions or changes in types or quality of vegetative ground cover

1 condition. The floodway shall not include those lands that can
2 reasonably be expected to be protected from flood waters by flood
3 control devices maintained by or maintained under license from the
4 federal government, the state, or a political subdivision of the state;

5 (h) "Wetlands" means areas that are inundated or saturated by
6 surface water or ground water at a frequency and duration sufficient to
7 support, and that under normal circumstances do support, a prevalence
8 of vegetation typically adapted for life in saturated soil conditions.
9 Wetlands generally include swamps, marshes, bogs, and similar areas.
10 Wetlands do not include those artificial wetlands intentionally created
11 from nonwetland sites, including, but not limited to, irrigation and
12 drainage ditches, grass-lined swales, canals, detention facilities,
13 wastewater treatment facilities, farm ponds, and landscape amenities.
14 Wetlands may include those artificial wetlands intentionally created
15 from nonwetland areas to mitigate the conversion of other wetlands.

16 (3) Procedural terms:

17 (a) "Guidelines" means those standards adopted to implement the
18 policy of this chapter for regulation of use of the shorelines of the
19 state prior to adoption of master programs. Such standards shall also
20 provide criteria to local governments and the department in developing
21 master programs;

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

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

29 (d) "Development" means a use consisting of the construction or
30 exterior alteration of structures; dredging; drilling; dumping;
31 filling; removal of any sand, gravel, or minerals; bulkheading; driving
32 of piling; placing of obstructions; or any project of a permanent or
33 temporary nature which interferes with the normal public use of the
34 surface of the waters overlying lands subject to this chapter at any
35 state of water level;

36 (e) "Substantial development" shall mean any development of which
37 the total cost or fair market value exceeds two thousand five hundred
38 dollars, or any development which materially interferes with the normal
39 public use of the water or shorelines of the state; except that the

1 following shall not be considered substantial developments for the
2 purpose of this chapter:

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

5 (ii) Construction of the normal protective bulkhead common to
6 single family residences;

7 (iii) Emergency construction necessary to protect property from
8 damage by the elements;

9 (iv) Construction and practices normal or necessary for farming,
10 irrigation, and ranching activities, including agricultural service
11 roads and utilities on ((~~wetlands~~)) shorelands, and the construction
12 and maintenance of irrigation structures including but not limited to
13 head gates, pumping facilities, and irrigation channels(~~(:—PROVIDED,~~
14 ~~That))~~). A feedlot of any size, all processing plants, other activities
15 of a commercial nature, alteration of the contour of the ((~~wetlands~~))
16 shorelands by leveling or filling other than that which results from
17 normal cultivation, shall not be considered normal or necessary farming
18 or ranching activities. A feedlot shall be an enclosure or facility
19 used or capable of being used for feeding livestock hay, grain, silage,
20 or other livestock feed, but shall not include land for growing crops
21 or vegetation for livestock feeding and/or grazing, nor shall it
22 include normal livestock wintering operations;

23 (v) Construction or modification of navigational aids such as
24 channel markers and anchor buoys;

25 (vi) Construction on ((~~wetlands~~)) shorelands by an owner, lessee,
26 or contract purchaser of a single family residence for his own use or
27 for the use of his family, which residence does not exceed a height of
28 thirty-five feet above average grade level and which meets all
29 requirements of the state agency or local government having
30 jurisdiction thereof, other than requirements imposed pursuant to this
31 chapter;

32 (vii) Construction of a dock, including a community dock, designed
33 for pleasure craft only, for the private noncommercial use of the
34 owner, lessee, or contract purchaser of single and multiple family
35 residences, the cost of which does not exceed two thousand five hundred
36 dollars;

37 (viii) Operation, maintenance, or construction of canals,
38 waterways, drains, reservoirs, or other facilities that now exist or
39 are hereafter created or developed as a part of an irrigation system

1 for the primary purpose of making use of system waters, including
2 return flow and artificially stored ground water for the irrigation of
3 lands;

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

7 (x) Operation and maintenance of any system of dikes, ditches,
8 drains, or other facilities existing on September 8, 1975, which were
9 created, developed, or utilized primarily as a part of an agricultural
10 drainage or diking system((+)

11 ~~(xi) Any action commenced prior to December 31, 1982, pertaining to~~
12 ~~(A) the restoration of interim transportation services as may be~~
13 ~~necessary as a consequence of the destruction of the Hood Canal bridge,~~
14 ~~including, but not limited to, improvements to highways, development of~~
15 ~~park and ride facilities, and development of ferry terminal facilities~~
16 ~~until a new or reconstructed Hood Canal bridge is open to traffic; and~~
17 ~~(B) the reconstruction of a permanent bridge at the site of the~~
18 ~~original Hood Canal bridge)).~~

19 **Sec. 3.** RCW 90.58.050 and 1971 ex.s. c 286 s 5 are each amended to
20 read as follows:

21 This chapter establishes a cooperative program of shoreline
22 management between local government and the state. Local government
23 shall have the primary responsibility for initiating the planning
24 required by this chapter and administering the regulatory program
25 consistent with the policy and provisions of this chapter. The
26 department shall act primarily in a supportive and review capacity with
27 ~~((primary))~~ an emphasis on providing assistance to local government and
28 on insuring compliance with the policy and provisions of this chapter.

29 **Sec. 4.** RCW 90.58.060 and 1971 ex.s. c 286 s 6 are each amended to
30 read as follows:

31 ~~((Within one hundred twenty days from June 1, 1971,))~~ The
32 department shall ~~((submit to local governments proposed))~~ periodically
33 review and adopt guidelines consistent with RCW 90.58.020, containing
34 the elements specified in RCW 90.58.100 for:

35 (a) Development of master programs for regulation of the uses of
36 shorelines; and

1 (b) Development of master programs for regulation of the uses of
2 shorelines of state-wide significance.

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

6 (a) The department shall mail copies of the proposal to all cities,
7 counties, and federally recognized Indian tribes, and to any other
8 person who has requested a copy, and shall publish the proposed
9 guidelines in the Washington state register. Comments shall be
10 submitted in writing to the department within sixty days from ((receipt
11 of such proposed guidelines, local governments shall submit to the
12 department in writing proposed changes, if any, and comments upon the
13 proposed guidelines.

14 ~~(3) Thereafter and within one hundred twenty days from the~~
15 ~~submission of such proposed guidelines to local governments, the~~
16 ~~department, after review and consideration of the comments and~~
17 ~~suggestions submitted to it, shall resubmit final proposed guidelines.~~

18 ~~(4) Within sixty days thereafter public hearings shall be held by))~~
19 ~~the date the proposal has been published in the register.~~

20 (b) The department ((in Olympia and Spokane, at which interested
21 public and private parties shall have the opportunity)) shall hold at
22 least four public hearings on the proposal in different locations
23 throughout the state to provide a reasonable opportunity for residents
24 in all parts of the state to present statements and views on the
25 proposed guidelines. Notice of ((such)) the hearings shall be
26 published at least once in each of the three weeks immediately
27 preceding the hearing in one or more newspapers of general circulation
28 in each county of the state. If an amendment to the guidelines
29 addresses an issue limited to one geographic area, the number and
30 location of hearings may be adjusted consistent with the intent of this
31 subsection to assure all parties a reasonable opportunity to comment on
32 the proposed amendment. The department shall accept written comments
33 on the proposal during the sixty-day public comment period and for
34 seven days after the final public hearing.

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

1 (~~(5) Within ninety days following such public hearings, the~~
2 department at a public hearing to be held in Olympia shall adopt
3 guidelines.)) (3) The department may propose amendments to the
4 guidelines not more than once each year. At least once every five
5 years the department shall conduct a review of the guidelines pursuant
6 to the procedures outlined in subsection (2) of this section.

7 **Sec. 5.** RCW 90.58.080 and 1974 ex.s. c 61 s 1 are each amended to
8 read as follows:

9 Local governments (~~are directed with regard to shorelines of the~~
10 ~~state within their various jurisdictions as follows:~~

11 ~~(1) To complete within eighteen months after June 1, 1971, a~~
12 ~~comprehensive inventory of such shorelines. Such inventory shall~~
13 ~~include but not be limited to the general ownership patterns of the~~
14 ~~lands located therein in terms of public and private ownership, a~~
15 ~~survey of the general natural characteristics thereof, present uses~~
16 ~~conducted therein and initial projected uses thereof;~~

17 ~~(2) To~~) shall develop or amend, within twenty-four months after
18 the adoption of guidelines as provided in RCW 90.58.060, a master
19 program for regulation of uses of the shorelines of the state
20 consistent with the required elements of the guidelines adopted by the
21 department.

22 **Sec. 6.** RCW 90.58.090 and 1971 ex.s. c 286 s 9 are each amended to
23 read as follows:

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

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

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

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

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

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

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

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

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

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

1 ~~((1) As to those segments of the master program relating to~~
2 ~~shorelines, they shall be approved by))~~

3 (3) The department shall approve the segment of a master program
4 relating to shorelines unless it determines that the submitted segments
5 are not consistent with the policy of RCW 90.58.020 and the applicable
6 guidelines. ~~((If approval is denied, the department shall state within~~
7 ~~ninety days from the date of submission in detail the precise facts~~
8 ~~upon which that decision is based, and shall submit to the local~~
9 ~~government suggested modifications to the program to make it consistent~~
10 ~~with said policy and guidelines. The local government shall have~~
11 ~~ninety days after it receives recommendations from the department to~~
12 ~~make modifications designed to eliminate the inconsistencies and to~~
13 ~~resubmit the program to the department for approval. Any resubmitted~~
14 ~~program shall take effect when and in such form and content as is~~
15 ~~approved by the department.~~

16 ~~(2) As to))~~ (4) The department shall approve those segments of the
17 master program relating to shorelines of state-wide significance ~~((the~~
18 ~~department shall have full authority following review and evaluation of~~
19 ~~the submission by local government to develop and adopt an alternative~~
20 ~~to the local government's proposal if in the department's opinion the~~
21 ~~program submitted does not))~~ only after determining the program
22 provides the optimum implementation of the policy of this chapter to
23 satisfy the state-wide interest. ~~((If the submission by local~~
24 ~~government is not approved, the department shall suggest modifications~~
25 ~~to the local government within ninety days from receipt of the~~
26 ~~submission. The local government shall have ninety days after it~~
27 ~~receives said modifications to consider the same and resubmit a master~~
28 ~~program to the department. Thereafter, the department shall adopt the~~
29 ~~resubmitted program or, if the department determines that said program~~
30 ~~does not provide for optimum implementation, it may develop and adopt~~
31 ~~an alternative as hereinbefore provided.))~~ If the department does not
32 approve a segment of a local government master program relating to a
33 shoreline of state-wide significance, the department may develop and by
34 rule adopt an alternative to the local government s proposal.

35 ~~((3))~~ (5) In the event a local government has not complied with
36 the requirements of RCW 90.58.070 it may thereafter upon written notice
37 to the department elect to adopt a master program for the shorelines
38 within its jurisdiction, in which event it shall comply with the

1 provisions established by this chapter for the adoption of a master
2 program for such shorelines.

3 Upon approval of such master program by the department it shall
4 supersede such master program as may have been adopted by the
5 department for such shorelines.

6 (6) A master program or amendment to a master program takes effect
7 when and in such form as approved or adopted by the department. The
8 department shall maintain a record of each master program, the action
9 taken on any proposal for adoption or amendment of the master program,
10 and any appeal of the department's action. The department's approved
11 document of record constitutes the official master program.

12 **Sec. 7.** RCW 90.58.100 and 1992 c 105 s 2 are each amended to read
13 as follows:

14 (1) The master programs provided for in this chapter, when adopted
15 ~~((and))~~ or approved by the department ~~((, as appropriate,))~~ shall
16 constitute use regulations for the various shorelines of the state. In
17 preparing the master programs, and any amendments thereto, the
18 department and local governments shall to the extent feasible:

19 (a) Utilize a systematic interdisciplinary approach which will
20 insure the integrated use of the natural and social sciences and the
21 environmental design arts;

22 (b) Consult with and obtain the comments of any federal, state,
23 regional, or local agency having any special expertise with respect to
24 any environmental impact;

25 (c) Consider all plans, studies, surveys, inventories, and systems
26 of classification made or being made by federal, state, regional, or
27 local agencies, by private individuals, or by organizations dealing
28 with pertinent shorelines of the state;

29 (d) Conduct or support such further research, studies, surveys, and
30 interviews as are deemed necessary;

31 (e) Utilize all available information regarding hydrology,
32 geography, topography, ecology, economics, and other pertinent data;

33 (f) Employ, when feasible, all appropriate, modern scientific data
34 processing and computer techniques to store, index, analyze, and manage
35 the information gathered.

36 (2) The master programs shall include, when appropriate, the
37 following:

1 (a) An economic development element for the location and design of
2 industries, transportation facilities, port facilities, tourist
3 facilities, commerce and other developments that are particularly
4 dependent on their location on or use of the shorelines of the state;

5 (b) A public access element making provision for public access to
6 publicly owned areas;

7 (c) A recreational element for the preservation and enlargement of
8 recreational opportunities, including but not limited to parks,
9 tidelands, beaches, and recreational areas;

10 (d) A circulation element consisting of the general location and
11 extent of existing and proposed major thoroughfares, transportation
12 routes, terminals, and other public utilities and facilities, all
13 correlated with the shoreline use element;

14 (e) A use element which considers the proposed general distribution
15 and general location and extent of the use on shorelines and adjacent
16 land areas for housing, business, industry, transportation,
17 agriculture, natural resources, recreation, education, public buildings
18 and grounds, and other categories of public and private uses of the
19 land;

20 (f) A conservation element for the preservation of natural
21 resources, including but not limited to scenic vistas, aesthetics, and
22 vital estuarine areas for fisheries and wildlife protection;

23 (g) An historic, cultural, scientific, and educational element for
24 the protection and restoration of buildings, sites, and areas having
25 historic, cultural, scientific, or educational values;

26 (h) An element that gives consideration to the state-wide interest
27 in the prevention and minimization of flood damages; and

28 (i) Any other element deemed appropriate or necessary to effectuate
29 the policy of this chapter.

30 (3) The master programs shall include such map or maps, descriptive
31 text, diagrams and charts, or other descriptive material as are
32 necessary to provide for ease of understanding.

33 (4) Master programs will reflect that state-owned shorelines of the
34 state are particularly adapted to providing wilderness beaches,
35 ecological study areas, and other recreational activities for the
36 public and will give appropriate special consideration to same.

37 (5) Each master program shall contain provisions to allow for the
38 varying of the application of use regulations of the program, including
39 provisions for permits for conditional uses and variances, to insure

1 that strict implementation of a program will not create unnecessary
2 hardships or thwart the policy enumerated in RCW 90.58.020. Any such
3 varying shall be allowed only if extraordinary circumstances are shown
4 and the public interest suffers no substantial detrimental effect. The
5 concept of this subsection shall be incorporated in the rules adopted
6 by the department relating to the establishment of a permit system as
7 provided in RCW 90.58.140(3).

8 (6) Each master program shall contain standards governing the
9 protection of single family residences and appurtenant structures
10 against damage or loss due to shoreline erosion. The standards shall
11 govern the issuance of substantial development permits for shoreline
12 protection, including structural methods such as construction of
13 bulkheads, and nonstructural methods of protection. The standards
14 shall provide for methods which achieve effective and timely protection
15 against loss or damage to single family residences and appurtenant
16 structures due to shoreline erosion. The standards shall provide a
17 preference for permit issuance for measures to protect single family
18 residences occupied prior to January 1, 1992, where the proposed
19 measure is designed to minimize harm to the shoreline natural
20 environment.

21 **Sec. 8.** RCW 90.58.120 and 1989 c 175 s 182 are each amended to
22 read as follows:

23 All rules, regulations, (~~((master programs,))~~) designations, and
24 guidelines, issued by the department, and master programs and
25 amendments adopted by the department pursuant to RCW 90.58.070(2) or
26 90.58.090(4) shall be adopted or approved in accordance with the
27 provisions of RCW 34.05.310 through 34.05.395 insofar as such
28 provisions are not inconsistent with the provisions of this chapter.
29 In addition:

30 (1) Prior to the (~~((approval or))~~) adoption by the department of a
31 master program, or portion thereof pursuant to RCW 90.58.070(2) or
32 90.58.090(4), at least one public hearing shall be held in each county
33 affected by a program or portion thereof for the purpose of obtaining
34 the views and comments of the public. Notice of each such hearing
35 shall be published at least once in each of the three weeks immediately
36 preceding the hearing in one or more newspapers of general circulation
37 in the county in which the hearing is to be held.

1 (2) All guidelines, regulations, designations, or master programs
2 adopted or approved under this chapter shall be available for public
3 inspection at the office of the department or the appropriate county
4 ((auditor)) and city ((clerk)). The terms "adopt" and "approve" for
5 purposes of this section, shall include modifications and rescission of
6 guidelines.

7 **Sec. 9.** RCW 90.58.140 and 1992 c 105 s 3 are each amended to read
8 as follows:

9 (1) A development shall not be undertaken on the shorelines of the
10 state unless it is consistent with the policy of this chapter and,
11 after adoption or approval, as appropriate, the applicable guidelines,
12 rules, or master program.

13 (2) A substantial development shall not be undertaken on shorelines
14 of the state without first obtaining a permit from the government
15 entity having administrative jurisdiction under this chapter.

16 A permit shall be granted:

17 (a) From June 1, 1971, until such time as an applicable master
18 program has become effective, only when the development proposed is
19 consistent with: (i) The policy of RCW 90.58.020; and (ii) after their
20 adoption, the guidelines and rules of the department; and (iii) so far
21 as can be ascertained, the master program being developed for the area;

22 (b) After adoption or approval, as appropriate, by the department
23 of an applicable master program, only when the development proposed is
24 consistent with the applicable master program and ~~((the provisions of))~~
25 this chapter ((90.58-RCW)).

26 (3) The local government shall establish a program, consistent with
27 rules adopted by the department, for the administration and enforcement
28 of the permit system provided in this section. The administration of
29 the system so established shall be performed exclusively by the local
30 government.

31 (4) Except as otherwise specifically provided in subsection
32 ~~((+13))~~ (11) of this section, the local government shall require
33 notification of the public of all applications for permits governed by
34 any permit system established pursuant to subsection (3) of this
35 section by ensuring that(~~(+~~

36 ~~(a) A notice of such an application is published at least once a~~
37 ~~week on the same day of the week for two consecutive weeks in a legal~~

1 newspaper of general circulation within the area in which the
2 development is proposed; and

3 (~~(b) Additional~~) notice of (~~(such an)~~) the application is given by
4 at least one of the following methods:

5 (~~((i))~~) (a) Mailing of the notice to the latest recorded real
6 property owners as shown by the records of the county assessor within
7 at least three hundred feet of the boundary of the property upon which
8 the substantial development is proposed;

9 (~~((ii))~~) (b) Posting of the notice in a conspicuous manner on the
10 property upon which the project is to be constructed; or

11 (~~((iii))~~) (c) Any other manner deemed appropriate by local
12 authorities to accomplish the objectives of reasonable notice to
13 adjacent landowners and the public.

14 The notices shall include a statement that any person desiring to
15 submit written comments concerning an application, or desiring to
16 receive (~~(a copy)~~) notification of the final (~~(order)~~) decision
17 concerning an application as expeditiously as possible after the
18 issuance of the (~~(order)~~) decision, may submit the comments or requests
19 for (~~(orders)~~) decisions to the local government within thirty days of
20 the last date the notice is to be published pursuant to (~~(subsection~~
21 ~~(a) of)~~) this subsection. The local government shall forward, in a
22 timely manner following the issuance of (~~(an order)~~) a decision, a copy
23 of the (~~(order)~~) decision to each person who submits a request for the
24 (~~(order)~~) decision.

25 If a hearing is to be held on an application, notices of such a
26 hearing shall include a statement that any person may submit oral or
27 written comments on an application at the hearing.

28 (5) The system shall include provisions to assure that construction
29 pursuant to a permit will not begin or be authorized until (~~(thirty)~~)
30 twenty-one days from the date the final order was filed as provided in
31 subsection (6) of this section; or until all review proceedings are
32 terminated if the proceedings were initiated within (~~(thirty)~~) twenty-
33 one days from the date of filing as defined in subsection (6) of this
34 section except as follows:

35 (a) In the case of any permit issued to the state of Washington,
36 department of transportation, for the construction and modification of
37 SR 90 (I-90) on or adjacent to Lake Washington, the construction may
38 begin after thirty days from the date of filing, and the permits are
39 valid until December 31, 1995;

1 (b) If a permit is granted by the local government and (i) the
2 granting of the permit is appealed to the shorelines hearings board
3 within (~~(thirty)~~) twenty-one days of the date of filing, (ii) the
4 hearings board approves the granting of the permit by the local
5 government or approves a portion of the substantial development for
6 which the local government issued the permit, and (iii) an appeal for
7 judicial review of the hearings board decision is filed pursuant to
8 chapter 34.05 RCW(~~(, the permittee)~~) construction may be commenced
9 thirty days after the date of the appeal of the board's decision is
10 filed. The appellant may request, within ten days of the filing of the
11 appeal with the court, a hearing before the court to determine whether
12 construction (~~(may begin)~~) pursuant to the permit approved by the
13 hearings board or to a revised permit issued pursuant to the order of
14 the hearings board should begin. If, at the conclusion of the hearing,
15 the court finds that construction pursuant to such a permit would
16 (~~(not)~~) involve a significant, irreversible damaging of the
17 environment, the court (~~(may allow)~~) shall prohibit the permittee (~~(to~~
18 ~~begin)~~) from commencing the construction pursuant to the approved or
19 revised permit (~~(as the court deems appropriate. The court may require~~
20 ~~the permittee to post bonds, in the name of the local government that~~
21 ~~issued the permit, sufficient to remove the substantial development or~~
22 ~~to restore the environment if the permit is ultimately disapproved by~~
23 ~~the courts, or to alter the substantial development if the alteration~~
24 ~~is ultimately ordered by the courts)~~) until all review proceedings are
25 final. Construction pursuant to a permit revised at the direction of
26 the hearings board may begin only on that portion of the substantial
27 development for which the local government had originally issued the
28 permit, and construction pursuant to such a revised permit on other
29 portions of the substantial development may not begin until after all
30 review proceedings are terminated. In such a hearing before the court,
31 the burden of proving whether the construction may involve significant
32 irreversible damage to the environment and demonstrating whether such
33 construction would or would not be appropriate is on the appellant;

34 (c) (~~(If a permit is granted by the local government and the~~
35 ~~granting of the permit is appealed directly to the superior court for~~
36 ~~judicial review pursuant to the proviso in RCW 90.58.180(1), the~~
37 ~~permittee may request the court to remand the appeal to the shorelines~~
38 ~~hearings board, in which case the appeal shall be so remanded and~~
39 ~~construction pursuant to such a permit shall be governed by the~~

1 ~~provisions of subsection (b) of this subsection or may otherwise begin~~
2 ~~after review proceedings before the hearings board are terminated if~~
3 ~~judicial review is not thereafter requested pursuant to chapter 34.05~~
4 ~~RCW;~~

5 (d)) If the permit is for a substantial development meeting the
6 requirements of subsection ((+13)) (11) of this section, construction
7 pursuant to that permit may not begin or be authorized until ((thirty))
8 twenty-one days from the date the final order was filed as provided in
9 subsection (6) of this section.

10 If a permittee begins construction pursuant to subsections (a),
11 (b), or (c)((, ~~or~~ (d))) of this subsection, the construction is begun
12 at the permittee's own risk. If, as a result of judicial review, the
13 courts order the removal of any portion of the construction or the
14 restoration of any portion of the environment involved or require the
15 alteration of any portion of a substantial development constructed
16 pursuant to a permit, the permittee is barred from recovering damages
17 or costs involved in adhering to such requirements from the local
18 government that granted the permit, the hearings board, or any
19 appellant or intervener.

20 (6) Any ruling on an application for a permit under the authority
21 of this section, whether it is an approval or a denial, shall,
22 concurrently with the transmittal of the ruling to the applicant, be
23 filed with the department and the attorney general. With regard to a
24 permit other than a permit governed by subsection ((+12)) (10) of this
25 section, "date of filing" as used herein means the date of actual
26 receipt by the department. With regard to a permit for a variance or
27 a conditional use, "date of filing" means the date a decision of the
28 department rendered on the permit pursuant to subsection ((+12)) (10)
29 of this section is transmitted by the department to the local
30 government. The department shall notify in writing the local
31 government and the applicant of the date of filing.

32 (7) Applicants for permits under this section have the burden of
33 proving that a proposed substantial development is consistent with the
34 criteria that must be met before a permit is granted. In any review of
35 the granting or denial of an application for a permit as provided in
36 RCW 90.58.180 (1) and (2), the person requesting the review has the
37 burden of proof.

38 (8) Any permit may, after a hearing with adequate notice to the
39 permittee and the public, be rescinded by the issuing authority upon

1 the finding that a permittee has not complied with conditions of a
2 permit. If the department is of the opinion that noncompliance exists,
3 the department shall provide written notice to the local government and
4 the permittee. If the department is of the opinion that the
5 noncompliance continues to exist thirty days after the date of the
6 notice, and the local government has taken no action to rescind the
7 permit, the department may petition the hearings board for a rescission
8 of the permit upon written notice of the petition to the local
9 government and the permittee if the request by the department is made
10 to the hearings board within fifteen days of the termination of the
11 thirty-day notice to the local government.

12 (9) The holder of a certification from the governor pursuant to
13 chapter 80.50 RCW shall not be required to obtain a permit under this
14 section.

15 (10) ~~((A permit shall not be required for any development on
16 shorelines of the state included within a preliminary or final plat
17 approved by the applicable state agency or local government before
18 April 1, 1971, if:~~

19 ~~(a) The final plat was approved after April 13, 1961, or the
20 preliminary plat was approved after April 30, 1969; and~~

21 ~~(b) The development is completed within two years after June 1,
22 1971.~~

23 ~~((11) The applicable state agency or local government is authorized
24 to approve a final plat with respect to shorelines of the state
25 included within a preliminary plat approved after April 30, 1969, and
26 before April 1, 1971: PROVIDED, That any substantial development
27 within the platted shorelines of the state is authorized by a permit
28 granted pursuant to this section, or does not require a permit as
29 provided in subsection (10) of this section, or does not require a
30 permit because of substantial development occurred before June 1, 1971.~~

31 ~~((12))) Any permit for a variance or a conditional use by local
32 government under approved master programs must be submitted to the
33 department for its approval or disapproval.~~

34 ~~((13)))~~ (11)(a) An application for a substantial development
35 permit for a limited utility extension or for the construction of a
36 bulkhead or other measures to protect a single family residence and its
37 appurtenant structures from shoreline erosion shall be subject to the
38 following procedures:

1 (i) The public comment period under subsection (4) of this section
2 shall be twenty days. The notice provided under subsection (4) of this
3 section shall state the manner in which the public may obtain a copy of
4 the local government decision on the application no later than two days
5 following its issuance;

6 (ii) The local government shall issue its decision to grant or deny
7 the permit within twenty-one days of the last day of the comment period
8 specified in (i) of this subsection; and

9 (iii) If there is an appeal of the decision to grant or deny the
10 permit to the local government legislative authority, the appeal shall
11 be finally determined by the legislative authority within thirty days.

12 (b) For purposes of this section, a limited utility extension means
13 the extension of a utility service that:

14 (i) Is categorically exempt under chapter 43.21C RCW for one or
15 more of the following: Natural gas, electricity, telephone, water, or
16 sewer;

17 (ii) Will serve an existing use in compliance with this chapter;
18 and

19 (iii) Will not extend more than twenty-five hundred linear feet
20 within the shorelines of the state.

21 **Sec. 10.** RCW 90.58.180 and 1994 c 253 s 3 are each amended to read
22 as follows:

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

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

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

17 (2) The department or the attorney general may obtain review of any
18 final ((order)) decision granting a permit, or granting or denying an
19 application for a permit issued by a local government by filing a
20 written ((request)) petition with the shorelines hearings board and the
21 appropriate local government within ((thirty)) twenty-one days from the
22 date the final ((order)) decision was filed as provided in RCW
23 90.58.140(6).

24 (3) The review proceedings authorized in subsections (1) and (2) of
25 this section are subject to the provisions of chapter 34.05 RCW
26 pertaining to procedures in adjudicative proceedings. Judicial review
27 of such proceedings of the shorelines hearings board is governed by
28 chapter 34.05 RCW. The board shall issue its decision on the appeal
29 authorized under subsections (1) and (2) of this section within one
30 hundred eighty days after the date the petition is filed with the board
31 or a petition to intervene is filed by the department or the attorney
32 general, whichever is later. The time period may be waived by the
33 parties or may be extended by the board for a period of thirty days
34 upon a showing of good cause.

35 (4) ~~((A local government may appeal to the shorelines hearings~~
36 ~~board))~~ Any person may appeal any rules, regulations, or guidelines
37 adopted or approved by the department within thirty days of the date of
38 the adoption or approval. The board shall make a final decision within
39 sixty days following the hearing held thereon.

1 ~~((If the board))~~ (5) The board shall find the rule, regulation, or
2 guideline to be valid and enter a final decision to that effect unless
3 it determines that the rule, regulation, or guideline:

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

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

7 (c) Is arbitrary and capricious; or

8 (d) Was developed without fully considering and evaluating all
9 material submitted to the department ~~((by the local government))~~ during
10 public review and comment; or

11 (e) Was not adopted in accordance with required procedures~~((?))~~.

12 (6) If the board makes a determination under subsection (5) (a)
13 through (e) of this section, it shall enter a final decision declaring
14 the rule, regulation, or guideline invalid, remanding the rule,
15 regulation, or guideline to the department with a statement of the
16 reasons in support of the determination, and directing the department
17 to adopt, after a thorough consultation with the affected local
18 government and any other interested party, a new rule, regulation, or
19 guideline consistent with the board's decision. ((Unless the board
20 makes one or more of the determinations as hereinbefore provided, the
21 board shall find the rule, regulation, or guideline to be valid and
22 enter a final decision to that effect.

23 ~~(5) Rules, regulations, and guidelines))~~ (7) A decision of the
24 board on the validity of a rule, regulation, or guideline shall be
25 subject to review in superior court, if authorized pursuant to ((RCW
26 34.05.570(2). No review shall be granted by a superior court on
27 petition from a local government unless the local government shall
28 first have obtained review under subsection (4) of this section and the
29 petition for court review is)) chapter 34.05 RCW. A petition for
30 review of the decision of the shorelines hearings board on a rule,
31 regulation, or guideline shall be filed within ((three months)) thirty
32 days after the date of final decision by the shorelines hearings board.

33 **Sec. 11.** RCW 90.58.190 and 1989 c 175 s 184 are each amended to
34 read as follows:

35 (1) ~~((The department and each local government shall periodically~~
36 ~~review any master programs under its jurisdiction and make such~~
37 ~~adjustments thereto as are necessary. Any adjustments proposed by a~~
38 ~~local government to its master program shall be forwarded to the~~

1 ~~department for review. The department shall approve, reject, or~~
2 ~~propose modification to the adjustment. If the department either~~
3 ~~rejects or proposes modification to the master program adjustment, it~~
4 ~~shall provide substantive written comments as to why the proposal is~~
5 ~~being rejected or modified.))~~ The appeal of the department s decision
6 to adopt a master program or amendment pursuant to RCW 90.58.070(2) or
7 90.58.090(4) is governed by RCW 34.05.510 through 34.05.598.

8 (2)(a) The department's decision to approve, reject, or modify a
9 proposed master program or amendment adopted by a local government
10 planning under RCW 36.70A.040 shall be appealed to the growth
11 management hearings board with jurisdiction over the local government.
12 The appeal shall be initiated by filing a petition as provided in RCW
13 36.70A.250 through 36.70A.320.

14 (b) If the appeal to the growth management hearings board concerns
15 shorelines, the growth management hearings board shall review the
16 proposed master program or amendment for compliance with the
17 requirements of this chapter and chapter 36.70A RCW, the policy of RCW
18 90.58.020 and the applicable guidelines, and chapter 43.21C RCW as it
19 relates to the adoption of master programs and amendments under chapter
20 90.58 RCW.

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

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

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

32 (3)(a) Any local government aggrieved by the department's decision
33 to approve, reject, or modify a proposed master program or master
34 program ((adjustment)) amendment adopted by a local government not
35 planning under RCW 36.70A.040 may appeal the department's decision by
36 filing a petition to the shorelines hearings board within thirty days
37 of the date of the department s written notice to the local government
38 of the department s decision to approve, reject, or modify a proposed

1 master program or master program amendment as provided in RCW
2 90.58.090(2).

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

10 (c) In an appeal relating to shorelines of state-wide significance,
11 the shorelines hearings board shall uphold the decision by the
12 department unless ((a local government shall)) the board determines, by
13 clear and convincing evidence ((and argument, persuade the board)) that
14 the decision of the department is inconsistent with the policy of RCW
15 90.58.020 and the applicable guidelines.

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

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

26 ((+3)) (4) A master program amendment shall become effective after
27 the approval of the department or after the decision of the shorelines
28 hearings board to uphold the master program or master program
29 ((adjustment)) amendment, provided that the board may remand the master
30 program or master program adjustment to the local government or the
31 department for modification prior to the final adoption of the master
32 program or master program ((adjustment)) amendment.

33 **Sec. 12.** RCW 34.05.461 and 1989 c 175 s 19 are each amended to
34 read as follows:

35 (1) Except as provided in subsection (2) of this section:

36 (a) If the presiding officer is the agency head or one or more
37 members of the agency head, the presiding officer may enter an initial

1 order if further review is available within the agency, or a final
2 order if further review is not available;

3 (b) If the presiding officer is a person designated by the agency
4 to make the final decision and enter the final order, the presiding
5 officer shall enter a final order; and

6 (c) If the presiding officer is one or more administrative law
7 judges, the presiding officer shall enter an initial order.

8 (2) With respect to agencies exempt from chapter 34.12 RCW or an
9 institution of higher education, the presiding officer shall transmit
10 a full and complete record of the proceedings, including such comments
11 upon demeanor of witnesses as the presiding officer deems relevant, to
12 each agency official who is to enter a final or initial order after
13 considering the record and evidence so transmitted.

14 (3) Initial and final orders shall include a statement of findings
15 and conclusions, and the reasons and basis therefor, on all the
16 material issues of fact, law, or discretion presented on the record,
17 including the remedy or sanction and, if applicable, the action taken
18 on a petition for a stay of effectiveness. Any findings based
19 substantially on credibility of evidence or demeanor of witnesses shall
20 be so identified. Findings set forth in language that is essentially
21 a repetition or paraphrase of the relevant provision of law shall be
22 accompanied by a concise and explicit statement of the underlying
23 evidence of record to support the findings. The order shall also
24 include a statement of the available procedures and time limits for
25 seeking reconsideration or other administrative relief. An initial
26 order shall include a statement of any circumstances under which the
27 initial order, without further notice, may become a final order.

28 (4) Findings of fact shall be based exclusively on the evidence of
29 record in the adjudicative proceeding and on matters officially noticed
30 in that proceeding. Findings shall be based on the kind of evidence on
31 which reasonably prudent persons are accustomed to rely in the conduct
32 of their affairs. Findings may be based on such evidence even if it
33 would be inadmissible in a civil trial. However, the presiding officer
34 shall not base a finding exclusively on such inadmissible evidence
35 unless the presiding officer determines that doing so would not unduly
36 abridge the parties' opportunities to confront witnesses and rebut
37 evidence. The basis for this determination shall appear in the order.

1 (5) Where it bears on the issues presented, the agency's
2 experience, technical competency, and specialized knowledge may be used
3 in the evaluation of evidence.

4 (6) If a person serving or designated to serve as presiding officer
5 becomes unavailable for any reason before entry of the order, a
6 substitute presiding officer shall be appointed as provided in RCW
7 34.05.425. The substitute presiding officer shall use any existing
8 record and may conduct any further proceedings appropriate in the
9 interests of justice.

10 (7) The presiding officer may allow the parties a designated time
11 after conclusion of the hearing for the submission of memos, briefs, or
12 proposed findings.

13 (8)(a) Except as otherwise provided in (b) of this subsection,
14 initial or final orders shall be served in writing within ninety days
15 after conclusion of the hearing or after submission of memos, briefs,
16 or proposed findings in accordance with subsection (7) of this section
17 unless this period is waived or extended for good cause shown.

18 (b) This subsection does not apply to the final order of the
19 shorelines hearings board on appeal under RCW 90.58.180(3).

20 (9) The presiding officer shall cause copies of the order to be
21 served on each party and the agency.

22 **Sec. 13.** RCW 34.05.514 and 1994 c 257 s 23 are each amended to
23 read as follows:

24 (1) Except as provided in subsection (2) of this section (~~and RCW~~
25 ~~36.70A.300(3))~~), proceedings for review under this chapter shall be
26 instituted by filing a petition in the superior court, at the
27 petitioner's option, for (a) Thurston county, (b) the county of the
28 petitioner's residence or principal place of business, or (c) in any
29 county where the property owned by the petitioner and affected by the
30 contested decision is located.

31 (2) For proceedings involving institutions of higher education, the
32 petition shall be filed either in the county in which the principal
33 office of the institution involved is located or in the county of a
34 branch campus if the action involves such branch.

35 **Sec. 14.** RCW 36.70A.020 and 1990 1st ex.s. c 17 s 2 are each
36 amended to read as follows:

1 The following goals are adopted to guide the development and
2 adoption of comprehensive plans and development regulations of those
3 counties and cities that are required or choose to plan under RCW
4 36.70A.040. The following goals are not listed in order of priority
5 and shall be used exclusively for the purpose of guiding the
6 development of comprehensive plans and development regulations:

7 (1) Urban growth. Encourage development in urban areas where
8 adequate public facilities and services exist or can be provided in an
9 efficient manner.

10 (2) Reduce sprawl. Reduce the inappropriate conversion of
11 undeveloped land into sprawling, low-density development.

12 (3) Transportation. Encourage efficient multimodal transportation
13 systems that are based on regional priorities and coordinated with
14 county and city comprehensive plans.

15 (4) Housing. Encourage the availability of affordable housing to
16 all economic segments of the population of this state, promote a
17 variety of residential densities and housing types, and encourage
18 preservation of existing housing stock.

19 (5) Economic development. Encourage economic development
20 throughout the state that is consistent with adopted comprehensive
21 plans, promote economic opportunity for all citizens of this state,
22 especially for unemployed and for disadvantaged persons, and encourage
23 growth in areas experiencing insufficient economic growth, all within
24 the capacities of the state's natural resources, public services, and
25 public facilities.

26 (6) Property rights. Private property shall not be taken for
27 public use without just compensation having been made. The property
28 rights of landowners shall be protected from arbitrary and
29 discriminatory actions.

30 (7) Permits. Applications for both state and local government
31 permits should be processed in a timely and fair manner to ensure
32 predictability.

33 (8) Natural resource industries. Maintain and enhance natural
34 resource-based industries, including productive timber, agricultural,
35 and fisheries industries. Encourage the conservation of productive
36 forest lands and productive agricultural lands, and discourage
37 incompatible uses.

38 (9) Open space and recreation. Encourage the retention of open
39 space and development of recreational opportunities, conserve fish and

1 wildlife habitat, increase access to natural resource lands and water,
2 and develop parks.

3 (10) Environment. Protect the environment and enhance the state's
4 high quality of life, including air and water quality, and the
5 availability of water.

6 (11) Citizen participation and coordination. Encourage the
7 involvement of citizens in the planning process and ensure coordination
8 between communities and jurisdictions to reconcile conflicts.

9 (12) Public facilities and services. Ensure that those public
10 facilities and services necessary to support development shall be
11 adequate to serve the development at the time the development is
12 available for occupancy and use without decreasing current service
13 levels below locally established minimum standards.

14 (13) Historic preservation. Identify and encourage the
15 preservation of lands, sites, and structures, that have historical or
16 archaeological significance.

17 (14) Shorelines of the state. See RCW 90.58.030.

18 **Sec. 15.** RCW 36.70A.070 and 1990 1st ex.s. c 17 s 7 are each
19 amended to read as follows:

20 The comprehensive plan of a county or city that is required or
21 chooses to plan under RCW 36.70A.040 shall consist of a map or maps,
22 and descriptive text covering objectives, principles, and standards
23 used to develop the comprehensive plan. The plan shall be an
24 internally consistent document and all elements shall be consistent
25 with the future land use map. A comprehensive plan shall be adopted
26 and amended with public participation as provided in RCW 36.70A.140.

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

29 (1) A land use element designating the proposed general
30 distribution and general location and extent of the uses of land, where
31 appropriate, for agriculture, timber production, housing, commerce,
32 industry, recreation, open spaces, public utilities, public facilities,
33 and other land uses. The land use element shall include population
34 densities, building intensities, and estimates of future population
35 growth. The land use element shall provide for protection of the
36 quality and quantity of ground water used for public water supplies.
37 Where applicable, the land use element shall review drainage, flooding,
38 and storm water run-off in the area and nearby jurisdictions and

1 provide guidance for corrective actions to mitigate or cleanse those
2 discharges that pollute waters of the state, including Puget Sound or
3 waters entering Puget Sound.

4 (2) A housing element recognizing the vitality and character of
5 established residential neighborhoods that: (a) Includes an inventory
6 and analysis of existing and projected housing needs; (b) includes a
7 statement of goals, policies, and objectives for the preservation,
8 improvement, and development of housing; (c) identifies sufficient land
9 for housing, including, but not limited to, government-assisted
10 housing, housing for low-income families, manufactured housing,
11 multifamily housing, and group homes and foster care facilities; and
12 (d) makes adequate provisions for existing and projected needs of all
13 economic segments of the community.

14 (3) A capital facilities plan element consisting of: (a) An
15 inventory of existing capital facilities owned by public entities,
16 showing the locations and capacities of the capital facilities; (b) a
17 forecast of the future needs for such capital facilities; (c) the
18 proposed locations and capacities of expanded or new capital
19 facilities; (d) at least a six-year plan that will finance such capital
20 facilities within projected funding capacities and clearly identifies
21 sources of public money for such purposes; and (e) a requirement to
22 reassess the land use element if probable funding falls short of
23 meeting existing needs and to ensure that the land use element, capital
24 facilities plan element, and financing plan within the capital
25 facilities plan element are coordinated and consistent.

26 (4) A utilities element consisting of the general location,
27 proposed location, and capacity of all existing and proposed utilities,
28 including, but not limited to, electrical lines, telecommunication
29 lines, and natural gas lines.

30 (5) Counties shall include a rural element including lands that are
31 not designated for urban growth, agriculture, forest, or mineral
32 resources. The rural element shall permit land uses that are
33 compatible with the rural character of such lands and provide for a
34 variety of rural densities.

35 (6) A transportation element that implements, and is consistent
36 with, the land use element. The transportation element shall include
37 the following subelements:

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

39 (b) Facilities and services needs, including:

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

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

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

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

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

15 (c) Finance, including:

16 (i) An analysis of funding capability to judge needs against
17 probable funding resources;

18 (ii) A multiyear financing plan based on the needs identified in
19 the comprehensive plan, the appropriate parts of which shall serve as
20 the basis for the six-year street, road, or transit program required by
21 RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW
22 35.58.2795 for public transportation systems;

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

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

30 (e) Demand-management strategies.

31 After adoption of the comprehensive plan by jurisdictions required
32 to plan or who choose to plan under RCW 36.70A.040, local jurisdictions
33 must adopt and enforce ordinances which prohibit development approval
34 if the development causes the level of service on a transportation
35 facility to decline below the standards adopted in the transportation
36 element of the comprehensive plan, unless transportation improvements
37 or strategies to accommodate the impacts of development are made
38 concurrent with the development. These strategies may include
39 increased public transportation service, ride sharing programs, demand

1 management, and other transportation systems management strategies.
2 For the purposes of this subsection (6) "concurrent with the
3 development" shall mean that improvements or strategies are in place at
4 the time of development, or that a financial commitment is in place to
5 complete the improvements or strategies within six years.

6 The transportation element described in this subsection, and the
7 six-year plans required by RCW 35.77.010 for cities, RCW 36.81.121 for
8 counties, and RCW 35.58.2795 for public transportation systems, must be
9 consistent.

10 (7) A shoreline element, consisting of the comprehensive use plan
11 segment of the shoreline master program adopted by the city or county
12 and approved by the department of ecology pursuant to chapter 90.58
13 RCW.

14 **Sec. 16.** RCW 36.70A.280 and 1994 c 249 s 31 are each amended to
15 read as follows:

16 (1) A growth management hearings board shall hear and determine
17 only those petitions alleging either:

18 (a) That a state agency(~~(7)~~) or any county(~~(7)~~) or city planning
19 under this chapter is not in compliance with the requirements of this
20 chapter, chapter 90.58 RCW as it relates to the adoption of shoreline
21 master programs or amendments thereto, or chapter 43.21C RCW as it
22 relates to plans, development regulations, or amendments, adopted under
23 RCW 36.70A.040 or chapter 90.58 RCW; or

24 (b) That the twenty-year growth management planning population
25 projections adopted by the office of financial management pursuant to
26 RCW 43.62.035 should be adjusted.

27 (2) A petition may be filed only by the state, a county or city
28 that plans under this chapter, a person who has either appeared before
29 the county or city regarding the matter on which a review is being
30 requested or is certified by the governor within sixty days of filing
31 the request with the board, or a person qualified pursuant to RCW
32 34.05.530.

33 (3) For purposes of this section "person" means any individual,
34 partnership, corporation, association, governmental subdivision or unit
35 thereof, or public or private organization or entity of any character.

36 (4) When considering a possible adjustment to a growth management
37 planning population projection prepared by the office of financial

1 management, a board shall consider the implications of any such
2 adjustment to the population forecast for the entire state.

3 The rationale for any adjustment that is adopted by a board must be
4 documented and filed with the office of financial management within ten
5 working days after adoption.

6 If adjusted by a board, a county growth management planning
7 population projection shall only be used for the planning purposes set
8 forth in this chapter and shall be known as a "board adjusted
9 population projection". None of these changes shall affect the
10 official state and county population forecasts prepared by the office
11 of financial management, which shall continue to be used for state
12 budget and planning purposes.

13 **Sec. 17.** RCW 36.70A.290 and 1994 c 257 s 2 and 1994 c 249 s 26 are
14 each reenacted and amended to read as follows:

15 (1) All requests for review to a growth management hearings board
16 shall be initiated by filing a petition that includes a detailed
17 statement of issues presented for resolution by the board.

18 (2) All petitions relating to whether or not an adopted
19 comprehensive plan, development regulation, or permanent amendment
20 thereto, is in compliance with the goals and requirements of this
21 chapter or chapter 90.58 or 43.21C RCW must be filed within sixty days
22 after publication by the legislative bodies of the county or city.

23 (a) Except as provided in (c) of this subsection, the date of
24 publication for a city shall be the date the city publishes the
25 ordinance, or summary of the ordinance, adopting the comprehensive plan
26 or development regulations, or amendment thereto, as is required to be
27 published.

28 (b) Promptly after adoption, a county shall publish a notice that
29 it has adopted the comprehensive plan or development regulations, or
30 amendment thereto.

31 Except as provided in (c) of this subsection, for purposes of this
32 section the date of publication for a county shall be the date the
33 county publishes the notice that it has adopted the comprehensive plan
34 or development regulations, or amendment thereto.

35 (c) For local governments planning under RCW 36.70A.040, promptly
36 after approval or disapproval of a local government s shoreline master
37 program or amendment thereto by the department of ecology as provided
38 in RCW 90.58.090, the local government shall publish a notice that the

1 shoreline master program or amendment thereto has been approved or
2 disapproved by the department of ecology. For purposes of this
3 section, the date of publication for the adoption or amendment of a
4 shoreline master program is the date the local government publishes
5 notice that the shoreline master program or amendment thereto has been
6 approved or disapproved by the department of ecology.

7 (3) Unless the board dismisses the petition as frivolous or finds
8 that the person filing the petition lacks standing, the board shall,
9 within ten days of receipt of the petition, set a time for hearing the
10 matter.

11 (4) The board shall base its decision on the record developed by
12 the city, county, or the state and supplemented with additional
13 evidence if the board determines that such additional evidence would be
14 necessary or of substantial assistance to the board in reaching its
15 decision.

16 (5) The board, shall consolidate, when appropriate, all petitions
17 involving the review of the same comprehensive plan or the same
18 development regulation or regulations.

19 **Sec. 18.** RCW 36.70A.320 and 1991 sp.s. c 32 s 13 are each amended
20 to read as follows:

21 (1) Except as provided in subsection (2) of this section,
22 comprehensive plans and development regulations, and amendments
23 thereto, adopted under this chapter are presumed valid upon adoption.
24 In any petition under this chapter, the board, after full consideration
25 of the petition, shall determine whether there is compliance with the
26 requirements of this chapter. In making its determination, the board
27 shall consider the criteria adopted by the department under RCW
28 36.70A.190(4). The board shall find compliance unless it finds by a
29 preponderance of the evidence that the state agency, county, or city
30 erroneously interpreted or applied this chapter.

31 (2) The shoreline element of a comprehensive plan and the
32 applicable development regulations adopted by a county or city shall
33 take effect as provided in chapter 90.58 RCW.

34 NEW SECTION. **Sec. 19.** RCW 90.58.145 and 1979 ex.s. c 84 s 4 are
35 each repealed.

1 NEW SECTION. **Sec. 20.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

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