

2 **SHB 1724 - H AMD 414 ADOPTED 3/15/95**
3 By Representative Reams

4
5 Strike everything after the enacting clause and insert the
6 following:

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13 NEW SECTION. **Sec. 1.** The legislature recognizes by this act that
14 the growth management act is a fundamental building block of regulatory
15 reform. The state and local governments have invested considerable
16 resources in an act that should serve as the integrating framework for
17 all other land-use related laws. The growth management act provides
18 the means to effectively combine certainty for development decisions,
19 reasonable environmental protection, long-range planning for cost-
20 effective infrastructure, and orderly growth and development.

21 **PART I - PLANNING AND ENVIRONMENTAL REVIEW**

22 NEW SECTION. **Sec. 101.** In reviewing a development permit
23 application and making permit decisions, a county or city planning
24 under RCW 36.70A.040 shall rely on its development regulations and
25 comprehensive plan to determine permitted land uses, including
26 conditional and special uses, allowable densities, system improvements
27 related to the proposal if the comprehensive plan and development

1 regulations provide for funding of these improvements, and other
2 matters. During the project review the county or city shall not
3 reexamine alternatives to or hear appeals on these matters, except for
4 code interpretation.

5 A proposed project's consistency with development regulations shall
6 be determined by the county or city considering the type of land use,
7 the level of development, infrastructure, including public facilities
8 and public services needed to serve the development, and the character
9 of development, such as design and development standards.
10 Determination of a project's consistency does not require documentation
11 or use of any specific procedure.

12 Specific project design and conditions relating to the character of
13 development, the payment of impact fees, or other measures to mitigate
14 a proposal's probable adverse environmental impacts, if applicable,
15 shall be identified during the project review.

16 If the conditions of section 103 of this act are met, the
17 requirements for environmental analysis and mitigation measures in
18 development regulations are presumed to provide adequate mitigation for
19 the specific adverse environmental impacts to which the requirements
20 apply. Permitting agencies shall continue to have the authority to
21 approve, condition, or deny projects as provided in their development
22 regulations and in their policies adopted under RCW 43.21C.060.

23 NEW SECTION. **Sec. 102.** A new section is added to chapter 36.70A
24 RCW to read as follows:

25 Project review by a county or city planning under RCW 36.70A.040
26 shall be used to make individual project decisions, not land use
27 planning decisions. If, during project review, a county or city
28 identifies deficiencies in plans or regulations, the project review
29 shall continue and shall not be used as a comprehensive planning
30 process, but any deficiencies in the comprehensive plan or development
31 regulations shall be noted for consideration during the periodic review
32 of the comprehensive plan and development regulations. Procedures
33 shall include allowing persons to suggest changes in the comprehensive
34 plan and development regulations.

35 For purposes of this section, a deficiency in a comprehensive plan
36 or development regulation refers to the absence of required or
37 potentially desirable contents of a comprehensive plan or development
38 regulation. It does not refer to whether a development regulation

1 addresses a project's probable site-specific adverse environmental
2 impacts that the permitting agency could mitigate in the normal project
3 review process.

4 NEW SECTION. **Sec. 103.** A new section is added to chapter 43.21C
5 RCW to read as follows:

6 (1) The legislature finds that a wide range of environmental
7 subjects and impacts have been addressed by counties, cities, and towns
8 in comprehensive plans and development regulations adopted under
9 chapter 36.70A RCW, and by the state and federal government in
10 environmental rules and laws. These plans, regulations, rules, and
11 laws often provide environmental analysis and mitigation measures for
12 project actions without the need for an environmental impact statement
13 or further project mitigation. When existing plans, regulations,
14 rules, or laws provide environmental analysis and mitigation measures
15 for the specific adverse environmental impacts of proposed projects,
16 these requirements should be integrated with, and should not be
17 duplicated by, environmental review under this chapter. The
18 legislature reaffirms that a primary role of environmental review under
19 this chapter is to focus on the gaps and overlaps that may exist,
20 taking into account the other laws and requirements. Review of project
21 actions in counties, cities, and towns planning under RCW 36.70A.040
22 should integrate environmental review with project review and not use
23 this chapter to substitute for other land use planning and
24 environmental requirements.

25 A county or city planning under RCW 36.70A.040 shall attempt to
26 prepare an enhanced detailed statement, or enhanced environmental
27 analysis, of its proposed comprehensive plan, subarea plans, and
28 development regulations that is of sufficient detail in addressing
29 impacts and alternatives to allow the detailed statement to be used in
30 whole or in part by applicants for development permits within the
31 geographic area covered by the statement.

32 (2) In reviewing a project action, a county, city, or town planning
33 under RCW 36.70A.040 shall presume that requirements for environmental
34 analysis, protection, and mitigation measures in development
35 regulations, comprehensive plans, and other applicable local, state, or
36 federal laws and rules provide adequate analysis of and mitigation for
37 the specific adverse environmental impacts to which the requirements
38 apply, and shall not conduct environmental analysis or impose

1 mitigation under this chapter if the following has occurred:

2 (a)(i) The local government has considered the probable adverse
3 environmental impacts of the proposed action and has determined that
4 these impacts are adequately addressed by the development regulations
5 or other applicable requirements of the comprehensive plan, subarea
6 plan element of the comprehensive plan, or other local, state, or
7 federal rules or laws; and

8 (ii) The local government has based or conditioned its approval on
9 compliance with these requirements or mitigation measures.

10 (b) If the requirements of (a) of this subsection are not satisfied
11 for some or all of the probable adverse environmental impacts of the
12 project action, environmental review under this chapter shall be
13 limited to those impacts and their effect on and relationship with
14 other impacts, if any, consistent with the intent of this section, and
15 shall be subject to the provisions of RCW 43.21C.060.

16 (3) For a county, city, or town planning under RCW 36.70A.040,
17 project review shall not require additional environmental analysis or
18 mitigation if the comprehensive plans, subarea plans, or development
19 regulations already address a project s probable site-specific adverse
20 environmental impacts, as determined under subsection (2) of this
21 section. If a comprehensive plan, subarea plan, or development
22 regulation adopted pursuant to chapter 36.70A RCW does not address a
23 project s probable site-specific adverse environmental impacts, project
24 review shall be integrated with environmental analysis under this
25 chapter.

26 (4) The addressing of impacts in a comprehensive plan, subarea
27 plan, or development regulation shall include but not be limited to the
28 adoption or designation of levels of service, land use designations, or
29 development standards.

30 (5) In deciding whether a specific adverse environmental impact has
31 been addressed by an existing rule or law of another agency with
32 jurisdiction with environmental expertise with regard to a specific
33 environmental impact, the local government shall consult with that
34 agency and may expressly defer to that agency. In making this
35 deferral, the local government shall base or condition its project
36 approval on compliance with these other existing rules or laws.

37 **Sec. 104.** RCW 43.21C.075 and 1994 c 253 s 4 are each amended to
38 read as follows:

1 (1) Because a major purpose of this chapter is to combine
2 environmental considerations with public decisions, any appeal brought
3 under this chapter shall be linked to a specific governmental action.
4 The State Environmental Policy Act provides a basis for challenging
5 whether governmental action is in compliance with the substantive and
6 procedural provisions of this chapter. The State Environmental Policy
7 Act is not intended to create a cause of action unrelated to a specific
8 governmental action.

9 (2) Unless otherwise provided by this section:

10 (a) Appeals under this chapter shall be of the governmental action
11 together with its accompanying environmental determinations.

12 (b) Appeals of environmental determinations made (or lacking) under
13 this chapter shall be commenced within the time required to appeal the
14 governmental action which is subject to environmental review.

15 (3) If an agency has a procedure for appeals of agency
16 environmental determinations made under this chapter, such procedure:

17 (a) Shall not allow more than one agency appeal proceeding on a
18 procedural determination (the adequacy of a determination of
19 significance/nonsignificance or of a final environmental impact
20 statement)((~~, consistent with any state statutory requirements for~~
21 ~~appeals to local legislative bodies~~)). The appeal proceeding on a
22 determination of significance(~~(/nonsignificance)~~) may occur before the
23 agency's final decision on a proposed action. Such an appeal shall
24 also be allowed for a determination of significance/nonsignificance
25 which may be issued by the agency after supplemental review;

26 (b) Shall consolidate an appeal of procedural issues and of
27 substantive determinations made under this chapter (such as a decision
28 to require particular mitigation measures or to deny a proposal) with
29 a hearing or appeal on the underlying governmental action by providing
30 for a single simultaneous ((~~appeal of an~~) hearing before one hearing
31 officer or body to consider the agency decision on a proposal and any
32 environmental determinations made under this chapter, with the
33 exception of the ((~~threshold determination~~)) appeal, if any, of a
34 determination of significance as provided in (a) of this subsection or
35 an appeal to the local legislative authority under RCW 43.21C.060 or
36 other applicable state statutes;

37 (c) Shall provide for the preparation of a record for use in any
38 subsequent appeal proceedings, and shall provide for any subsequent
39 appeal proceedings to be conducted on the record, consistent with other

1 applicable law. An adequate record consists of findings and
2 conclusions, testimony under oath, and taped or written transcript. An
3 electronically recorded transcript will suffice for purposes of review
4 under this subsection; and

5 (d) Shall provide that procedural determinations made by the
6 responsible official shall be entitled to substantial weight.

7 (4) If a person aggrieved by an agency action has the right to
8 judicial appeal and if an agency has an appeal procedure, such person
9 shall, prior to seeking any judicial review, use such agency procedure
10 if any such procedure is available, unless expressly provided otherwise
11 by state statute.

12 (5) (~~RCW 43.21C.080 establishes an optional "notice of action"~~
13 ~~procedure which, if used, imposes a time period for appealing decisions~~
14 ~~under this chapter.)) Some statutes and ordinances contain time
15 periods for challenging governmental actions which are subject to
16 review under this chapter, such as various local land use approvals
17 (the "underlying governmental action"). RCW 43.21C.080 establishes an
18 optional "notice of action" procedure which, if used, imposes a time
19 period for appealing decisions under this chapter. This ((section))
20 subsection does not modify any such time periods. ((This section
21 governs when a judicial appeal must be brought under this chapter where
22 a "notice of action" is used, and/or where there is another time period
23 which is required by statute or ordinance for challenging the
24 underlying governmental action.)) In this subsection, the term "appeal"
25 refers to a judicial appeal only.~~

26 (a) If there is a time period for appealing the underlying
27 governmental action, appeals under this chapter shall be commenced
28 within ~~((thirty days))~~ such time period. The agency shall give
29 official notice stating the date and place for commencing an appeal.
30 (~~If there is an agency proceeding under subsection (3) of this~~
31 ~~section, the appellant shall, prior to commencing a judicial appeal,~~
32 ~~submit to the responsible official a notice of intent to commence a~~
33 ~~judicial appeal. This notice of intent shall be given within the time~~
34 ~~period for commencing a judicial appeal on the underlying governmental~~
35 ~~action.))~~

36 (b) If there is no time period for appealing the underlying
37 governmental action, and a notice of action under RCW 43.21C.080 ((may
38 be used. If a notice of action)) is used, ((judicial)) appeals shall
39 be commenced within the time period specified by RCW 43.21C.080((7

1 ~~unless there is a time period for appealing the underlying governmental~~
2 ~~action in which case (a) of this subsection shall apply.~~

3 ~~(c) Notwithstanding RCW 43.21C.080(1), if there is a time period~~
4 ~~for appealing the underlying governmental action, a notice of action~~
5 ~~may be published within such time period)).~~

6 (6)(a) Judicial review under subsection (3) of this section of an
7 appeal decision made by an agency under ((~~RCW 43.21C.075(5)~~)
8 subsection (3) of this section shall be on the record, consistent with
9 other applicable law.

10 (b) A taped or written transcript may be used. If a taped
11 transcript is to be reviewed, a record shall identify the location on
12 the taped transcript of testimony and evidence to be reviewed. Parties
13 are encouraged to designate only those portions of the testimony
14 necessary to present the issues raised on review, but if a party
15 alleges that a finding of fact is not supported by evidence, the party
16 should include in the record all evidence relevant to the disputed
17 finding. Any other party may designate additional portions of the
18 taped transcript relating to issues raised on review. A party may
19 provide a written transcript of portions of the testimony at the
20 party's own expense or apply to that court for an order requiring the
21 party seeking review to pay for additional portions of the written
22 transcript.

23 (c) Judicial review under this chapter shall without exception be
24 of the governmental action together with its accompanying environmental
25 determinations.

26 (7) Jurisdiction over the review of determinations under this
27 chapter in an appeal before an agency or superior court shall upon
28 consent of the parties be transferred in whole or part to the
29 shorelines hearings board. The shorelines hearings board shall hear
30 the matter and sign the final order expeditiously. The superior court
31 shall certify the final order of the shorelines hearings board and said
32 certified final order may only be appealed to an appellate court. In
33 the case of an appeal under this chapter regarding a project or other
34 matter that is also the subject of an appeal to the shorelines hearings
35 board under chapter 90.58 RCW, the shorelines hearings board shall have
36 sole jurisdiction over both the appeal under this section and the
37 appeal under chapter 90.58 RCW, shall consider them together, and shall
38 issue a final order within one hundred eighty days as provided in RCW
39 90.58.180.

1 (8) For purposes of this section and RCW 43.21C.080, the words
2 "action", "decision", and "determination" mean substantive agency
3 action including any accompanying procedural determinations under this
4 chapter (except where the word "action" means "appeal" in RCW
5 43.21C.080(2) and (3)). The word "action" in this section and RCW
6 43.21C.080 does not mean a procedural determination by itself made
7 under this chapter. The word "determination" includes any
8 environmental document required by this chapter and state or local
9 implementing rules. The word "agency" refers to any state or local
10 unit of government. Except as provided in subsection (5) of this
11 section, the word "appeal" refers to administrative, legislative, or
12 judicial appeals.

13 (9) The court in its discretion may award reasonable attorney's
14 fees of up to one thousand dollars in the aggregate to the prevailing
15 party, including a governmental agency, on issues arising out of this
16 chapter if the court makes specific findings that the legal position of
17 a party is frivolous and without reasonable basis.

18 **Sec. 105.** RCW 43.21C.031 and 1983 c 117 s 1 are each amended to
19 read as follows:

20 (1) An environmental impact statement (the detailed statement
21 required by RCW 43.21C.030(2)(c)) shall be prepared on proposals for
22 legislation and other major actions having a probable significant,
23 adverse environmental impact. The environmental impact statement may
24 be combined with the recommendation or report on the proposal or issued
25 as a separate document. Actions categorically exempt under RCW
26 43.21C.110(1)(a) do not require environmental review or the preparation
27 of an environmental impact statement under this chapter. In a county,
28 city, or town planning under RCW 36.70A.040, a planned action, as
29 provided for in subsection (2) of this section, does not require a
30 threshold determination or the preparation of an environmental impact
31 statement under this chapter, but is subject to environmental review
32 and mitigation as provided in this chapter.

33 An environmental impact statement is required to analyze only those
34 probable adverse environmental impacts which are significant.
35 Beneficial environmental impacts may be discussed. The responsible
36 official shall consult with agencies and the public to identify such
37 impacts and limit the scope of an environmental impact statement. The
38 subjects listed in RCW 43.21C.030(2)(c) need not be treated as separate

1 sections of an environmental impact statement. Discussions of
2 significant short-term and long-term environmental impacts, significant
3 irrevocable commitments of natural resources, significant alternatives
4 including mitigation measures, and significant environmental impacts
5 which cannot be mitigated should be consolidated or included, as
6 applicable, in those sections of an environmental impact statement
7 where the responsible official decides they logically belong.

8 (2)(a) For purposes of this section, a planned action means one or
9 more types of project action that:

10 (i) Are designated planned actions by an ordinance or resolution
11 adopted by a county, city, or town planning under RCW 36.70A.040;

12 (ii) Have had the significant impacts adequately addressed in an
13 environmental impact statement prepared in conjunction with (A) a
14 comprehensive plan or subarea plan adopted under chapter 36.70A RCW, or
15 (B) a fully contained community, a master planned resort, a master
16 planned development, or a phased project;

17 (iii) Are subsequent or implementing projects for the proposals
18 listed in (a)(ii) of this subsection;

19 (iv) Are located within an urban growth area, as defined in RCW
20 36.70A.030;

21 (v) Are not essential public facilities, as defined in RCW
22 36.70A.200; and

23 (vi) Are consistent with a comprehensive plan adopted under chapter
24 36.70A RCW.

25 (b) A county, city, or town shall limit planned actions to certain
26 types of development or to specific geographical areas that are less
27 extensive than the jurisdictional boundaries of the county, city, or
28 town and may limit a planned action to a time period identified in the
29 environmental impact statement or the ordinance or resolution adopted
30 under this subsection.

31 **Sec. 106.** RCW 43.21C.110 and 1983 c 117 s 7 are each amended to
32 read as follows:

33 It shall be the duty and function of the department of ecology(~~(~~
34 ~~which may utilize proposed rules developed by the environmental policy~~
35 ~~commission)):~~

36 (1) To adopt and amend thereafter rules of interpretation and
37 implementation of this chapter (~~(the state environmental policy act of~~
38 ~~1971))~~), subject to the requirements of chapter 34.05 RCW, for the

1 purpose of providing uniform rules and guidelines to all branches of
2 government including state agencies, political subdivisions, public and
3 municipal corporations, and counties. The proposed rules shall be
4 subject to full public hearings requirements associated with rule
5 promulgation. Suggestions for modifications of the proposed rules
6 shall be considered on their merits, and the department shall have the
7 authority and responsibility for full and appropriate independent
8 promulgation and adoption of rules, assuring consistency with this
9 chapter as amended and with the preservation of protections afforded by
10 this chapter. The rule making powers authorized in this section shall
11 include, but shall not be limited to, the following phases of
12 interpretation and implementation of this chapter (~~((the state
13 environmental policy act of 1971))~~):

14 (a) Categories of governmental actions which are not to be
15 considered as potential major actions significantly affecting the
16 quality of the environment, including categories pertaining to
17 applications for water right permits pursuant to chapters 90.03 and
18 90.44 RCW. The types of actions included as categorical exemptions in
19 the rules shall be limited to those types which are not major actions
20 significantly affecting the quality of the environment. The rules
21 shall provide for certain circumstances where actions which potentially
22 are categorically exempt require environmental review. An action that
23 is determined to be categorically exempted under the rules adopted by
24 the department may not be conditioned or denied under this chapter.

25 (b) Rules for criteria and procedures applicable to the
26 determination of when an act of a branch of government is a major
27 action significantly affecting the quality of the environment for which
28 a detailed statement is required to be prepared pursuant to RCW
29 43.21C.030.

30 (c) Rules and procedures applicable to the preparation of detailed
31 statements and other environmental documents, including but not limited
32 to rules for timing of environmental review, obtaining comments, data
33 and other information, and providing for and determining areas of
34 public participation which shall include the scope and review of draft
35 environmental impact statements.

36 (d) Scope of coverage and contents of detailed statements assuring
37 that such statements are simple, uniform, and as short as practicable;
38 statements are required to analyze only reasonable alternatives and
39 probable adverse environmental impacts which are significant, and may

1 analyze beneficial impacts.

2 (e) Rules and procedures for public notification of actions taken
3 and documents prepared.

4 (f) Definition of terms relevant to the implementation of this
5 chapter including the establishment of a list of elements of the
6 environment. Analysis of environmental considerations under RCW
7 43.21C.030(2) may be required only for those subjects listed as
8 elements of the environment (or portions thereof). The list of
9 elements of the environment shall consist of the "natural" and "built"
10 environment. The elements of the built environment shall consist of
11 public services and utilities (such as water, sewer, schools, fire and
12 police protection), transportation, environmental health (such as
13 explosive materials and toxic waste), and land and shoreline use
14 (including housing, and a description of the relationships with land
15 use and shoreline plans and designations, including population).

16 (g) Rules for determining the obligations and powers under this
17 chapter of two or more branches of government involved in the same
18 project significantly affecting the quality of the environment.

19 (h) Methods to assure adequate public awareness of the preparation
20 and issuance of detailed statements required by RCW 43.21C.030(2)(c).

21 (i) To prepare rules for projects setting forth the time limits
22 within which the governmental entity responsible for the action shall
23 comply with the provisions of this chapter.

24 (j) Rules for utilization of a detailed statement for more than one
25 action and rules improving environmental analysis of nonproject
26 proposals and encouraging better interagency coordination and
27 integration between this chapter and other environmental laws.

28 (k) Rules relating to actions which shall be exempt from the
29 provisions of this chapter in situations of emergency.

30 (l) Rules relating to the use of environmental documents in
31 planning and decision making and the implementation of the substantive
32 policies and requirements of this chapter, including procedures for
33 appeals under this chapter.

34 (m) Rules and procedures that provide for the integration of
35 environmental review with project review as provided in section 103 of
36 this act. The rules and procedures shall be jointly developed with the
37 department of community, trade, and economic development and shall be
38 applicable to the preparation of environmental documents for actions in
39 counties, cities, and towns planning under RCW 36.70A.040. The rules

1 and procedures shall also include criteria to analyze the consistency
2 of project actions, including planned actions under RCW 43.21C.031(2),
3 with development regulations adopted pursuant to chapter 36.70A RCW, or
4 in the absence of applicable development regulations, the appropriate
5 elements of a comprehensive plan or subarea plan adopted pursuant to
6 chapter 36.70A RCW. Ordinances or procedures adopted by a county,
7 city, or town to implement the provisions of section 103 of this act
8 prior to the effective date of rules adopted pursuant to this
9 subsection (1)(m) shall continue to be effective until the adoption of
10 any new or revised ordinances or procedures that may be required. If
11 any revisions are required as a result of rules adopted pursuant to
12 this subsection (1)(m), those revisions shall be made within the time
13 limits specified in RCW 43.21C.120.

14 (2) In exercising its powers, functions, and duties under this
15 section, the department may:

16 (a) Consult with the state agencies and with representatives of
17 science, industry, agriculture, labor, conservation organizations,
18 state and local governments and other groups, as it deems advisable;
19 and

20 (b) Utilize, to the fullest extent possible, the services,
21 facilities, and information (including statistical information) of
22 public and private agencies, organizations, and individuals, in order
23 to avoid duplication of effort and expense, overlap, or conflict with
24 similar activities authorized by law and performed by established
25 agencies.

26 (3) Rules adopted pursuant to this section shall be subject to the
27 review procedures of chapter 34.05 RCW ((34.05.538 and 34.05.240)).

28 **Sec. 107.** RCW 43.21C.080 and 1977 ex.s. c 278 s 1 are each amended
29 to read as follows:

30 (1) Notice of any action taken by a governmental agency may be
31 publicized by the acting governmental agency, the applicant for, or the
32 proponent of such action, in substantially the form as set forth in
33 ~~((subsection (3) of this section and in the following manner))~~ rules
34 adopted pursuant to RCW 43.21C.110:

35 (a) By publishing notice on the same day of each week for two
36 consecutive weeks in a legal newspaper of general circulation in the
37 area where the property which is the subject of the action is located;

38 (b) By filing notice of such action with the department of ecology

1 at its main office in Olympia prior to the date of the last newspaper
2 publication; and

3 (c) Except for those actions which are of a nonproject nature, by
4 one of the following methods which shall be accomplished prior to the
5 date of ~~((last))~~ first newspaper publication;

6 (i) Mailing to the latest recorded real property owners, as shown
7 by the records of the county treasurer, who share a common boundary
8 line with the property upon which the project is proposed through
9 United States mail, first class, postage prepaid.

10 (ii) Posting of the notice in a conspicuous manner on the property
11 upon which the project is to be constructed.

12 (2)~~((a))~~ Except as otherwise provided in RCW 43.21C.075(5)(a),
13 any action to set aside, enjoin, review, or otherwise challenge any
14 such governmental action or subsequent government action for which
15 notice is given as provided in subsection (1) of this section on
16 grounds of noncompliance with the provisions of this chapter shall be
17 commenced within ~~((thirty))~~ twenty-one days from the date of last
18 newspaper publication of the notice pursuant to subsection (1) of this
19 section, or be barred~~((:— PROVIDED, HOWEVER, That the time period~~
20 ~~within which an action shall be commenced shall be ninety days (i) for~~
21 ~~projects to be performed by a governmental agency or to be performed~~
22 ~~under government contract, or (ii) for thermal power plant projects:~~
23 ~~PROVIDED FURTHER, That))~~.

24 Any subsequent governmental action on the proposal for which notice
25 has been given as provided in subsection (1) of this section shall not
26 be set aside, enjoined, reviewed, or otherwise challenged on grounds of
27 noncompliance with the provisions of RCW 43.21C.030(2)(a) through (h)
28 unless there has been a substantial change in the proposal between the
29 time of the first governmental action and the subsequent governmental
30 action that is likely to have adverse environmental impacts beyond the
31 range of impacts previously analyzed, or unless the action now being
32 considered was identified in an earlier detailed statement or
33 declaration of nonsignificance as being one which would require further
34 environmental evaluation.

35 ~~((b) Any action to challenge a subsequent governmental action~~
36 ~~based upon any provisions of this chapter shall be commenced within~~
37 ~~thirty days from the date of last newspaper publication of the~~
38 ~~subsequent governmental action except (i) for projects to be performed~~
39 ~~by a governmental agency or to be performed under governmental~~

1 contract, or (ii) for thermal power plant projects which shall be
2 challenged within ninety days from the date of last newspaper
3 publication of the subsequent governmental action, or be barred.

4 (3) The form for such notice of action shall be issued by the
5 department of ecology and shall be made available by the governmental
6 agency taking an action subject to being publicized pursuant to this
7 section, by the county auditor, and/or the city clerk to the project
8 applicant or proposer. The form of such notice shall be substantially
9 as follows:

10 NOTICE OF ACTION BY

11

12 (Government agency or entity)

13 Pursuant to the provisions of chapter 43.21C RCW, notice is hereby
14 given that:

15 The (Government agency or entity) did on
16 (date), take the action described below.

17 Any action to set aside, enjoin, review, or otherwise challenge
18 such action on the grounds of noncompliance with the provisions of
19 chapter 43.21C RCW (State Environmental Policy Act) shall be commenced
20 within days or be barred.

21 The action taken by (Government agency or
22 entity), notice of which is hereby given, was as follows:

23 (1) (Here insert description of action taken such
24 as: Adoption Ordinance No.; Issued Building Permit; Approved
25 preliminary (or final) plat, etc.)

26 (2) (Here insert brief description of the
27 complete project or proposal.)

28 (3) Said action pertained to property commonly known as:
29
30
31
32
33 (Sufficient description to locate property, but complete legal
34 description not required)

35 (4) Pertinent documents may be examined during regular business
36 hours at the office of: located at:
37
38 (Location, including room number)

1
2 (~~Name of government agency, proponent, or applicant giving notice~~)
3 Filed by
4 (~~Signature of individual and capacity in which such individual is~~
5 ~~signing~~))

6 NEW SECTION. **Sec. 108.** A new section is added to chapter 36.70A
7 RCW to read as follows:

8 (1) In designating and protecting critical areas under this
9 chapter, counties and cities shall include the best available science
10 in developing policies and development regulations to protect the
11 functions and values of critical areas. In addition, counties and
12 cities shall give special consideration to conservation or protection
13 measures necessary to preserve or enhance anadromous fisheries.

14 (2) If it determines that advice from scientific or other experts
15 is necessary or will be of substantial assistance in reaching its
16 decision, a growth management hearings board may retain scientific or
17 other expert advice to assist in reviewing a petition under RCW
18 36.70A.290 that involves critical areas.

19 **Sec. 109.** RCW 36.70A.140 and 1990 1st ex.s. c 17 s 14 are each
20 amended to read as follows:

21 Each county and city that is required or chooses to plan under RCW
22 36.70A.040 shall establish and broadly disseminate to the public a
23 public participation program identifying procedures providing for early
24 and continuous public participation in the development and amendment of
25 comprehensive land use plans and development regulations implementing
26 such plans. The procedures shall provide for broad dissemination of
27 proposals and alternatives, opportunity for written comments, public
28 meetings after effective notice, provision for open discussion,
29 communication programs, information services, and consideration of and
30 response to public comments. The public participation program and
31 procedures shall apply to a response made by a county or city to a
32 decision by a growth management hearings board under RCW 36.70A.300
33 that the comprehensive plan or development regulations were not in
34 compliance with this chapter. Errors in exact compliance with the
35 established program and procedures shall not render the comprehensive
36 land use plan or development regulations invalid if the spirit of the
37 program and procedures is observed.

1 **Sec. 110.** RCW 36.70A.300 and 1991 sp.s. c 32 s 11 are each amended
2 to read as follows:

3 (1) The board shall issue a final order within one hundred eighty
4 days of receipt of the petition for review, or, when multiple petitions
5 are filed, within one hundred eighty days of receipt of the last
6 petition that is consolidated. Such a final order shall be based
7 exclusively on whether or not a state agency, county, or city is in
8 compliance with the requirements of this chapter, chapter 90.58 RCW as
9 it relates to adoption or amendment of shoreline master programs, or
10 chapter 43.21C RCW as it relates to plans, development regulations, and
11 amendments thereto, adopted under RCW 36.70A.040 or chapter 90.58 RCW.
12 In the final order, the board shall either: (a) Find that the state
13 agency, county, or city is in compliance with the requirements of this
14 chapter or chapter 90.58 RCW as it relates to the adoption or amendment
15 of shoreline master programs; or (b) find that the state agency,
16 county, or city is not in compliance with the requirements of this
17 chapter or chapter 90.58 RCW as it relates to the adoption or amendment
18 of shoreline master programs, in which case the board shall remand the
19 matter to the affected state agency, county, or city and specify a
20 reasonable time not in excess of one hundred eighty days within which
21 the state agency, county, or city shall comply with the requirements of
22 this chapter.

23 (2) A finding of noncompliance and an order of remand shall not
24 affect the validity of comprehensive plans and development regulations
25 during the period of remand, unless the board's final order also:

26 (a) Includes a determination, supported by findings of fact and
27 conclusions of law, that the continued validity of the plan or
28 regulation would substantially interfere with the fulfillment of the
29 goals of this chapter; and

30 (b) Specifies the particular part or parts of the plan or
31 regulation that are determined to be invalid, and the reasons for their
32 invalidity.

33 (3) A determination of invalidity shall:

34 (a) Be prospective in effect and shall not extinguish rights that
35 vested under state or local law before the date of the board's order;
36 and

37 (b) Subject any development application that would otherwise vest
38 after the date of the board's order to the development regulations in
39 effect pursuant to subsection (2) or (4) of this section.

1 (4) If the ordinance that adopts a plan or development regulation
2 under this chapter includes a savings clause intended to revive prior
3 policies or regulations in the event the new plan or regulations are
4 determined to be invalid, the board shall determine under subsection
5 (2) of this section whether the prior policies or regulations are valid
6 during the period of remand.

7 (5) Any party aggrieved by a final decision of the hearings board
8 may appeal the decision as provided in RCW 34.05.514 to ((Thurston
9 county)) superior court within thirty days of the final order of the
10 board.

11 **Sec. 111.** RCW 36.70A.330 and 1991 sp.s. c 32 s 14 are each amended
12 to read as follows:

13 (1) After the time set for complying with the requirements of this
14 chapter under RCW 36.70A.300(1)(b) has expired, or at an earlier time
15 upon the motion of a county or city subject to a determination of
16 invalidity under RCW 36.70A.300, the board(~~(, on its own motion or~~
17 ~~motion of the petitioner,~~)) shall set a hearing for the purpose of
18 determining whether the state agency, county, or city is in compliance
19 with the requirements of this chapter.

20 (2) The board shall conduct a hearing and issue a finding of
21 compliance or noncompliance with the requirements of this chapter. A
22 person with standing to challenge the legislation enacted in response
23 to the board's final order may participate in the hearing along with
24 the petitioner and the state agency, city, or county. A hearing under
25 this subsection shall be given the highest priority of business to be
26 conducted by the board, and a finding shall be issued within forty-five
27 days of the filing of the motion under subsection (1) of this section
28 with the board.

29 (3) If the board finds that the state agency, county, or city is
30 not in compliance, the board shall transmit its finding to the
31 governor. The board may recommend to the governor that the sanctions
32 authorized by this chapter be imposed. The board shall also reconsider
33 its final order and decide:

34 (a) If a determination of invalidity has been made, whether such a
35 determination should be rescinded or modified under the standards in
36 RCW 36.70A.300(2); or

37 (b) If no determination of invalidity has been made, whether one
38 now should be made under the standards in RCW 36.70A.300(2).

1 The board shall schedule additional hearings as appropriate
2 pursuant to subsections (1) and (2) of this section.

3 NEW SECTION. **Sec. 112.** A new section is added to chapter 36.70A
4 RCW to read as follows:

5 A city planning under RCW 36.70A.040 that operates public
6 facilities and services shall serve within its service area if service
7 is technically feasible and in compliance with local regulations.

8 Such a city that provides water or sewer service outside of its
9 corporate boundaries shall not require, as a condition of providing
10 water or sewer service that the property owner who has requested the
11 water or sewer service agree to: (1) Lot sizes different from those
12 authorized by the county or city within whose planning jurisdiction the
13 property is located; or (2) other development or design requirements
14 that are not required by the county or city within whose planning
15 jurisdiction the property is located.

16 NEW SECTION. **Sec. 113.** A new section is added to chapter 36.70A
17 RCW to read as follows:

18 Nothing in this chapter shall preclude public sanitary sewer
19 systems and public domestic water systems designed for and serving
20 rural uses in areas included within the rural area designated under RCW
21 36.70A.070(5).

22 NEW SECTION. **Sec. 114.** A new section is added to chapter 36.70A
23 RCW to read as follows:

24 Urban growth areas designated under RCW 36.70A.110 shall include
25 transition areas that are designed to eventually have urban growth but
26 which are temporarily zoned to lower densities and lower intensities of
27 land use.

28 **Sec. 115.** RCW 36.70A.030 and 1994 c 307 s 2 and 1994 c 257 s 5 are
29 each reenacted and amended to read as follows:

30 Unless the context clearly requires otherwise, the definitions in
31 this section apply throughout this chapter.

32 (1) "Adopt a comprehensive land use plan" means to enact a new
33 comprehensive land use plan or to update an existing comprehensive land
34 use plan.

35 (2) "Agricultural land" means land primarily devoted to the

1 commercial production of horticultural, viticultural, floricultural,
2 dairy, apiary, vegetable, or animal products or of berries, grain, hay,
3 straw, turf, seed, Christmas trees not subject to the excise tax
4 imposed by RCW 84.33.100 through 84.33.140, finfish in upland
5 hatcheries, or livestock, and that has long-term commercial
6 significance for agricultural production.

7 (3) "City" means any city or town, including a code city.

8 (4) "Comprehensive land use plan," "comprehensive plan," or "plan"
9 means a generalized coordinated land use policy statement of the
10 governing body of a county or city that is adopted pursuant to this
11 chapter.

12 (5) "Critical areas" include the following areas and ecosystems:
13 (a) Wetlands; (b) areas with a critical recharging effect on aquifers
14 used for potable water; (c) fish and wildlife habitat conservation
15 areas; (d) frequently flooded areas; and (e) geologically hazardous
16 areas.

17 (6) "Department" means the department of community, trade, and
18 economic development.

19 (7) For purposes of RCW 36.70A.065 and 36.70A.440, "development
20 permit application" means any application for a development proposal
21 for a use that could be permitted under a plan adopted pursuant to this
22 chapter and is consistent with the underlying land use and zoning,
23 including but not limited to building permits, subdivisions, binding
24 site plans, planned unit developments, conditional uses or other
25 applications pertaining to land uses, but shall not include rezones,
26 proposed amendments to comprehensive plans or the adoption or amendment
27 of development regulations.

28 (8) "Development regulations" means any controls placed on
29 development or land use activities by a county or city, including, but
30 not limited to, zoning ordinances, official controls, planned unit
31 development ordinances, subdivision ordinances, and binding site plan
32 ordinances.

33 (9) "Forest land" means land primarily devoted to growing trees for
34 long-term commercial timber production on land that can be economically
35 and practically managed for such production, including Christmas trees
36 subject to the excise tax imposed under RCW 84.33.100 through
37 84.33.140, and that has long-term commercial significance. In
38 determining whether forest land is primarily devoted to growing trees
39 for long-term commercial timber production on land that can be

1 economically and practically managed for such production, the following
2 factors shall be considered: (a) The proximity of the land to urban,
3 suburban, and rural settlements; (b) surrounding parcel size and the
4 compatibility and intensity of adjacent and nearby land uses; (c) long-
5 term local economic conditions that affect the ability to manage for
6 timber production; and (d) the availability of public facilities and
7 services conducive to conversion of forest land to other uses.

8 (10) "Geologically hazardous areas" means areas that because of
9 their susceptibility to erosion, sliding, earthquake, or other
10 geological events, are not suited to the siting of commercial,
11 residential, or industrial development consistent with public health or
12 safety concerns.

13 (11) "Long-term commercial significance" includes the growing
14 capacity, productivity, and soil composition of the land for long-term
15 commercial production, in consideration with the land's proximity to
16 population areas, and the possibility of more intense uses of the land.

17 (12) "Minerals" include gravel, sand, and valuable metallic
18 substances.

19 (13) "Public facilities" include streets, roads, highways,
20 sidewalks, street and road lighting systems, traffic signals, domestic
21 water systems, storm and sanitary sewer systems, parks and recreational
22 facilities, and schools.

23 (14) "Public services" include fire protection and suppression, law
24 enforcement, public health, education, recreation, environmental
25 protection, and other governmental services.

26 (15) "Urban growth" refers to growth that makes intensive use of
27 land for the location of buildings, structures, and impermeable
28 surfaces to such a degree as to be incompatible with the primary use of
29 such land for the production of food, other agricultural products, or
30 fiber, or the extraction of mineral resources. When allowed to spread
31 over wide areas, urban growth typically requires urban governmental
32 services. "Characterized by urban growth" refers to land having urban
33 growth located on it, or to land located in relationship to an area
34 with urban growth on it as to be appropriate for urban growth.

35 (16) "Urban growth areas" means those areas designated by a county
36 pursuant to RCW 36.70A.110.

37 (17) "Urban governmental services" include those governmental
38 services historically and typically delivered by cities, and include
39 storm and sanitary sewer systems, domestic water systems, street

1 cleaning services, fire and police protection services, public transit
2 services, and other public utilities associated with urban areas and
3 normally not associated with nonurban areas.

4 (18) "Wetland" or "wetlands" means areas (~~(that are inundated or~~
5 ~~saturated by surface water or ground water at a frequency and duration~~
6 ~~sufficient to support, and that under normal circumstances do support,~~
7 ~~a prevalence of vegetation typically adapted for life in saturated soil~~
8 ~~conditions.—Wetlands generally include swamps, marshes, bogs, and~~
9 ~~similar areas.—Wetlands do not include those artificial wetlands~~
10 ~~intentionally created from nonwetland sites, including, but not limited~~
11 ~~to, irrigation and drainage ditches, grass lined swales, canals,~~
12 ~~detention facilities, wastewater treatment facilities, farm ponds, and~~
13 ~~landscape amenities.—However, wetlands may include those artificial~~
14 ~~wetlands intentionally created from nonwetland areas created to~~
15 ~~mitigate conversion of wetlands, if permitted by the county or city))~~
16 defined as wetlands under section 401 of the clean water act, 33 U.S.C.
17 Sec. 1344. Wetlands do not include inadvertent wetlands
18 unintentionally created after July 1, 1990, as a result of development
19 activity, including the construction of roads, streets, or highways.

20 **Sec. 116.** RCW 90.58.020 and 1992 c 105 s 1 are each amended to
21 read as follows:

22 The legislature finds that the shorelines of the state are among
23 the most valuable and fragile of its natural resources and that there
24 is great concern throughout the state relating to their utilization,
25 protection, restoration, and preservation. In addition it finds that
26 ever increasing pressures of additional uses are being placed on the
27 shorelines necessitating increased coordination in the management and
28 development of the shorelines of the state. The legislature further
29 finds that much of the shorelines of the state and the uplands adjacent
30 thereto are in private ownership; that unrestricted construction on the
31 privately owned or publicly owned shorelines of the state is not in the
32 best public interest; and therefore, coordinated planning is necessary
33 in order to protect the public interest associated with the shorelines
34 of the state while, at the same time, recognizing and protecting
35 private property rights consistent with the public interest. There is,
36 therefor, a clear and urgent demand for a planned, rational, and
37 concerted effort, jointly performed by federal, state, and local
38 governments, to prevent the inherent harm in an uncoordinated and

1 piecemeal development of the state's shorelines.

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

12 The legislature declares that the interest of all of the people
13 shall be paramount in the management of shorelines of state-wide
14 significance. The department, in adopting guidelines for shorelines of
15 state-wide significance, and local government, in developing master
16 programs for shorelines of state-wide significance, shall give
17 preference to uses in the following order of preference which:

18 (1) Recognize and protect the state-wide interest over local
19 interest;

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

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

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

23 (5) Increase public access to publicly owned areas of the
24 shorelines;

25 (6) Increase recreational opportunities for the public in the
26 shoreline;

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

29 In the implementation of this policy the public's opportunity to
30 enjoy the physical and aesthetic qualities of natural shorelines of the
31 state shall be preserved to the greatest extent feasible consistent
32 with the overall best interest of the state and the people generally.
33 To this end uses shall be preferred which are consistent with control
34 of pollution and prevention of damage to the natural environment, or
35 are unique to or dependent upon use of the state's shoreline.
36 Alterations of the natural condition of the shorelines of the state, in
37 those limited instances when authorized, shall be given priority for
38 single family residences and their appurtenant structures, ports,
39 shoreline recreational uses including but not limited to parks,

1 marinas, piers, and other improvements facilitating public access to
2 shorelines of the state, industrial and commercial developments which
3 are particularly dependent on their location on or use of the
4 shorelines of the state and other development that will provide an
5 opportunity for substantial numbers of the people to enjoy the
6 shorelines of the state. Alterations of the natural condition of the
7 shorelines and ((wetlands)) shorelands of the state shall be recognized
8 by the department. Shorelines and ((wetlands)) shorelands of the state
9 shall be appropriately classified and these classifications shall be
10 revised when circumstances warrant regardless of whether the change in
11 circumstances occurs through man-made causes or natural causes. Any
12 areas resulting from alterations of the natural condition of the
13 shorelines and ((wetlands)) shorelands of the state no longer meeting
14 the definition of "shorelines of the state" shall not be subject to the
15 provisions of chapter 90.58 RCW.

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

20 **Sec. 117.** RCW 90.58.030 and 1987 c 474 s 1 are each amended to
21 read as follows:

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

24 (1) Administration:

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

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

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

30 (d) "Person" means an individual, partnership, corporation,
31 association, organization, cooperative, public or municipal
32 corporation, or agency of the state or local governmental unit however
33 designated;

34 (e) "Hearing board" means the shoreline hearings board established
35 by this chapter.

36 (2) Geographical:

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

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

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

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

23 (e) "Shorelines of state-wide significance" means the following
24 shorelines of the state:

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

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

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

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

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

34 (D) Skagit Bay and adjacent area--from Brown Point to Yokeko Point,
35 and

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

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

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

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

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

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

13 (vi) Those ~~((wetlands))~~ shorelands associated with (i), (ii), (iv),
14 and (v) of this subsection (2)(e);

15 (f) "~~((Wetlands))~~ Shorelands" or "~~((wetland))~~ shoreland areas"
16 means those lands extending landward for two hundred feet in all
17 directions as measured on a horizontal plane from the ordinary high
18 water mark; floodways and contiguous floodplain areas landward two
19 hundred feet from such floodways; and all ~~((marshes, bogs, swamps,))~~
20 wetlands and river deltas associated with the streams, lakes, and tidal
21 waters which are subject to the provisions of this chapter; the same to
22 be designated as to location by the department of ecology(~~(:—PROVIDED,~~
23 ~~That))~~). Any county or city may determine that portion of a one-
24 hundred-year-flood plain to be included in its master program as long
25 as such portion includes, as a minimum, the floodway and the adjacent
26 land extending landward two hundred feet therefrom;

27 (g) "Floodway" means those portions of the area of a river valley
28 lying streamward from the outer limits of a watercourse upon which
29 flood waters are carried during periods of flooding that occur with
30 reasonable regularity, although not necessarily annually, said floodway
31 being identified, under normal condition, by changes in surface soil
32 conditions or changes in types or quality of vegetative ground cover
33 condition. The floodway shall not include those lands that can
34 reasonably be expected to be protected from flood waters by flood
35 control devices maintained by or maintained under license from the
36 federal government, the state, or a political subdivision of the state;

37 (h) "Wetlands" means areas defined as wetlands under section 401 of
38 the clean water act, 33 U.S.C. Sec. 1344. Wetlands do not include
39 inadvertent wetlands unintentionally created after July 1, 1990, as a

1 result of development activity, including the construction of roads,
2 streets, or highways.

3 (3) Procedural terms:

4 (a) "Guidelines" means those standards adopted to implement the
5 policy of this chapter for regulation of use of the shorelines of the
6 state prior to adoption of master programs. Such standards shall also
7 provide criteria to local governments and the department in developing
8 master programs;

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

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

16 (d) "Development" means a use consisting of the construction or
17 exterior alteration of structures; dredging; drilling; dumping;
18 filling; removal of any sand, gravel, or minerals; bulkheading; driving
19 of piling; placing of obstructions; or any project of a permanent or
20 temporary nature which interferes with the normal public use of the
21 surface of the waters overlying lands subject to this chapter at any
22 state of water level;

23 (e) "Substantial development" shall mean any development of which
24 the total cost or fair market value exceeds two thousand five hundred
25 dollars, or any development which materially interferes with the normal
26 public use of the water or shorelines of the state; except that the
27 following shall not be considered substantial developments for the
28 purpose of this chapter:

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

31 (ii) Construction of the normal protective bulkhead common to
32 single family residences;

33 (iii) Emergency construction necessary to protect property from
34 damage by the elements;

35 (iv) Construction and practices normal or necessary for farming,
36 irrigation, and ranching activities, including agricultural service
37 roads and utilities on (~~wetlands~~) shorelands, and the construction
38 and maintenance of irrigation structures including but not limited to
39 head gates, pumping facilities, and irrigation channels(~~(:—PROVIDED,~~

1 That)). A feedlot of any size, all processing plants, other activities
2 of a commercial nature, alteration of the contour of the ((wetlands))
3 shorelands by leveling or filling other than that which results from
4 normal cultivation, shall not be considered normal or necessary farming
5 or ranching activities. A feedlot shall be an enclosure or facility
6 used or capable of being used for feeding livestock hay, grain, silage,
7 or other livestock feed, but shall not include land for growing crops
8 or vegetation for livestock feeding and/or grazing, nor shall it
9 include normal livestock wintering operations;

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

12 (vi) Construction on ((wetlands)) shorelands by an owner, lessee,
13 or contract purchaser of a single family residence for his own use or
14 for the use of his family, which residence does not exceed a height of
15 thirty-five feet above average grade level and which meets all
16 requirements of the state agency or local government having
17 jurisdiction thereof, other than requirements imposed pursuant to this
18 chapter;

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

24 (viii) Operation, maintenance, or construction of canals,
25 waterways, drains, reservoirs, or other facilities that now exist or
26 are hereafter created or developed as a part of an irrigation system
27 for the primary purpose of making use of system waters, including
28 return flow and artificially stored ground water for the irrigation of
29 lands;

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

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

37 ~~(xi) Any action commenced prior to December 31, 1982, pertaining to~~
38 ~~(A) the restoration of interim transportation services as may be~~
39 ~~necessary as a consequence of the destruction of the Hood Canal bridge,~~

1 including, but not limited to, improvements to highways, development of
2 park and ride facilities, and development of ferry terminal facilities
3 until a new or reconstructed Hood Canal bridge is open to traffic; and
4 (B) the reconstruction of a permanent bridge at the site of the
5 original Hood Canal bridge)).

6 **Sec. 118.** RCW 90.58.050 and 1971 ex.s. c 286 s 5 are each amended
7 to read as follows:

8 This chapter establishes a cooperative program of shoreline
9 management between local government and the state. Local government
10 shall have the primary responsibility for initiating the planning
11 required by this chapter and administering the regulatory program
12 consistent with the policy and provisions of this chapter. The
13 department shall act primarily in a supportive and review capacity with
14 ((primary)) an emphasis on providing assistance to local government and
15 on insuring compliance with the policy and provisions of this chapter.

16 **Sec. 119.** RCW 90.58.060 and 1971 ex.s. c 286 s 6 are each amended
17 to read as follows:

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

22 (a) Development of master programs for regulation of the uses of
23 shorelines; and

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

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

29 (a) The department shall mail copies of the proposal to all cities,
30 counties, and federally recognized Indian tribes, and to any other
31 person who has requested a copy, and shall publish the proposed
32 guidelines in the Washington state register. Comments shall be
33 submitted in writing to the department within sixty days from ((receipt
34 of such proposed guidelines, local governments shall submit to the
35 department in writing proposed changes, if any, and comments upon the
36 proposed guidelines.

37 (3) ~~Thereafter and within one hundred twenty days from the~~

1 ~~submission of such proposed guidelines to local governments, the~~
2 ~~department, after review and consideration of the comments and~~
3 ~~suggestions submitted to it, shall resubmit final proposed guidelines.~~

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

6 ~~(b) The department ((in Olympia and Spokane, at which interested~~
7 ~~public and private parties shall have the opportunity)) shall hold at~~
8 least four public hearings on the proposal in different locations
9 throughout the state to provide a reasonable opportunity for residents
10 in all parts of the state to present statements and views on the
11 proposed guidelines. Notice of ((such)) the hearings shall be
12 published at least once in each of the three weeks immediately
13 preceding the hearing in one or more newspapers of general circulation
14 in each county of the state. If an amendment to the guidelines
15 addresses an issue limited to one geographic area, the number and
16 location of hearings may be adjusted consistent with the intent of this
17 subsection to assure all parties a reasonable opportunity to comment on
18 the proposed amendment. The department shall accept written comments
19 on the proposal during the sixty-day public comment period and for
20 seven days after the final public hearing.

21 ~~(c) At the conclusion of the public comment period, the department~~
22 shall review the comments received and modify the proposal consistent
23 with the provisions of this chapter. The proposal shall then be
24 published for adoption pursuant to the provisions of chapter 34.05 RCW.

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

31 **Sec. 120.** RCW 90.58.080 and 1974 ex.s. c 61 s 1 are each amended
32 to read as follows:

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

35 ~~(1) To complete within eighteen months after June 1, 1971, a~~
36 ~~comprehensive inventory of such shorelines. Such inventory shall~~
37 ~~include but not be limited to the general ownership patterns of the~~
38 ~~lands located therein in terms of public and private ownership, a~~

1 ~~survey of the general natural characteristics thereof, present uses~~
2 ~~conducted therein and initial projected uses thereof;~~

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

8 **Sec. 121.** RCW 90.58.090 and 1971 ex.s. c 286 s 9 are each amended
9 to read as follows:

10 (1) A master program(~~s or segments thereof~~), segment of a master
11 program, or an amendment to a master program shall become effective
12 when (~~adopted or~~) approved by the department (~~as appropriate~~).
13 Within the time period provided in RCW 90.58.080, each local government
14 shall have submitted a master program, either totally or by segments,
15 for all shorelines of the state within its jurisdiction to the
16 department for review and approval.

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

19 (a) Provide notice to and opportunity for written comment by all
20 interested parties of record as a part of the local government review
21 process for the proposal and to all persons, groups, and agencies that
22 have requested in writing notice of proposed master programs or
23 amendments generally or for a specific area, subject matter, or issue.
24 The comment period shall be at least thirty days, unless the department
25 determines that the level of complexity or controversy involved
26 supports a shorter period;

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

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

34 (d) Within thirty days after receipt of the local government
35 response pursuant to (c) of this subsection, make written findings and
36 conclusions regarding the consistency of the proposal with the policy
37 of RCW 90.58.020 and the applicable guidelines, provide a response to
38 the issues identified in (c) of this subsection, and either approve the

1 proposal as submitted, recommend specific changes necessary to make the
2 proposal approvable, or deny approval of the proposal in those
3 instances where no alteration of the proposal appears likely to
4 accomplish the purposes for which it was submitted and the requirements
5 of this chapter. The written findings and conclusions shall be
6 provided to the local government, all interested persons, parties,
7 groups, and agencies of record on the proposal;

8 (e) If the department recommends changes to the proposed master
9 program or amendment, within thirty days after the department mails the
10 written findings and conclusions to the local government, the local
11 government may:

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

15 (ii) Submit an alternative proposal. If, in the opinion of the
16 department, the alternative is consistent with the purpose and intent
17 of the changes originally submitted by the department and with this
18 chapter it shall approve the changes and provide written notice to all
19 recipients of the written findings and conclusions. If the department
20 determines the proposal is not consistent with the purpose and intent
21 of the changes proposed by the department, the department may resubmit
22 the proposal for public and agency review pursuant to this section or
23 reject the proposal.

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

26 (3) The department shall approve the segment of a master program
27 relating to shorelines unless it determines that the submitted segments
28 are not consistent with the policy of RCW 90.58.020 and the applicable
29 guidelines. ((If approval is denied, the department shall state within
30 ninety days from the date of submission in detail the precise facts
31 upon which that decision is based, and shall submit to the local
32 government suggested modifications to the program to make it consistent
33 with said policy and guidelines. The local government shall have
34 ninety days after it receives recommendations from the department to
35 make modifications designed to eliminate the inconsistencies and to
36 resubmit the program to the department for approval. Any resubmitted
37 program shall take effect when and in such form and content as is
38 approved by the department.

39 ~~(2) As to))~~ (4) The department shall approve those segments of the

1 master program relating to shorelines of state-wide significance (~~the~~
2 ~~department shall have full authority following review and evaluation of~~
3 ~~the submission by local government to develop and adopt an alternative~~
4 ~~to the local government's proposal if in the department's opinion the~~
5 ~~program submitted does not~~) only after determining the program
6 provides the optimum implementation of the policy of this chapter to
7 satisfy the state-wide interest. (~~If the submission by local~~
8 ~~government is not approved, the department shall suggest modifications~~
9 ~~to the local government within ninety days from receipt of the~~
10 ~~submission. The local government shall have ninety days after it~~
11 ~~receives said modifications to consider the same and resubmit a master~~
12 ~~program to the department. Thereafter, the department shall adopt the~~
13 ~~resubmitted program or, if the department determines that said program~~
14 ~~does not provide for optimum implementation, it may develop and adopt~~
15 ~~an alternative as hereinbefore provided.~~) If the department does not
16 approve a segment of a local government master program relating to a
17 shoreline of state-wide significance, the department may develop and by
18 rule adopt an alternative to the local government s proposal.

19 (~~(3)~~) (5) In the event a local government has not complied with
20 the requirements of RCW 90.58.070 it may thereafter upon written notice
21 to the department elect to adopt a master program for the shorelines
22 within its jurisdiction, in which event it shall comply with the
23 provisions established by this chapter for the adoption of a master
24 program for such shorelines.

25 Upon approval of such master program by the department it shall
26 supersede such master program as may have been adopted by the
27 department for such shorelines.

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

34 **Sec. 122.** RCW 90.58.100 and 1992 c 105 s 2 are each amended to
35 read as follows:

36 (1) The master programs provided for in this chapter, when adopted
37 (~~and~~) or approved by the department(~~(, as appropriate,)~~) shall
38 constitute use regulations for the various shorelines of the state. In

1 preparing the master programs, and any amendments thereto, the
2 department and local governments shall to the extent feasible:

3 (a) Utilize a systematic interdisciplinary approach which will
4 insure the integrated use of the natural and social sciences and the
5 environmental design arts;

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

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

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

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

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

20 (2) The master programs shall include, when appropriate, the
21 following:

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

26 (b) A public access element making provision for public access to
27 publicly owned areas;

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

31 (d) A circulation element consisting of the general location and
32 extent of existing and proposed major thoroughfares, transportation
33 routes, terminals, and other public utilities and facilities, all
34 correlated with the shoreline use element;

35 (e) A use element which considers the proposed general distribution
36 and general location and extent of the use on shorelines and adjacent
37 land areas for housing, business, industry, transportation,
38 agriculture, natural resources, recreation, education, public buildings
39 and grounds, and other categories of public and private uses of the

1 land;

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

5 (g) An historic, cultural, scientific, and educational element for
6 the protection and restoration of buildings, sites, and areas having
7 historic, cultural, scientific, or educational values;

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

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

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

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

19 (5) Each master program shall contain provisions to allow for the
20 varying of the application of use regulations of the program, including
21 provisions for permits for conditional uses and variances, to insure
22 that strict implementation of a program will not create unnecessary
23 hardships or thwart the policy enumerated in RCW 90.58.020. Any such
24 varying shall be allowed only if extraordinary circumstances are shown
25 and the public interest suffers no substantial detrimental effect. The
26 concept of this subsection shall be incorporated in the rules adopted
27 by the department relating to the establishment of a permit system as
28 provided in RCW 90.58.140(3).

29 (6) Each master program shall contain standards governing the
30 protection of single family residences and appurtenant structures
31 against damage or loss due to shoreline erosion. The standards shall
32 govern the issuance of substantial development permits for shoreline
33 protection, including structural methods such as construction of
34 bulkheads, and nonstructural methods of protection. The standards
35 shall provide for methods which achieve effective and timely protection
36 against loss or damage to single family residences and appurtenant
37 structures due to shoreline erosion. The standards shall provide a
38 preference for permit issuance for measures to protect single family
39 residences occupied prior to January 1, 1992, where the proposed

1 measure is designed to minimize harm to the shoreline natural
2 environment.

3 **Sec. 123.** RCW 90.58.120 and 1989 c 175 s 182 are each amended to
4 read as follows:

5 All rules, regulations, (~~master programs,~~) designations, and
6 guidelines, issued by the department, and master programs and
7 amendments adopted by the department pursuant to RCW 90.58.070(2) or
8 90.58.090(4) shall be adopted or approved in accordance with the
9 provisions of RCW 34.05.310 through 34.05.395 insofar as such
10 provisions are not inconsistent with the provisions of this chapter.
11 In addition:

12 (1) Prior to the (~~approval or~~) adoption by the department of a
13 master program, or portion thereof pursuant to RCW 90.58.070(2) or
14 90.58.090(4), at least one public hearing shall be held in each county
15 affected by a program or portion thereof for the purpose of obtaining
16 the views and comments of the public. Notice of each such hearing
17 shall be published at least once in each of the three weeks immediately
18 preceding the hearing in one or more newspapers of general circulation
19 in the county in which the hearing is to be held.

20 (2) All guidelines, regulations, designations, or master programs
21 adopted or approved under this chapter shall be available for public
22 inspection at the office of the department or the appropriate county
23 (~~auditor~~) and city (~~clerk~~). The terms "adopt" and "approve" for
24 purposes of this section, shall include modifications and rescission of
25 guidelines.

26 **Sec. 124.** RCW 90.58.140 and 1992 c 105 s 3 are each amended to
27 read as follows:

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

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

35 A permit shall be granted:

36 (a) From June 1, 1971, until such time as an applicable master
37 program has become effective, only when the development proposed is

1 consistent with: (i) The policy of RCW 90.58.020; and (ii) after their
2 adoption, the guidelines and rules of the department; and (iii) so far
3 as can be ascertained, the master program being developed for the area;

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

8 (3) The local government shall establish a program, consistent with
9 rules adopted by the department, for the administration and enforcement
10 of the permit system provided in this section. The administration of
11 the system so established shall be performed exclusively by the local
12 government.

13 (4) Except as otherwise specifically provided in subsection
14 ~~((+13))~~ (11) of this section, the local government shall require
15 notification of the public of all applications for permits governed by
16 any permit system established pursuant to subsection (3) of this
17 section by ensuring that~~((:~~

18 ~~(a) A notice of such an application is published at least once a
19 week on the same day of the week for two consecutive weeks in a legal
20 newspaper of general circulation within the area in which the
21 development is proposed; and~~

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

24 ~~((+i))~~ (a) Mailing of the notice to the latest recorded real
25 property owners as shown by the records of the county assessor within
26 at least three hundred feet of the boundary of the property upon which
27 the substantial development is proposed;

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

30 ~~((+iii))~~ (c) Any other manner deemed appropriate by local
31 authorities to accomplish the objectives of reasonable notice to
32 adjacent landowners and the public.

33 The notices shall include a statement that any person desiring to
34 submit written comments concerning an application, or desiring to
35 receive ~~((a copy))~~ notification of the final ~~((order))~~ decision
36 concerning an application as expeditiously as possible after the
37 issuance of the ~~((order))~~ decision, may submit the comments or requests
38 for ~~((orders))~~ decisions to the local government within thirty days of
39 the last date the notice is to be published pursuant to ~~((subsection~~

1 ~~(a) of~~) this subsection. The local government shall forward, in a
2 timely manner following the issuance of ~~((an order))~~ a decision, a copy
3 of the ~~((order))~~ decision to each person who submits a request for the
4 ~~((order))~~ decision.

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

8 (5) The system shall include provisions to assure that construction
9 pursuant to a permit will not begin or be authorized until ~~((thirty))~~
10 twenty-one days from the date the ~~((final order))~~ permit decision was
11 filed as provided in subsection (6) of this section; or until all
12 review proceedings are terminated if the proceedings were initiated
13 within ~~((thirty))~~ twenty-one days from the date of filing as defined in
14 subsection (6) of this section except as follows:

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

20 (b) Construction may be commenced thirty days after the date the
21 appeal of the board's decision is filed if a permit is granted by the
22 local government and (i) the granting of the permit is appealed to the
23 shorelines hearings board within ~~((thirty))~~ twenty-one days of the date
24 of filing, (ii) the hearings board approves the granting of the permit
25 by the local government or approves a portion of the substantial
26 development for which the local government issued the permit, and (iii)
27 an appeal for judicial review of the hearings board decision is filed
28 pursuant to chapter 34.05 RCW~~(, the permittee))~~. The appellant may
29 request, within ten days of the filing of the appeal with the court, a
30 hearing before the court to determine whether construction ~~((may~~
31 ~~begin))~~ pursuant to the permit approved by the hearings board or to a
32 revised permit issued pursuant to the order of the hearings board
33 should not commence. If, at the conclusion of the hearing, the court
34 finds that construction pursuant to such a permit would ~~((not))~~ involve
35 a significant, irreversible damaging of the environment, the court
36 ~~((may allow))~~ shall prohibit the permittee ~~((to begin))~~ from commencing
37 the construction pursuant to the approved or revised permit ~~((as the~~
38 ~~court deems appropriate. The court may require the permittee to post~~
39 ~~bonds, in the name of the local government that issued the permit,~~

1 sufficient to remove the substantial development or to restore the
2 environment if the permit is ultimately disapproved by the courts, or
3 to alter the substantial development if the alteration is ultimately
4 ordered by the courts)) until all review proceedings are final.
5 Construction pursuant to a permit revised at the direction of the
6 hearings board may begin only on that portion of the substantial
7 development for which the local government had originally issued the
8 permit, and construction pursuant to such a revised permit on other
9 portions of the substantial development may not begin until after all
10 review proceedings are terminated. In such a hearing before the court,
11 the burden of proving whether the construction may involve significant
12 irreversible damage to the environment and demonstrating whether such
13 construction would or would not be appropriate is on the appellant;

14 (c) (~~If a permit is granted by the local government and the~~
15 ~~granting of the permit is appealed directly to the superior court for~~
16 ~~judicial review pursuant to the proviso in RCW 90.58.180(1), the~~
17 ~~permittee may request the court to remand the appeal to the shorelines~~
18 ~~hearings board, in which case the appeal shall be so remanded and~~
19 ~~construction pursuant to such a permit shall be governed by the~~
20 ~~provisions of subsection (b) of this subsection or may otherwise begin~~
21 ~~after review proceedings before the hearings board are terminated if~~
22 ~~judicial review is not thereafter requested pursuant to chapter 34.05~~
23 ~~RCW;~~

24 (d)) If the permit is for a substantial development meeting the
25 requirements of subsection ((~~13~~)) (11) of this section, construction
26 pursuant to that permit may not begin or be authorized until ((~~thirty~~))
27 twenty-one days from the date the ((~~final order~~)) permit decision was
28 filed as provided in subsection (6) of this section.

29 If a permittee begins construction pursuant to subsections (a),
30 (b), or (c)((~~, or (d)~~)) of this subsection, the construction is begun
31 at the permittee's own risk. If, as a result of judicial review, the
32 courts order the removal of any portion of the construction or the
33 restoration of any portion of the environment involved or require the
34 alteration of any portion of a substantial development constructed
35 pursuant to a permit, the permittee is barred from recovering damages
36 or costs involved in adhering to such requirements from the local
37 government that granted the permit, the hearings board, or any
38 appellant or intervener.

39 (6) Any ((~~ruling~~)) decision on an application for a permit under

1 the authority of this section, whether it is an approval or a denial,
2 shall, concurrently with the transmittal of the ruling to the
3 applicant, be filed with the department and the attorney general. With
4 regard to a permit other than a permit governed by subsection ~~((+12))~~
5 (10) of this section, "date of filing" as used herein means the date of
6 actual receipt by the department. With regard to a permit for a
7 variance or a conditional use, "date of filing" means the date a
8 decision of the department rendered on the permit pursuant to
9 subsection ~~((+12))~~ (10) of this section is transmitted by the
10 department to the local government. The department shall notify in
11 writing the local government and the applicant of the date of filing.

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

18 (8) Any permit may, after a hearing with adequate notice to the
19 permittee and the public, be rescinded by the issuing authority upon
20 the finding that a permittee has not complied with conditions of a
21 permit. If the department is of the opinion that noncompliance exists,
22 the department shall provide written notice to the local government and
23 the permittee. If the department is of the opinion that the
24 noncompliance continues to exist thirty days after the date of the
25 notice, and the local government has taken no action to rescind the
26 permit, the department may petition the hearings board for a rescission
27 of the permit upon written notice of the petition to the local
28 government and the permittee if the request by the department is made
29 to the hearings board within fifteen days of the termination of the
30 thirty-day notice to the local government.

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

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

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

1 ~~(b) The development is completed within two years after June 1,~~
2 ~~1971.~~

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

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

14 ~~((13))~~ (11)(a) An application for a substantial development
15 permit for a limited utility extension or for the construction of a
16 bulkhead or other measures to protect a single family residence and its
17 appurtenant structures from shoreline erosion shall be subject to the
18 following procedures:

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

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

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

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

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

35 (ii) Will serve an existing use in compliance with this chapter;
36 and

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

1 **Sec. 125.** RCW 90.58.180 and 1994 c 253 s 3 are each amended to
2 read as follows:

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

8 ~~((Concurrently with))~~ Within seven days of the filing of any
9 ~~((request))~~ petition for review with the board as provided in this
10 section pertaining to a final ~~((order))~~ decision of a local government,
11 the ~~((requestor))~~ petitioner shall ~~((file a copy))~~ serve copies of
12 ~~((his or her request with))~~ the petition on the department and the
13 office of the attorney general. ~~((If it appears to the department or~~
14 ~~the attorney general that the requestor has valid reasons to seek~~
15 ~~review, either the department or the attorney general may certify the~~
16 ~~request within thirty days after its receipt to the shorelines hearings~~
17 ~~board following which the board shall then, but not otherwise, review~~
18 ~~the matter covered by the requestor. The failure to obtain such~~
19 ~~certification shall not preclude the requestor from obtaining a review~~
20 ~~in the superior court under any right to review otherwise available to~~
21 ~~the requestor.))~~ The department and the attorney general may intervene
22 to protect the public interest and insure that the provisions of this
23 chapter are complied with at any time within fifteen days from the date
24 of the receipt by the department or the attorney general of a copy of
25 the ~~((request))~~ petition for review filed pursuant to this section.
26 The shorelines hearings board shall ~~((initially))~~ schedule review
27 proceedings on ~~((such requests))~~ the petition for review without regard
28 as to whether ~~((such requests have or have not been certified or as to~~
29 ~~whether))~~ the period for the department or the attorney general to
30 intervene has or has not expired~~((, unless such review is to begin~~
31 ~~within thirty days of such scheduling. If at the end of the thirty day~~
32 ~~period for certification neither the department nor the attorney~~
33 ~~general has certified a request for review, the hearings board shall~~
34 ~~remove the request from its review schedule)).~~

35 (2) The department or the attorney general may obtain review of any
36 final ~~((order))~~ decision granting a permit, or granting or denying an
37 application for a permit issued by a local government by filing a
38 written ~~((request))~~ petition with the shorelines hearings board and the
39 appropriate local government within ~~((thirty))~~ twenty-one days from the

1 date the final (~~order~~) decision was filed as provided in RCW
2 90.58.140(6).

3 (3) The review proceedings authorized in subsections (1) and (2) of
4 this section are subject to the provisions of chapter 34.05 RCW
5 pertaining to procedures in adjudicative proceedings. Judicial review
6 of such proceedings of the shorelines hearings board is governed by
7 chapter 34.05 RCW. The board shall issue its decision on the appeal
8 authorized under subsections (1) and (2) of this section within one
9 hundred eighty days after the date the petition is filed with the board
10 or a petition to intervene is filed by the department or the attorney
11 general, whichever is later. The time period may be waived by the
12 parties or may be extended by the board for a period of thirty days
13 upon a showing of good cause.

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

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

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

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

25 (c) Is arbitrary and capricious; or

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

29 (e) Was not adopted in accordance with required procedures(~~+~~).

30 (6) If the board makes a determination under subsection (5) (a)
31 through (e) of this section, it shall enter a final decision declaring
32 the rule, regulation, or guideline invalid, remanding the rule,
33 regulation, or guideline to the department with a statement of the
34 reasons in support of the determination, and directing the department
35 to adopt, after a thorough consultation with the affected local
36 government and any other interested party, a new rule, regulation, or
37 guideline consistent with the board's decision. (~~Unless the board~~
38 makes one or more of the determinations as hereinbefore provided, the
39 board shall find the rule, regulation, or guideline to be valid and

1 enter a final decision to that effect.

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

12 **Sec. 126.** RCW 90.58.190 and 1989 c 175 s 184 are each amended to
13 read as follows:

14 (1) ~~((The department and each local government shall periodically~~
15 review any master programs under its jurisdiction and make such
16 adjustments thereto as are necessary. Any adjustments proposed by a
17 local government to its master program shall be forwarded to the
18 department for review. The department shall approve, reject, or
19 propose modification to the adjustment. If the department either
20 rejects or proposes modification to the master program adjustment, it
21 shall provide substantive written comments as to why the proposal is
22 being rejected or modified.)) The appeal of the department s decision
23 to adopt a master program or amendment pursuant to RCW 90.58.070(2) or
24 90.58.090(4) is governed by RCW 34.05.510 through 34.05.598.

25 (2)(a) The department's decision to approve, reject, or modify a
26 proposed master program or amendment adopted by a local government
27 planning under RCW 36.70A.040 shall be appealed to the growth
28 management hearings board with jurisdiction over the local government.
29 The appeal shall be initiated by filing a petition as provided in RCW
30 36.70A.250 through 36.70A.320.

31 (b) If the appeal to the growth management hearings board concerns
32 shorelines, the growth management hearings board shall review the
33 proposed master program or amendment for compliance with the
34 requirements of this chapter and chapter 36.70A RCW, the policy of RCW
35 90.58.020 and the applicable guidelines, and chapter 43.21C RCW as it
36 relates to the adoption of master programs and amendments under chapter
37 90.58 RCW.

38 (c) If the appeal to the growth management hearings board concerns

1 a shoreline of state-wide significance, the board shall uphold the
2 decision by the department unless the board, by clear and convincing
3 evidence, determines that the decision of the department is
4 inconsistent with the policy of RCW 90.58.020 and the applicable
5 guidelines.

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

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

11 (3)(a) Except as provided in subsection (2) of this section, any
12 local government not planning under RCW 36.70A.040 that is aggrieved by
13 the department's decision to approve, reject, or modify ((a)) its
14 proposed master program or master program ((adjustment)) amendment may
15 appeal the department's decision by filing a petition to the shorelines
16 hearings board within thirty days of the date of the department s
17 written notice to the local government of the department s decision to
18 approve, reject, or modify a proposed master program or master program
19 amendment as provided in RCW 90.58.090(2).

20 (b) In an appeal relating to shorelines, the shorelines hearings
21 board shall review the proposed master program or master program
22 ((adjustment)) amendment and, after full consideration of the
23 presentations of the local government and the department, shall
24 determine the validity of the local government's ((adjustment)) master
25 program or amendment in light of the policy of RCW 90.58.020 and the
26 applicable guidelines.

27 (c) In an appeal relating to shorelines of state-wide significance,
28 the shorelines hearings board shall uphold the decision by the
29 department unless ((a local government shall)) the board determines, by
30 clear and convincing evidence ((and argument, persuade the board)) that
31 the decision of the department is inconsistent with the policy of RCW
32 90.58.020 and the applicable guidelines.

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

37 (e) Whenever possible, the review by the shorelines hearings board
38 shall be heard within the county where the land subject to the proposed
39 master program or master program ((adjustment)) amendment is primarily

1 located. The department and any local government aggrieved by a final
2 decision of the hearings board may appeal the decision to ~~((the))~~
3 superior court ~~((of Thurston county))~~ as provided in chapter 34.05 RCW.

4 ~~((+3+))~~ (4) A master program amendment shall become effective after
5 the approval of the department or after the decision of the shorelines
6 hearings board to uphold the master program or master program
7 ~~((adjustment))~~ amendment, provided that the board may remand the master
8 program or master program adjustment to the local government or the
9 department for modification prior to the final adoption of the master
10 program or master program ~~((adjustment))~~ amendment.

11 **Sec. 127.** RCW 34.05.461 and 1989 c 175 s 19 are each amended to
12 read as follows:

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

14 (a) If the presiding officer is the agency head or one or more
15 members of the agency head, the presiding officer may enter an initial
16 order if further review is available within the agency, or a final
17 order if further review is not available;

18 (b) If the presiding officer is a person designated by the agency
19 to make the final decision and enter the final order, the presiding
20 officer shall enter a final order; and

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

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

29 (3) Initial and final orders shall include a statement of findings
30 and conclusions, and the reasons and basis therefor, on all the
31 material issues of fact, law, or discretion presented on the record,
32 including the remedy or sanction and, if applicable, the action taken
33 on a petition for a stay of effectiveness. Any findings based
34 substantially on credibility of evidence or demeanor of witnesses shall
35 be so identified. Findings set forth in language that is essentially
36 a repetition or paraphrase of the relevant provision of law shall be
37 accompanied by a concise and explicit statement of the underlying
38 evidence of record to support the findings. The order shall also

1 include a statement of the available procedures and time limits for
2 seeking reconsideration or other administrative relief. An initial
3 order shall include a statement of any circumstances under which the
4 initial order, without further notice, may become a final order.

5 (4) Findings of fact shall be based exclusively on the evidence of
6 record in the adjudicative proceeding and on matters officially noticed
7 in that proceeding. Findings shall be based on the kind of evidence on
8 which reasonably prudent persons are accustomed to rely in the conduct
9 of their affairs. Findings may be based on such evidence even if it
10 would be inadmissible in a civil trial. However, the presiding officer
11 shall not base a finding exclusively on such inadmissible evidence
12 unless the presiding officer determines that doing so would not unduly
13 abridge the parties' opportunities to confront witnesses and rebut
14 evidence. The basis for this determination shall appear in the order.

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

18 (6) If a person serving or designated to serve as presiding officer
19 becomes unavailable for any reason before entry of the order, a
20 substitute presiding officer shall be appointed as provided in RCW
21 34.05.425. The substitute presiding officer shall use any existing
22 record and may conduct any further proceedings appropriate in the
23 interests of justice.

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

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

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

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

36 **Sec. 128.** RCW 34.05.514 and 1994 c 257 s 23 are each amended to
37 read as follows:

38 (1) Except as provided in subsection (2) of this section (~~and RCW~~

1 36.70A.300(3)), proceedings for review under this chapter shall be
2 instituted by filing a petition in the superior court, at the
3 petitioner's option, for (a) Thurston county, (b) the county of the
4 petitioner's residence or principal place of business, or (c) in any
5 county where the property owned by the petitioner and affected by the
6 contested decision is located.

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

11 NEW SECTION. **Sec. 129.** A new section is added to chapter 36.70A
12 RCW to read as follows:

13 For shorelines of the state, the goals and policies of the
14 shoreline management act as set forth in RCW 90.58.020 are added as one
15 of the goals of this chapter as set forth in RCW 36.70A.020. The
16 comprehensive plan of a county or city planning under RCW 36.70A.040
17 must also include a separate shorelines element consisting of the
18 goals, policies, and use guidelines segments of the shoreline master
19 program adopted under chapter 90.58 RCW. All other portions of the
20 shoreline master program, including regulations, shall be considered
21 part of the county's or city's development regulations.

22 The shoreline master program shall be adopted pursuant to the
23 procedures of chapter 90.58 RCW rather than the procedures set forth in
24 this chapter for the adoption of a comprehensive plan and development
25 regulations, including approval by the department of ecology, except
26 that an appeal from the actions by the department of ecology are
27 appealable to the appropriate growth management hearings board rather
28 than the shorelines hearings board.

29 **Sec. 130.** RCW 36.70A.130 and 1990 1st ex.s. c 17 s 13 are each
30 amended to read as follows:

31 (1) Each comprehensive land use plan and development regulations
32 shall be subject to continuing evaluation and review by the county or
33 city that adopted them.

34 Any amendment or revision to a comprehensive land use plan shall
35 conform to this chapter, and any change to development regulations
36 shall be consistent with and implement the comprehensive plan.

37 (2)(a) Each county and city shall establish and broadly disseminate

1 to the public a public participation program identifying procedures
2 whereby proposed amendments or revisions of the comprehensive plan are
3 considered by the governing body of the county or city no more
4 frequently than once every year except under the following
5 circumstances:

6 (i) The initial adoption of a subarea plan; and

7 (ii) The adoption or amendment of a shoreline master program under
8 the procedures set forth in chapter 90.58 RCW.

9 (b) All proposals shall be considered by the governing body
10 concurrently so the cumulative effect of the various proposals can be
11 ascertained. However, after appropriate public participation, a county
12 or city may adopt amendments or revisions to its comprehensive plan
13 that conform with this chapter whenever an emergency exists or to
14 resolve an appeal of a comprehensive plan filed with the growth
15 management hearings board or with the court.

16 (3) Each county that designates urban growth areas under RCW
17 36.70A.110 shall review, at least every ten years, its designated urban
18 growth area or areas, and the densities permitted within both the
19 incorporated and unincorporated portions of each urban growth area. In
20 conjunction with this review by the county, each city located within an
21 urban growth area shall review the densities permitted within its
22 boundaries, and the extent to which the urban growth occurring within
23 the county has located within each city and the unincorporated portions
24 of the urban growth areas. The county comprehensive plan designating
25 urban growth areas, and the densities permitted in the urban growth
26 areas by the comprehensive plans of the county and each city located
27 within the urban growth areas, shall be revised to accommodate the
28 urban growth projected to occur in the county for the succeeding
29 twenty-year period.

30 **Sec. 131.** RCW 36.70A.290 and 1994 c 257 s 2 and 1994 c 249 s 26
31 are each reenacted and amended to read as follows:

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

35 (2) All petitions relating to whether or not an adopted
36 comprehensive plan, development regulation, or permanent amendment
37 thereto, is in compliance with the goals and requirements of this
38 chapter or chapter 90.58 or 43.21C RCW must be filed within sixty days

1 after publication by the legislative bodies of the county or city.

2 (a) Except as provided in (c) of this subsection, the date of
3 publication for a city shall be the date the city publishes the
4 ordinance, or summary of the ordinance, adopting the comprehensive plan
5 or development regulations, or amendment thereto, as is required to be
6 published.

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

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

14 (c) For local governments planning under RCW 36.70A.040, promptly
15 after approval or disapproval of a local government s shoreline master
16 program or amendment thereto by the department of ecology as provided
17 in RCW 90.58.090, the local government shall publish a notice that the
18 shoreline master program or amendment thereto has been approved or
19 disapproved by the department of ecology. For purposes of this
20 section, the date of publication for the adoption or amendment of a
21 shoreline master program is the date the local government publishes
22 notice that the shoreline master program or amendment thereto has been
23 approved or disapproved by the department of ecology.

24 (3) Unless the board dismisses the petition as frivolous or finds
25 that the person filing the petition lacks standing, the board shall,
26 within ten days of receipt of the petition, set a time for hearing the
27 matter.

28 (4) The board shall base its decision on the record developed by
29 the city, county, or the state and supplemented with additional
30 evidence if the board determines that such additional evidence would be
31 necessary or of substantial assistance to the board in reaching its
32 decision.

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

36 **Sec. 132.** RCW 36.70A.320 and 1991 sp.s. c 32 s 13 are each amended
37 to read as follows:

38 (1) Except as provided in subsection (2) of this section,

1 comprehensive plans and development regulations, and amendments
2 thereto, adopted under this chapter are presumed valid upon adoption.
3 In any petition under this chapter, the board, after full consideration
4 of the petition, shall determine whether there is compliance with the
5 requirements of this chapter. In making its determination, the board
6 shall consider the criteria adopted by the department under RCW
7 36.70A.190(4). The board shall find compliance unless it finds by a
8 preponderance of the evidence that the state agency, county, or city
9 erroneously interpreted or applied this chapter.

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

13 **Sec. 133.** RCW 82.02.090 and 1990 1st ex.s. c 17 s 48 are each
14 amended to read as follows:

15 Unless the context clearly requires otherwise, the following
16 definitions shall apply ~~((in RCW 82.02.050 through 82.02.090))~~
17 throughout this chapter:

18 (1) "Development" means any proposed change in use of land for
19 which review of environmental impacts is required under chapter 43.21C
20 RCW, any proposed construction or expansion of a building, structure,
21 or use, or any proposed change in use of a building or structure.

22 (2) "Development activity" means any construction or expansion of
23 a building, structure, or use, any change in use of a building or
24 structure, or any changes in the use of land, that creates additional
25 demand and need for public facilities.

26 ~~((+2))~~ (3) "Development approval" means any written authorization
27 from a county, city, or town which authorizes the commencement of
28 development activity.

29 ~~((+3))~~ (4) "Environmental analysis" means review under chapter
30 43.21C RCW of environmental impacts of an action required or authorized
31 by chapter 36.70A RCW.

32 (5) "Environmental analysis fees" means a payment of money imposed
33 on development as a condition of development approval to pay for
34 environmental analysis needed to establish the system capacity
35 projected to accommodate implementation of a comprehensive plan adopted
36 under chapter 36.70A RCW.

37 (6) "Impact fee" means a payment of money imposed upon development
38 as a condition of development approval to pay for public facilities

1 needed to serve new growth and development, and that is reasonably
2 related to the new development that creates additional demand and need
3 for public facilities, that is a proportionate share of the cost of the
4 public facilities, and that is used for facilities that reasonably
5 benefit the new development. "Impact fee" does not include a
6 reasonable permit or application fee.

7 ~~((+4))~~ (7) "Owner" means the owner of record of real property,
8 although when real property is being purchased under a real estate
9 contract, the purchaser shall be considered the owner of the real
10 property if the contract is recorded.

11 ~~((+5))~~ (8) "Proportionate share" means that portion of the cost of
12 public facility improvements that are reasonably related to the service
13 demands and needs of new development.

14 ~~((+6))~~ (9) "Project improvements" mean site improvements and
15 facilities that are planned and designed to provide service for a
16 particular development project and that are necessary for the use and
17 convenience of the occupants or users of the project, and are not
18 system improvements. No improvement or facility included in a capital
19 facilities plan approved by the governing body of the county, city, or
20 town shall be considered a project improvement.

21 ~~((+7))~~ (10) "Public facilities" means the following capital
22 facilities owned or operated by government entities: (a) Public
23 streets and roads; (b) publicly owned parks, open space, and recreation
24 facilities; (c) school facilities; and (d) fire protection facilities
25 in jurisdictions that are not part of a fire district.

26 ~~((+8))~~ (11) "Service area" means a geographic area defined by a
27 county, city, town, or intergovernmental agreement in which a defined
28 set of public facilities provide service to development within the
29 area. Service areas shall be designated on the basis of sound planning
30 or engineering principles.

31 ~~((+9))~~ (12) "System capacity" means the capacity of a county,
32 city, or town to accommodate new development determined by the limiting
33 capacities of specific natural or built systems identified in the
34 comprehensive plan adopted pursuant to RCW 36.70A.040.

35 (13) "System improvements" mean public facilities that are included
36 in the capital facilities plan and are designed to provide service to
37 service areas within the community at large, in contrast to project
38 improvements.

1 NEW SECTION. **Sec. 134.** A new section is added to chapter 82.02
2 RCW to read as follows:

3 Except only as expressly provided in RCW 67.28.180 and 67.28.190
4 and in chapter 82.14 RCW, the state preempts the field of imposing
5 taxes upon retail sales of tangible personal property, the use of
6 tangible personal property, parimutuel wagering authorized pursuant to
7 RCW 67.16.060, conveyances, and cigarettes, and no county, town, or
8 other municipal subdivision has the right to impose taxes of that
9 nature.

10 **Sec. 135.** RCW 82.02.020 and 1990 1st ex.s. c 17 s 42 are each
11 amended to read as follows:

12 (~~Except only as expressly provided in RCW 67.28.180 and 67.28.190~~
13 ~~and the provisions of chapter 82.14 RCW, the state preempts the field~~
14 ~~of imposing taxes upon retail sales of tangible personal property, the~~
15 ~~use of tangible personal property, parimutuel wagering authorized~~
16 ~~pursuant to RCW 67.16.060, conveyances, and cigarettes, and no county,~~
17 ~~town, or other municipal subdivision shall have the right to impose~~
18 ~~taxes of that nature.)) (1) Except as provided in ((RCW 82.02.050~~
19 ~~through 82.02.090)) this chapter, ((no)) a county, city, town, or other
20 municipal corporation shall not impose any tax, fee, or charge, either
21 direct or indirect, on the construction or reconstruction of
22 residential buildings, commercial buildings, industrial buildings, or
23 on any other building or building space or appurtenance thereto, or on
24 the development, subdivision, classification, or reclassification of
25 land. However, this section does not preclude dedications of land or
26 easements within the proposed development or plat which the county,
27 city, town, or other municipal corporation can demonstrate are
28 reasonably necessary as a direct result of the proposed development or
29 plat to which the dedication of land or easement is to apply.~~

30 (2) This section does not prohibit voluntary agreements with
31 (~~counties, cities, towns~~) a county, city, town, or other municipal
32 corporation((s)) that allows a payment in lieu of a dedication of land
33 or to mitigate a direct impact that has been identified as a
34 consequence of a proposed development, subdivision, or plat. A local
35 government shall not use such voluntary agreements for local off-site
36 transportation improvements within the geographic boundaries of the
37 area or areas covered by an adopted transportation program authorized
38 by chapter 39.92 RCW. Any such voluntary agreement is subject to the

1 following provisions:

2 ~~((1+))~~ (a) The payment shall be held in a reserve account and may
3 only be expended to fund a capital improvement agreed upon by the
4 parties to mitigate the identified, direct impact;

5 ~~((2+))~~ (b) The payment shall be expended in all cases within five
6 years of collection; and

7 ~~((3+))~~ (c) Any payment not so expended shall be refunded with
8 interest at the rate applied to judgments to the property owners of
9 record at the time of the refund; however, if the payment is not
10 expended within five years due to delay attributable to the developer,
11 the payment shall be refunded without interest.

12 ~~((No))~~ (3) A county, city, town, or other municipal corporation
13 shall not require any payment as part of such a voluntary agreement
14 which the county, city, town, or other municipal corporation cannot
15 establish is reasonably necessary as a direct result of the proposed
16 development or plat.

17 (4)(a) Nothing in this section prohibits cities, towns, counties,
18 or other municipal corporations from collecting reasonable fees from an
19 applicant for a permit or other governmental approval to cover the cost
20 to the city, town, county, or other municipal corporation of processing
21 applications, inspecting and reviewing plans, or preparing detailed
22 statements required by chapter 43.21C RCW.

23 (b) This section does not limit the existing authority of any
24 county, city, town, or other municipal corporation to impose special
25 assessments on property specifically benefitted thereby in the manner
26 prescribed by law.

27 (c) Nothing in this section prohibits counties, cities, or towns
28 from imposing or permits counties, cities, or towns to impose water,
29 sewer, natural gas, drainage utility, and drainage system charges(~~(+
30 PROVIDED, That)~~). No such charge (~~(shall)~~) may exceed the
31 proportionate share of such utility or system's capital costs which the
32 county, city, or town can demonstrate are attributable to the property
33 being charged(~~(+ PROVIDED FURTHER, That)~~). These provisions shall not
34 be interpreted to expand or contract any existing authority of
35 counties, cities, or towns to impose such charges.

36 (d) Nothing in this section prohibits a transportation benefit
37 district from imposing fees or charges authorized in RCW 36.73.120 nor
38 prohibits the legislative authority of a county, city, or town from
39 approving the imposition of such fees within a transportation benefit

1 district.

2 (e) Nothing in this section prohibits counties, cities, or towns
3 from imposing transportation impact fees authorized pursuant to chapter
4 39.92 RCW.

5 (f) Nothing in this section prohibits counties, cities, or towns
6 from requiring property owners to provide relocation assistance to
7 tenants under RCW 59.18.440 and 59.18.450.

8 (5) This section does not apply to special purpose districts formed
9 and acting pursuant to Titles 54, 56, 57, or 87 RCW, nor is the
10 authority conferred by these titles affected.

11 NEW SECTION. **Sec. 136.** (1) The legislature finds that:

12 (a) As of the effective date of this section, twenty-nine counties
13 and two hundred eight cities are conducting comprehensive planning
14 under the growth management act, chapter 36.70A RCW, which together
15 comprise over ninety percent of the state's population;

16 (b) Comprehensive plans for many of the jurisdictions were due by
17 July 1, 1994, and the remaining jurisdictions must complete plans under
18 due dates ranging from October 1994 to September 1997;

19 (c) Concurrently with these comprehensive planning activities,
20 local governments must conduct several other planning requirements
21 under the growth management act, such as the adoption of capital
22 facilities plans, urban growth areas, and development regulations;

23 (d) Local governments must also comply with the state environmental
24 policy act, chapter 43.21C RCW, in the development of comprehensive
25 plans;

26 (e) The combined activities of comprehensive planning and the state
27 environmental policy act present a serious fiscal burden upon counties,
28 cities, and towns;

29 (f) This fiscal burden will be experienced over a relatively short
30 period of time, whereas the benefits of growth management and
31 environmental protection achieved through the comprehensive plans will
32 accrue to each area over a much longer period in the future; and

33 (g) The revenues from fees assessed at the time of county, city, or
34 town government approval of projects that are consistent with the
35 comprehensive plan may provide the basis for these local governments to
36 issue both general obligations and revenue obligations in order to
37 provide the early funding necessary to carry out their comprehensive
38 planning and accompanying environmental analysis responsibilities.

1 (2) Therefore it is the intent of the legislature by enacting this
2 chapter to authorize counties, cities, and towns planning under RCW
3 36.70A.040 to assess environmental analysis fees at the time of project
4 review, issue both general indebtedness and revenue indebtedness
5 payable from the environmental analysis fees, and assist in financing
6 the enhanced environmental review of comprehensive plans, subarea
7 plans, and development regulations.

8 NEW SECTION. Sec. 137. (1) A county, city, or town planning under
9 RCW 36.70A.040 may impose environmental analysis fees on development to
10 partially finance the enhanced environmental analysis of its
11 comprehensive plan, subarea plans, and development regulations, as
12 provided in section 103 of this act.

13 (2) Environmental analysis fees may not be assessed or collected on
14 development that is categorically exempt from a threshold determination
15 under chapter 43.21C RCW.

16 (3) Environmental analysis fees shall be proportionate to the
17 amount of system capacity or capacities projected to be consumed by the
18 new development.

19 (4) Environmental analysis fees shall be collected and spent only
20 for the costs of environmental analysis upon which the system capacity
21 forecast in a comprehensive plan adopted pursuant to RCW 36.70A.070 or
22 subarea plan is based.

23 (5) Environmental analysis fees shall not be used to recover more
24 than seventy-five percent of the costs previously incurred by a county,
25 city, or town for environmental analysis required to establish the
26 system capacity forecast in a comprehensive plan or subarea plan.

27 NEW SECTION. Sec. 138. A county, city, or town in its ordinance
28 establishing environmental analysis fees shall:

29 (1) Include a schedule of environmental analysis fees based upon a
30 formula or other method of calculating such fees. The formula or
31 calculation shall incorporate at least the following:

32 (a) The amount of system capacity to be used by the new
33 development;

34 (b) The total cost of environmental analysis required to establish
35 the system capacity forecast in the comprehensive plan; and

36 (c) The amount of the total cost of environmental analysis
37 allocated to each capacity element used to determine the amount of the

1 fee;

2 (2) Allow the county, city, or town to adjust the standard fee at
3 the time the fee is imposed to consider unusual circumstances in
4 specific cases to ensure that environmental analysis fees are imposed
5 fairly;

6 (3) Not assess or collect environmental analysis fees to recover
7 costs of environmental analysis that have already been fully recovered
8 through environmental impact fees or through other sources.

9 NEW SECTION. **Sec. 139.** A county, city, or town planning under RCW
10 36.70A.040 may issue general obligations and revenue obligations
11 payable from environmental analysis fees to assist in financing the
12 enhanced environmental review of comprehensive plans, subarea plans,
13 and development regulations that is in sufficient detail to allow the
14 environmental impact statement to be used in whole or in part by an
15 applicant for a development within the geographic area covered by the
16 plan or regulations that receives the enhanced environmental review.
17 The comprehensive plan, subarea plan, or development regulations must
18 include mechanisms to monitor the usefulness of the enhanced
19 environmental review by applicants for development permits authorizing
20 development consistent with the plan and regulations.

21 The obligations issued to finance the enhanced environmental review
22 may not have a maturity in excess of ten years. The obligations shall
23 be issued as provided in chapter 39.46 RCW.

24 At least twenty-five percent of the funding for the enhanced
25 environmental review must come from sources other than the
26 environmental analysis fees.

27 NEW SECTION. **Sec. 140.** A new section is added to chapter 36.70A
28 RCW to read as follows:

29 The growth management planning and environmental review loan fund
30 is hereby established in the state treasury. Moneys may be placed in
31 the fund from the proceeds of bond sales, tax revenues, budget
32 transfers, federal appropriations, gifts, or any other lawful source.
33 Moneys in the fund may be spent only after appropriation. Moneys in
34 the fund shall be used to make low-interest loans to counties and
35 cities for the purposes set forth in section 103 of this act or RCW
36 43.21C.031. Loans from the fund shall be made by loan agreement under
37 chapter 39.69 RCW.

1 time needed to obtain local and state land use permits and has made it
2 difficult for the public to know how and when to provide timely
3 comments on land use proposals that require multiple permits and have
4 separate environmental review processes.

5 NEW SECTION. **Sec. 202.** Unless the context clearly requires
6 otherwise, the definitions in this section apply throughout this
7 chapter.

8 (1) "Closed record appeal" means an appeal to a local government
9 body or officer, including the legislative body, following an open
10 record hearing and a decision by the body or officer on a development
11 permit application when the appeal is on the record with no or limited
12 new evidence or information allowed to be submitted and only appeal
13 argument allowed.

14 (2) "Development permit" or "development permit application" means
15 any land use or environmental permit or license required from a local
16 government for a project action, including but not limited to building
17 permits, subdivisions, binding site plans, planned unit developments,
18 conditional uses, shoreline substantial development permits, and other
19 land use applications, but does not include proposed amendments to
20 comprehensive plans or the adoption or amendment of development
21 regulations.

22 (3) "Development regulations" means the controls placed on
23 development or land use activities by a local government, including,
24 but not limited to, zoning ordinances, critical areas ordinances,
25 shoreline master programs, official controls, planned unit development
26 ordinances, subdivision ordinances, and binding site plan ordinances,
27 together with any amendments, but does not include decisions to approve
28 a development permit application, even though such decisions may be
29 expressed in a resolution or ordinance of the legislative body of the
30 local government.

31 (4) "Local government" means a county, city, or town.

32 (5) "Open record hearing" means a hearing conducted by a hearing
33 body or officer of the local government that creates a record through
34 testimony and submission of evidence and information, whether the
35 hearing is open to members of the general public for purposes of
36 hearing public comments prior to a decision on a development permit
37 application or is limited to those filing an appeal of a staff
38 decision.

1 NEW SECTION. **Sec. 203.** Not later than December 31, 1996, each
2 local government that does not plan under RCW 36.70A.040 shall provide
3 by ordinance or resolution for review of development permit
4 applications to achieve the following objectives:

5 (1) Combine the environmental review process, both procedural and
6 substantive, with the procedure for review of development permits;

7 (2) Except as provided in RCW 43.21C.075(3), provide for no more
8 than one open record hearing and one closed record appeal; and

9 (3) Eliminate any appeal period for judicial appeals that conflicts
10 with the uniform twenty-one day appeal period provided in section 305
11 of this act.

12 NEW SECTION. **Sec. 204.** Not later than December 31, 1996, each
13 local government planning under RCW 36.70A.040 shall establish by
14 ordinance or resolution an integrated and consolidated development
15 permit process that includes the following required elements:

16 (1) A notice of completion to the applicant as required by RCW
17 36.70A.440 (as recodified by this act);

18 (2) A notice of application to the public and agencies with
19 jurisdiction as required by section 208 of this act;

20 (3) With the exception of a determination of significance, which
21 shall be issued in advance of the agency decision or recommendation on
22 the project action as provided in chapter 43.21C RCW, a single report
23 by the decision maker that combines the local government's threshold
24 determination, if required under chapter 43.21C RCW, with the agency's
25 decision or recommendation on all development permits included in the
26 consolidated permit review and also includes any mitigation required
27 pursuant to the development regulations or the agency's authority under
28 RCW 43.21C.060;

29 (4) Except as provided in section 211 of this act, the
30 consolidation into a single review process of all development permits
31 requested by an applicant for part or all of a project action,
32 including no more than one consolidated open record hearing before a
33 single hearing body or officer;

34 (5) Except for the appeal of a determination of significance as
35 provided in RCW 43.21C.075, if a local government elects to provide an
36 appeal of its threshold determinations or development permit decisions,
37 the local government shall provide for no more than one consolidated
38 open record hearing before a single hearing body or officer. The local

1 government need not provide for any further appeal. If a closed record
2 appeal is provided, the appeal shall be on the record before a single
3 decision-making body or officer;

4 (6) A notice of decision as required by section 210 of this act and
5 issued within the time period provided in RCW 36.70A.065 (as recodified
6 by this act) and section 207 of this act; and

7 (7) Any other provisions not inconsistent with the requirements of
8 this chapter or chapter 43.21C RCW.

9 **Sec. 205.** RCW 36.70A.440 and 1994 c 257 s 4 are each amended to
10 read as follows:

11 (~~Each city and county~~) (1) Within twenty-eight days after
12 receiving a development permit application, a local government planning
13 pursuant to RCW 36.70A.040 shall~~(, within twenty working days of~~
14 ~~receiving a development permit application as defined in RCW~~
15 ~~36.70A.030(7),)~~ mail or provide in person a written ~~((notice))~~
16 determination to the applicant, stating either:

17 (a) That the application is complete; or

18 (b) That the application is incomplete and what is necessary to
19 make the application complete.

20 (2)(a) An application shall be deemed complete under this section
21 if the local government does not provide a written determination to the
22 applicant that the application is incomplete as provided in subsection
23 (1)(b) of this section.

24 (b) Within ten days after an applicant has submitted to a local
25 government additional information identified by the local government as
26 being necessary for a complete application, the local government shall
27 notify the applicant whether the information submitted adequately
28 responds to the notice given under (a) of this subsection and thereby
29 makes the application complete or what additional information is
30 necessary.

31 (3) To the extent known by the ~~((city or county))~~ local government,
32 the ~~((notice))~~ local government shall identify other agencies of local,
33 state, or federal governments that may have jurisdiction over some
34 aspect of the application.

35 **Sec. 206.** RCW 36.70A.065 and 1994 c 257 s 3 are each amended to
36 read as follows:

37 Development regulations adopted pursuant to RCW 36.70A.040 shall

1 establish time periods consistent with section 207 of this act for
2 local government actions on specific development permit applications
3 and provide timely and predictable procedures to determine whether a
4 completed development permit application meets the requirements of
5 those development regulations. Such development regulations shall
6 specify the contents of a completed development permit application
7 necessary for the application of such time periods and procedures.

8 NEW SECTION. **Sec. 207.** (1) Except as otherwise provided in
9 subsection (2) of this section, a local government planning under RCW
10 36.70A.040 shall issue its notice of final decision within one hundred
11 twenty days after the local government notifies the applicant for a
12 project that the application is complete or is deemed complete, as
13 provided in RCW 36.70A.440 (as recodified by this act). In determining
14 the number of days that have elapsed after the local government has
15 notified the applicant that the application is complete, the following
16 periods shall be excluded:

17 (a) Any period during which an environmental impact statement is
18 being prepared following a determination of significance pursuant to
19 chapter 43.21C RCW, if the local government by ordinance or resolution
20 has established time periods for completion of environmental impact
21 statements, or if the local government and the applicant in writing
22 agree to a time period for completion of an environmental impact
23 statement; and

24 (b) A period, not to exceed sixty days, to consider and decide
25 closed record appeals, unless the parties voluntarily agree to extend
26 the period.

27 (2) The time limits established by subsection (1) of this section
28 do not apply if a development permit:

29 (a) Requires an amendment to the comprehensive plan or a
30 development regulation;

31 (b) Involves a new fully contained community as provided in RCW
32 36.70A.350, a master planned resort as provided in RCW 36.70A.360, or
33 the siting of an essential public facility as provided in RCW
34 36.70A.200; or

35 (c) Involves substantial revisions to the project proposal at the
36 applicant's request, in which case the time period shall start from the
37 date at which the revised project application is determined to be
38 complete under RCW 36.70A.440 (as recodified by this act).

1 (3) If the local government has failed to issue its notice of final
2 decision within one hundred twenty days after the local government
3 notifies the applicant for a project that the application is complete
4 or is deemed complete, as provided in RCW 36.70A.440 (as recodified by
5 this act), but not including time excluded under subsections (1) and
6 (2) of this section the application shall be deemed approved, in the
7 absence of extraordinary circumstances.

8 (4) After an application is complete as provided in RCW 36.70A.440
9 (as recodified by this act), the local government may not require the
10 applicant to submit additional information. The local government may,
11 in the course of processing the application, request the applicant to
12 clarify, explain, or correct information the applicant has submitted.

13 (5) Failure of an applicant to submit adequate information required
14 pursuant to RCW 36.70A.440 (as recodified by this act) may constitute
15 grounds for disapproving the application.

16 (6) The notice of completeness may include the following as
17 optional information:

18 (a) A preliminary determination of those development regulations
19 that will be used for project mitigation;

20 (b) A preliminary determination of consistency, as provided under
21 section 101 of this act; or

22 (c) Other information the local government chooses to include.

23 (7) A local government may require the applicant for a development
24 permit to designate a single person or entity to receive notice
25 required by this section.

26 NEW SECTION. **Sec. 208.** (1) Not later than December 31, 1996, a
27 local government planning under RCW 36.70A.040 shall provide a notice
28 of application to the public and the departments and agencies with
29 jurisdiction as provided in this section.

30 (2) The notice of application shall include the following:

31 (a) The date of application;

32 (b) The proposed project action and the development permits
33 included in the application and, if applicable, any studies requested
34 under RCW 36.70A.440 (as recodified by this act) or section 207 of this
35 act;

36 (c) The identification of other development or related permits not
37 included in the application to the extent known by the local
38 government;

1 (d) A public comment period of not less than fourteen nor more than
2 twenty-eight days following the date of notice of application, and
3 statements of the right of any person to request a copy of the decision
4 once made and any appeal rights;

5 (e) The date for open record hearing, if applicable and scheduled
6 at the date of notice of the application;

7 (f) A statement of the preliminary determination, if one has been
8 made at the time of notice, of those development regulations that will
9 be used for project mitigation and of consistency as provided in
10 section 101 of this act; and

11 (g) Any other information determined appropriate by the local
12 government, including the optional information required in
13 section 207(5) of this act.

14 (3) If an open record hearing is required for the requested
15 development permits, the notice of application shall be provided at
16 least fourteen days prior to the open record hearing.

17 (4) A local government shall use reasonable methods to give the
18 notice of application to the public and agencies with jurisdiction and
19 may use its existing notice procedures. A local government may use
20 different types of notice for different categories of development
21 permits or types or project actions. Examples of reasonable methods to
22 inform the public are:

23 (a) Posting the property for site-specific proposals;

24 (b) Publishing notice in the newspaper of general circulation in
25 the local government or general area where the proposal is located;

26 (c) Notifying public or private groups with known interest in a
27 certain proposal or in the type of proposal being considered;

28 (d) Notifying the news media;

29 (e) Placing notices in appropriate regional or neighborhood
30 newspapers or trade journals;

31 (f) Publishing notice in agency newsletters or sending notice to
32 agency mailing lists, either general lists or lists for specific
33 proposals or subject areas; and

34 (g) Mailing to neighboring property owners.

35 (5) A notice of application shall not be required for development
36 permits that are categorically exempt under chapter 43.21C RCW, unless
37 an open record hearing is required.

38 (6) The local government may not issue its threshold determination
39 or issue a decision or recommendation on a development permit until

1 expiration of the public comment period. Comments shall be as specific
2 as possible. If an agency with jurisdiction or a member of the public
3 does not respond with written comments within the public comment
4 period, the local government shall assume that such agency or person
5 has no objection to the proposed development permit if the procedures
6 of this section have been met.

7 NEW SECTION. **Sec. 209.** (1) Each local government planning under
8 RCW 36.70A.040 shall establish a permit review process that provides
9 for the integrated and consolidated review and decision on two or more
10 development permits relating to a proposed project action, including a
11 single application review and approval process covering all development
12 permits requested by an applicant for all or part of a project action
13 and a designated permit coordinator. If an applicant elects the
14 consolidated permit review process, the notice of completion, notice of
15 application, and notice of final decision must include all development
16 permits being reviewed through the consolidated permit review process.

17 (2) Consolidated permit review may provide different procedures for
18 different categories of development permits, but if a project action
19 requires development permits from more than one category, the local
20 government shall provide for consolidated permit review with a single
21 open record hearing and no more than one closed record appeal. Each
22 local government shall determine which development permits are subject
23 to an open record hearing and a closed record appeal. Examples of
24 categories of development permits include but are not limited to:

25 (a) Categorically exempt proposals, such as variances, lot boundary
26 adjustments, and certain construction permits, which require no
27 environmental review or public notice;

28 (b) Administrative permits that require environmental review, but
29 no open record hearing except on appeal;

30 (c) Administrative permits that require a threshold determination
31 and an open record hearing; and

32 (d) Permits that require environmental review and a decision by the
33 local government legislative body.

34 (3) A local government is not required to provide for appeals. If
35 provided, an appeal must be filed within fourteen days after notice of
36 the decision being appealed. The applicant for a development permit is
37 deemed to be a participant in any comment period, open record hearing,
38 and closed record appeal.

1 (4) A local government may provide by ordinance or resolution for
2 the same or a different decision maker or hearing body or officer for
3 different categories of development permits. In the case of
4 consolidated development permit review, the local government shall
5 specify which decision makers shall make the decision or
6 recommendation, conduct the hearing, or decide the appeal to ensure
7 that consolidated permit review occurs as provided in this section.
8 The consolidated permit review may combine an open record public
9 hearing with an open record appeal hearing. In such cases, the local
10 government by ordinance or resolution shall specify which development
11 permits, if any, shall be subject to a closed record appeal.

12 (5) Each local government planning under RCW 36.70A.040 shall adopt
13 procedures for administrative interpretation of its development
14 regulations.

15 NEW SECTION. **Sec. 210.** A local government planning under RCW
16 36.70A.040 shall provide a notice of decision, which may be a copy of
17 the report, recommendation, or decision, to the applicant and to any
18 person requesting notice of the decision prior to the rendering of the
19 decision. The local government may publish or otherwise provide for
20 additional notice of its decision.

21 NEW SECTION. **Sec. 211.** A local government by ordinance or
22 resolution may exclude the following development permits from the
23 provisions of RCW 36.70A.440 (as recodified by this act), 36.70A.065
24 (as recodified by this act), sections 204, and 207 through 210 of this
25 act:

26 (1) Variances, lot line or boundary adjustments, short subdivision
27 approval, building and other construction permits categorically exempt
28 from environmental review under chapter 43.21C RCW or similar
29 administrative approvals; and

30 (2) Landmark designations, street vacations, or other approvals
31 relating to the use of public areas or facilities, or other development
32 permits that the local government by ordinance or resolution has
33 determined present special circumstances that warrant a review process
34 different from that provided in RCW 36.70A.440 (as recodified by this
35 act), 36.70A.065 (as recodified by this act), sections 204, and 207
36 through 210 of this act.

1 NEW SECTION. **Sec. 212.** A local government not planning under RCW
2 36.70A.040 may incorporate some or all of the provisions of sections
3 204 and 207 through 210 of this act and RCW 36.70A.065 and 36.70A.440
4 (as recodified by this act) into its procedures for review of
5 development permits or other project actions.

6 NEW SECTION. **Sec. 213.** (1) Each local government is encouraged to
7 adopt further project review provisions to provide prompt, coordinated
8 review and ensure accountability to applicants and the public,
9 including expedited review for development permits for projects that
10 are consistent with adopted development regulations and within the
11 capacity of system-wide infrastructure improvements.

12 (2) Nothing in this chapter is intended or shall be construed to
13 prevent a local government from requiring by rule, ordinance, or
14 resolution a preapplication conference or meeting, design review, or
15 hearing on some or all proposed projects to obtain public comments on
16 scoping or a draft environmental impact statement pursuant to chapter
17 43.21C RCW and its applicable rules.

18 (3) Each local government is encouraged to develop a system of
19 professional certification whereby qualified engineers or other
20 professionals certify an application's compliance with adopted
21 development regulations for the purpose of expediting or eliminating
22 certain aspects of agency review of compliance with those regulations.

23 (4) Each local government shall adopt procedures to monitor and
24 enforce permit decisions and conditions.

25 (5) Nothing in this chapter modifies any independent statutory
26 authority for a government agency to appeal a development permit issued
27 by a local government.

28 NEW SECTION. **Sec. 214.** A new section is added to chapter 64.40
29 RCW to read as follows:

30 A local government is not liable for damages under this chapter due
31 to the local government's failure to make a final decision within the
32 time limits established in section 207 of this act.

33 **Sec. 215.** RCW 58.17.090 and 1981 c 293 s 5 are each amended to
34 read as follows:

35 (1) Upon receipt of an application for preliminary plat approval
36 the administrative officer charged by ordinance with responsibility for

1 administration of regulations pertaining to platting and subdivisions
2 shall provide public notice and set a date for a public hearing.
3 Except as provided in section 208 of this act, at a minimum, notice of
4 the hearing shall be given in the following manner:

5 ~~((1))~~ (a) Notice shall be published not less than ten days prior
6 to the hearing in a newspaper of general circulation within the county
7 and a newspaper of general circulation in the area where the real
8 property which is proposed to be subdivided is located; and

9 ~~((2))~~ (b) Special notice of the hearing shall be given to
10 adjacent landowners by any other reasonable method local authorities
11 deem necessary. Adjacent landowners are the owners of real property,
12 as shown by the records of the county assessor, located within three
13 hundred feet of any portion of the boundary of the proposed
14 subdivision. If the owner of the real property which is proposed to be
15 subdivided owns another parcel or parcels of real property which lie
16 adjacent to the real property proposed to be subdivided, notice under
17 this subsection (1)(b) shall be given to owners of real property
18 located within three hundred feet of any portion of the boundaries of
19 such adjacently located parcels of real property owned by the owner of
20 the real property proposed to be subdivided.

21 (2) All hearings shall be public. All hearing notices shall
22 include a description of the location of the proposed subdivision. The
23 description may be in the form of either a vicinity location sketch or
24 a written description other than a legal description.

25 **Sec. 216.** RCW 58.17.092 and 1988 c 168 s 12 are each amended to
26 read as follows:

27 Any notice made under chapter 58.17 or 36.--- (sections 101, 201
28 through 204, and 207 through 213 of this act) RCW that identifies
29 affected property may identify this affected property without using a
30 legal description of the property including, but not limited to,
31 identification by an address, written description, vicinity sketch, or
32 other reasonable means.

33 **Sec. 217.** RCW 58.17.100 and 1981 c 293 s 6 are each amended to
34 read as follows:

35 If a city, town or county has established a planning commission or
36 planning agency in accordance with state law or local charter, such
37 commission or agency shall review all preliminary plats and make

1 recommendations thereon to the city, town or county legislative body to
2 assure conformance of the proposed subdivision to the general purposes
3 of the comprehensive plan and to planning standards and specifications
4 as adopted by the city, town or county. Reports of the planning
5 commission or agency shall be advisory only: PROVIDED, That the
6 legislative body of the city, town or county may, by ordinance, assign
7 to such commission or agency, or any department official or group of
8 officials, such administrative functions, powers and duties as may be
9 appropriate, including the holding of hearings, and recommendations for
10 approval or disapproval of preliminary plats of proposed subdivisions.

11 Such recommendation shall be submitted to the legislative body not
12 later than fourteen days following action by the hearing body. Upon
13 receipt of the recommendation on any preliminary plat the legislative
14 body shall at its next public meeting set the date for the public
15 meeting where it shall consider the recommendations of the hearing body
16 and may adopt or reject the recommendations of such hearing body based
17 on the record established at the public hearing. If, after considering
18 the matter at a public meeting, the legislative body deems a change in
19 the planning commission's or planning agency's recommendation approving
20 or disapproving any preliminary plat is necessary, (~~the change of the~~
21 ~~recommendation shall not be made until~~) the legislative body shall
22 (~~conduct a public hearing and thereupon~~) adopt its own
23 recommendations and approve or disapprove the preliminary plat. (~~Such~~
24 ~~public hearing may be held before a committee constituting a majority~~
25 ~~of the legislative body. If the hearing is before a committee, the~~
26 ~~committee shall report its recommendations on the matter to the~~
27 ~~legislative body for final action.))~~

28 Every decision or recommendation made under this section shall be
29 in writing and shall include findings of fact and conclusions to
30 support the decision or recommendation.

31 A record of all public meetings and public hearings shall be kept
32 by the appropriate city, town or county authority and shall be open to
33 public inspection.

34 Sole authority to approve final plats, and to adopt or amend
35 platting ordinances shall reside in the legislative bodies.

36 **Sec. 218.** RCW 58.17.330 and 1994 c 257 s 6 are each amended to
37 read as follows:

38 (1) As an alternative to those provisions of this chapter requiring

1 a planning commission to hear and issue recommendations for plat
2 approval, the county or city legislative body may adopt a hearing
3 examiner system and shall specify by ordinance the legal effect of the
4 decisions made by the examiner. (~~Except as provided in subsection (2)~~
5 ~~of this section,~~) The legal effect of such decisions shall include one
6 of the following:

7 (a) The decision may be given the effect of a recommendation to the
8 legislative body;

9 (b) The decision may be given the effect of an administrative
10 decision appealable within a specified time limit to the legislative
11 body; or

12 (c) The decision may be given the effect of a final decision of the
13 legislative body.

14 The legislative authority shall prescribe procedures to be followed by
15 a hearing examiner.

16 (2) (~~The legislative body shall specify the legal effect of a~~
17 ~~hearing examiner's procedural determination under the state~~
18 ~~environmental policy act, as defined in RCW 43.21C.075(3)(a). It may~~
19 ~~have the effect under subsection (1) (a) or (b) of this section, or may~~
20 ~~be given the effect of a final decision of the legislative body.~~

21 (3)) Each final decision of a hearing examiner shall be in writing
22 and shall include findings and conclusions, based on the record, to
23 support the decision. Each final decision of a hearing examiner,
24 unless a longer period is mutually agreed to by the applicant and the
25 hearing examiner, shall be rendered within ten working days following
26 conclusion of all testimony and hearings.

27 NEW SECTION. Sec. 219. The legislature finds that the lack of
28 certainty in the approval of development projects can result in a waste
29 of public and private resources, escalate housing costs for consumers
30 and discourage the commitment to comprehensive planning which would
31 make maximum efficient use of resources at the least economic cost to
32 the public. Assurance to a development project applicant that upon
33 government approval the project may proceed in accordance with existing
34 policies and regulations, and subject to conditions of approval, all as
35 set forth in a development agreement, will strengthen the public
36 planning process, encourage private participation and comprehensive
37 planning, and reduce the economic costs of development. Further, the
38 lack of public facilities and services is a serious impediment to

1 development of new housing and commercial uses. Project applicants and
2 local governments may include provisions and agreements whereby
3 applicants are reimbursed over time for financing public facilities.
4 It is the intent of the legislature by sections 220 through 224 of this
5 act to allow local governments and owners and developers of real
6 property to enter into development agreements.

7 NEW SECTION. **Sec. 220.** A new section is added to chapter 36.70A
8 RCW to read as follows:

9 (1) A county or city may enter into a development agreement with a
10 person having ownership or control of real property within its
11 jurisdiction. A city may enter into a development agreement for real
12 property outside its boundaries as part of a proposed annexation or a
13 service agreement. A development agreement must set forth the
14 development standards and other provisions that shall apply to and
15 govern and vest the development, use, and mitigation of the development
16 of the real property for the duration specified in the agreement.

17 (2) Sections 219 through 222 of this act do not affect the validity
18 of a contract rezone, concomitant agreement, annexation agreement, or
19 other agreement in existence on the effective date of sections 219
20 through 222 of this act, or adopted under separate authority, that
21 includes some or all of the development standards provided in
22 subsection (3) of this section.

23 (3) For the purposes of this section, "development standards"
24 includes, but is not limited to:

25 (a) Project elements such as permitted uses, residential densities,
26 and nonresidential densities and intensities or building sizes;

27 (b) The amount and payment of impact fees imposed or agreed to in
28 accordance with chapter 36.-- RCW (the new chapter created in section
29 143 of this act) or any other applicable provisions of state law, other
30 financial contributions by the property owner, inspection fees, or
31 dedications;

32 (c) Mitigation measures, development conditions, and other
33 requirements under chapter 43.21C RCW;

34 (d) Design standards such as maximum heights, setbacks, drainage
35 and water quality requirements, landscaping, and other development
36 features;

37 (e) Affordable housing;

38 (f) Parks and open space preservation;

- 1 (g) Phasing;
- 2 (h) Review procedures and standards for implementing decisions;
- 3 (i) A build-out or vesting period for applicable standards; and
- 4 (j) Any other appropriate development requirement or procedure.

5 (4) The execution of a development agreement is a proper exercise
6 of county and city police power and contract authority. A development
7 agreement may obligate a party to fund or provide services,
8 infrastructure, or other facilities. A development agreement shall
9 reserve authority to impose new or different regulations to the extent
10 required by a serious threat to public health and safety.

11 NEW SECTION. **Sec. 221.** A new section is added to chapter 36.70A
12 RCW to read as follows:

13 Unless amended or terminated, a development agreement is
14 enforceable during its term by a party. A development agreement and
15 the development standards in the agreement govern during the term of
16 the agreement, or for all or that part of the build-out period
17 specified in the agreement, and may not be subject to an amendment to
18 a zoning ordinance or development standard or regulation or a new
19 zoning ordinance or development standard or regulation adopted after
20 the effective date of the agreement. A permit or approval issued by
21 the county or city after the execution of the development agreement
22 must be consistent with the development agreement.

23 NEW SECTION. **Sec. 222.** A new section is added to chapter 36.70A
24 RCW to read as follows:

25 A development agreement may be recorded with the real property
26 records of the county in which the property is located. During the
27 term of the development agreement, the agreement is binding on and will
28 inure to the benefit of the parties and their successors, including a
29 city that assumes jurisdiction through incorporation or annexation of
30 the area covering the property covered by the development agreement.

31 NEW SECTION. **Sec. 223.** A new section is added to chapter 36.70A
32 RCW to read as follows:

33 A county or city shall only approve a development agreement by
34 ordinance or resolution after a public hearing. The county or city
35 legislative body or a planning commission, hearing examiner, or other
36 body designated by the legislative body to conduct the public hearing

1 may conduct the hearing. If the development agreement relates to a
2 development permit application, the provisions of chapter 36.-- RCW
3 (sections 301 through 312 of this act) shall apply to the appeal of the
4 decision on the development agreement.

5 NEW SECTION. **Sec. 224.** Nothing in sections 219 through 223 of
6 this act is intended to authorize local governments to impose impact
7 fees, inspection fees, or dedications or to require any other financial
8 contributions or mitigation measures except as authorized in RCW
9 82.02.020 (as recodified by this act) and as otherwise expressly
10 authorized by other applicable provisions of state law.

11 **Sec. 225.** RCW 35.63.130 and 1994 c 257 s 8 are each amended to
12 read as follows:

13 (1) As an alternative to those provisions of this chapter relating
14 to powers or duties of the planning commission to hear and report on
15 any proposal to amend a zoning ordinance, the legislative body of a
16 city or county may adopt a hearing examiner system under which a
17 hearing examiner or hearing examiners may hear and decide applications
18 for amending the zoning ordinance when the amendment which is applied
19 for is not of general applicability. In addition, the legislative body
20 may vest in a hearing examiner the power to hear and decide those
21 issues it believes should be reviewed and decided by a hearing
22 examiner, including but not limited to:

23 (a) Applications for conditional uses, variances, subdivisions,
24 shoreline permits, or any other class of applications for or pertaining
25 to development of land or land use((s which the legislative body
26 believes should be reviewed and decided by a hearing examiner))i

27 (b) Appeals of administrative decisions or determinations; and

28 (c) Appeals of administrative decisions or determinations pursuant
29 to chapter 43.21C RCW.

30 The legislative body shall prescribe procedures to be followed by
31 the hearing examiner.

32 (2) Each city or county legislative body electing to use a hearing
33 examiner pursuant to this section shall by ordinance specify the legal
34 effect of the decisions made by the examiner. (~~Except as provided in~~
35 ~~subsection (2) of this section,~~) The legal effect of such decisions
36 may vary for the different classes of applications decided by the
37 examiner but shall include one of the following:

1 (a) The decision may be given the effect of a recommendation to the
2 legislative body;

3 (b) The decision may be given the effect of an administrative
4 decision appealable within a specified time limit to the legislative
5 body((-

6 ~~(2) The legislative body may specify the legal effect of a hearing
7 examiner's procedural determination under the state environmental
8 policy act, as defined in RCW 43.21C.075(3)(a). It may have the effect
9 under subsection (1) (a) or (b) of this section, or))i or~~

10 (c) The decision may be given the effect of a final decision of the
11 legislative body, except that applications for rezones may not be given
12 the effect of a final decision of a legislative body.

13 (3) Each final decision of a hearing examiner shall be in writing
14 and shall include findings and conclusions, based on the record, to
15 support the decision. Such findings and conclusions shall also set
16 forth the manner in which the decision would carry out and conform to
17 the city's or county's comprehensive plan and the city's or county's
18 development regulations. Each final decision of a hearing examiner,
19 unless a longer period is mutually agreed to in writing by the
20 applicant and the hearing examiner, shall be rendered within ten
21 working days following conclusion of all testimony and hearings.

22 **Sec. 226.** RCW 35A.63.170 and 1994 c 257 s 7 are each amended to
23 read as follows:

24 (1) As an alternative to those provisions of this chapter relating
25 to powers or duties of the planning commission to hear and report on
26 any proposal to amend a zoning ordinance, the legislative body of a
27 city may adopt a hearing examiner system under which a hearing examiner
28 or hearing examiners may hear and decide applications for amending the
29 zoning ordinance when the amendment which is applied for is not of
30 general applicability. In addition, the legislative body may vest in
31 a hearing examiner the power to hear and decide those issues it
32 believes should be reviewed and decided by a hearing examiner,
33 including but not limited to:

34 (a) Applications for conditional uses, variances, subdivisions,
35 shoreline permits, or any other class of applications for or pertaining
36 to development of land or land use((s which the legislative body
37 believes should be reviewed and decided by a hearing examiner))i

38 (b) Appeals of administrative decisions or determinations; and

1 (c) Appeals of administrative decisions or determinations pursuant
2 to chapter 43.21C RCW.

3 The legislative body shall prescribe procedures to be followed by
4 a hearing examiner. If the legislative authority vests in a hearing
5 examiner the authority to hear and decide variances, then the
6 provisions of RCW 35A.63.110 shall not apply to the city.

7 (2) Each city legislative body electing to use a hearing examiner
8 pursuant to this section shall by ordinance specify the legal effect of
9 the decisions made by the examiner. ((Except as provided in subsection
10 (2) of this section,)) The legal effect of such decisions may vary for
11 the different classes of applications decided by the examiner but shall
12 include one of the following:

13 (a) The decision may be given the effect of a recommendation to the
14 legislative body;

15 (b) The decision may be given the effect of an administrative
16 decision appealable within a specified time limit to the legislative
17 body((-

18 ~~(2) The legislative body shall specify the legal effect of a~~
19 ~~hearing examiner's procedural determination under the state~~
20 ~~environmental policy act, as defined in RCW 43.21C.075(3)(a). It may~~
21 ~~have the effect under subsection (1) (a) or (b) of this section, or));
22 or~~

23 (c) The decision may be given the effect of a final decision of the
24 legislative body, except that applications for a rezone may not be
25 given the effect of a final decision of a legislative body.

26 (3) Each final decision of a hearing examiner shall be in writing
27 and shall include findings and conclusions, based on the record, to
28 support the decision. Such findings and conclusions shall also set
29 forth the manner in which the decision would carry out and conform to
30 the city's comprehensive plan and the city's development regulations.
31 Each final decision of a hearing examiner, unless a longer period is
32 mutually agreed to in writing by the applicant and the hearing
33 examiner, shall be rendered within ten working days following
34 conclusion of all testimony and hearings.

35 **Sec. 227.** RCW 36.70.970 and 1994 c 257 s 9 are each amended to
36 read as follows:

37 (1) As an alternative to those provisions of this chapter relating
38 to powers or duties of the planning commission to hear and issue

1 recommendations on applications for plat approval and applications for
2 amendments to the zoning ordinance, the county legislative authority
3 may adopt a hearing examiner system under which a hearing examiner or
4 hearing examiners may hear and issue decisions on proposals for plat
5 approval and for amendments to the zoning ordinance when the amendment
6 which is applied for is not of general applicability. In addition, the
7 legislative authority may vest in a hearing examiner the power to hear
8 and decide those issues it believes should be reviewed and decided by
9 a hearing examiner, including but not limited to:

10 (a) Applications for conditional uses ((applications)), variances
11 ((applications)), ((applications for)) shoreline permits, or any other
12 class of applications for or pertaining to development of land or land
13 use((s));

14 (b) Appeals of administrative decisions or determinations; and

15 (c) Appeals of administrative decisions or determinations pursuant
16 to chapter 43.21C RCW.

17 The legislative authority shall prescribe procedures to be followed
18 by a hearing examiner.

19 Any county which vests in a hearing examiner the authority to hear
20 and decide conditional uses and variances shall not be required to have
21 a zoning adjuster or board of adjustment.

22 (2) Each county legislative authority electing to use a hearing
23 examiner pursuant to this section shall by ordinance specify the legal
24 effect of the decisions made by the examiner. ((Except as provided in
25 subsection (2) of this section,)) Such legal effect may vary for the
26 different classes of applications decided by the examiner but shall
27 include one of the following:

28 (a) The decision may be given the effect of a recommendation to the
29 legislative authority;

30 (b) The decision may be given the effect of an administrative
31 decision appealable within a specified time limit to the legislative
32 authority((-

33 ~~(2) The legislative authority may specify the legal effect of a~~
34 ~~hearing examiner's procedural determination under the state~~
35 ~~environmental policy act, as defined in RCW 43.21C.075(3)(a). It may~~
36 ~~have the effect under subsection (1) (a) or (b) of this section, or));~~
37 or

38 (c) The decision may be given the effect of a final decision of the
39 legislative authority, except that applications for rezones may not be

1 given the effect of a final decision of a legislative authority.

2 (3) Each final decision of a hearing examiner shall be in writing
3 and shall include findings and conclusions, based on the record, to
4 support the decision. Such findings and conclusions shall also set
5 forth the manner in which the decision would carry out and conform to
6 the county's comprehensive plan and the county's development
7 regulations. Each final decision of a hearing examiner, unless a
8 longer period is mutually agreed to in writing by the applicant and the
9 hearing examiner, shall be rendered within ten working days following
10 conclusion of all testimony and hearings.

11 NEW SECTION. Sec. 228. The legislature hereby finds and declares:

12 (1) Washington's environmental protection programs have established
13 strict standards to reduce pollution and protect the public health and
14 safety and the environment. The single-purpose programs instituted to
15 achieve these standards have been successful in many respects, and have
16 produced significant gains in protecting Washington's environment in
17 the face of substantial population growth.

18 (2) Continued progress to achieve the environmental standards in
19 the face of continued population growth will require greater
20 coordination between the single-purpose environmental programs and more
21 efficient operation of these programs overall. Pollution must be
22 prevented and controlled and not simply transferred to another media or
23 another place. This goal can only be achieved by maintaining the
24 current environmental protection standards and by greater integration
25 of the existing programs.

26 (3) As the number of environmental laws and regulations have grown
27 in Washington, so have the number of permits required of business and
28 government. This regulatory burden has significantly added to the cost
29 and time needed to obtain essential permits in Washington. The
30 increasing number of individual permits and permit authorities has
31 generated the continuing potential for conflict, overlap, and
32 duplication between the various state, local, and federal permits.

33 (4) To ensure that local needs and environmental conditions receive
34 the proper attention, the issuance and renewal of permits should
35 continue to be made, to the extent feasible, at the regional and local
36 levels of the environmental programs.

37 (5) The purpose of this chapter is to require the department of
38 ecology to institute new, efficient procedures that will assist

1 businesses and public agencies in complying with the environmental
2 quality laws in an expedited fashion, without reducing protection of
3 public health and safety and the environment.

4 (6) Those procedures need to provide a permit process that promotes
5 effective dialogue and ensures ease in the transfer and clarification
6 of technical information, while preventing duplication. It is
7 necessary that the procedures establish a process for preliminary and
8 ongoing meetings between the applicant, the consolidated permit agency,
9 and the participating permit agencies, but do not preclude the
10 applicant or participating permit agencies from individually
11 coordinating with each other.

12 (7) It is necessary, to the maximum extent practicable, that the
13 procedures established in this chapter ensure that the consolidated
14 permit agency process and applicable permit requirements and criteria
15 are integrated and run concurrently, rather than consecutively.

16 (8) It is necessary to provide a reliable and consolidated source
17 of information concerning the environmental and land use laws and
18 procedures that apply to any given proposal. This information is to be
19 current and encompass all state and local jurisdictions. To the extent
20 possible, it is to encompass federal jurisdictions and functions, as
21 well.

22 (9) The process shall provide an optional process by which a
23 project proponent may obtain active coordination of all applicable
24 regulatory and land-use permitting procedures. This process is not to
25 replace individual laws, or diminish the substantive decision-making
26 role of individual jurisdictions. Rather it is to provide
27 predictability, administrative consolidation, and, where possible,
28 consolidation of appeal processes.

29 (10) The process shall provide consolidated, effective, and easier
30 opportunities for members of the public to receive information and
31 present their views about proposed projects.

32 NEW SECTION. **Sec. 229.** Unless the context clearly requires
33 otherwise, the definitions in this section apply throughout this
34 chapter.

35 (1) "Center" means the permit assistance center established in the
36 department by section 230 of this act.

37 (2) "Consolidated permit agency" means the permit agency that has
38 the greatest overall jurisdiction over a project.

1 (3) "Department" means the department of ecology.

2 (4) "Participating permit agency" means a permit agency, other than
3 the consolidated permit agency, that is responsible for the issuance of
4 a permit for a project.

5 (5) "Permit" means any license, certificate, registration, permit,
6 or other form of authorization required by a permit agency to engage in
7 a particular activity.

8 (6) "Permit agency" means:

9 (a) The department of ecology, an air pollution control authority,
10 the department of natural resources, the department of fish and
11 wildlife, and the department of health; and

12 (b) Any other state or federal agency, county, city, or town for
13 the project that participates at the request of the permit applicant
14 and upon the agency's agreement to be subject to this chapter.

15 (7) "Project" means an activity, the conduct of which requires a
16 permit from two or more permit agencies.

17 NEW SECTION. **Sec. 230.** The permit assistance center is
18 established within the department. The center shall:

19 (1) Publish and keep current one or more handbooks containing lists
20 and explanations of all permit laws. The center shall coordinate with
21 the business assistance center in providing and maintaining this
22 information to applicants and others. To the extent possible, the
23 handbook shall include relevant federal laws. A state agency or local
24 government shall provide a reasonable number of copies of application
25 forms, statutes, ordinances, rules, handbooks, and other informational
26 material requested by the center and shall otherwise fully cooperate
27 with the center. The center shall seek the cooperation of relevant
28 federal agencies;

29 (2) Establish, and make known, a point of contact for distribution
30 of the handbook and advice to the public as to its interpretation in
31 any given case;

32 (3) Work closely and cooperatively with the business license center
33 and the business assistance center in providing efficient and
34 nonduplicative service to the public; and

35 (4) Provide a permit coordination training program designed to:

36 (a) Educate project facilitators as to the role and requirements of
37 all jurisdictions;

38 (b) Share permit coordination experiences;

- 1 (c) Improve the quality and efficiency of project facilitation; and
- 2 (d) Certify project facilitators.

3 NEW SECTION. **Sec. 231.** (1) Not later than January 1, 1996, the
4 center shall establish by rule an administrative process for the
5 designation of a consolidated permit agency for a project.

6 (2) The administrative process shall consist of the establishment
7 of guidelines for designating the consolidated permit agency for a
8 project. If a permit agency is the lead agency for purposes of chapter
9 43.21C RCW, that permit agency shall be the consolidated permit agency.
10 In other cases, the guidelines shall require that at least the
11 following factors be considered in determining which permit agency has
12 the greatest overall jurisdiction over the project:

13 (a) The types of facilities or activities that make up the project;

14 (b) The types of public health and safety and environmental
15 concerns that should be considered in issuing permits for the project;

16 (c) The environmental medium that may be affected by the project,
17 the extent of those potential effects, and the environmental protection
18 measures that may be taken to prevent the occurrence of, or to
19 mitigate, those potential effects;

20 (d) The regulatory activity that is of greatest importance in
21 preventing or mitigating the effects that the project may have on
22 public health and safety or the environment; and

23 (e) The statutory and regulatory requirements that apply to the
24 project and the complexity of those requirements.

25 NEW SECTION. **Sec. 232.** Upon the request of a project applicant,
26 the center shall appoint a project facilitator to assist the applicant
27 in determining which regulatory requirements, processes, and permits
28 may be required for development and operation of the proposed project.
29 The project facilitator shall provide the information to the applicant
30 and explain the options available to the applicant in obtaining the
31 required permits. If the applicant requests, the center shall
32 designate a coordinating permit agency as provided in section 233 of
33 this act.

34 NEW SECTION. **Sec. 233.** (1) A permit applicant who requests the
35 designation of a consolidated permit agency shall provide the center
36 with a description of the project, a preliminary list of the permits

1 that the project may require, the identity of any public agency that
2 has been designated the lead agency for the project pursuant to chapter
3 43.21C RCW, and the identity of the participating permit agencies. The
4 center may request any information from the permit applicant that is
5 necessary to make the designation under this section, and may convene
6 a scoping meeting of the likely consolidated permit agency and
7 participating permit agencies in order to make that designation.

8 (2) The consolidated permit agency shall serve as the main point of
9 contact for the permit applicant with regard to the processing of the
10 consolidated permit process for the project and shall manage the
11 procedural aspects of that processing consistent with existing laws
12 governing the consolidated permit agency and participating permit
13 agencies, and with the procedures agreed to by those agencies in
14 accordance with section 234 of this act. In carrying out these
15 responsibilities, the consolidated permit agency shall ensure that the
16 permit applicant has all the information needed to apply for all the
17 component permits that are incorporated in the consolidated permit
18 process for the project, coordinate the review of those permits by the
19 respective participating permit agencies, ensure that timely permit
20 decisions are made by the participating permit agencies, and assist in
21 resolving any conflict or inconsistency among the permit requirements
22 and conditions that are to be imposed by the participating permit
23 agencies with regard to the project. The coordinating permit agency
24 shall keep in contact with the applicant as well as other permit
25 agencies in order to assure that the process is progressing as
26 scheduled. The coordinating permit agency shall recommend appropriate
27 alternatives that may be more efficient and identify potential problems
28 to successful completion of the process.

29 (3) This chapter shall not be construed to limit or abridge the
30 powers and duties granted to a participating permit agency under the
31 law that authorizes or requires the agency to issue a permit for a
32 project. Each participating permit agency shall retain its authority
33 to make all decisions on all nonprocedural matters with regard to the
34 respective component permit that is within its scope of its
35 responsibility, including, but not limited to, the determination of
36 permit application completeness, permit approval or approval with
37 conditions, or permit denial. The consolidated permit agency may not
38 substitute its judgment for that of a participating permit agency on
39 any such nonprocedural matters.

1 NEW SECTION. **Sec. 234.** (1) Within twenty-one days of the date

2 that the consolidated permit agency is designated, it shall convene a
3 meeting with the permit applicant for the project and the participating
4 permit agencies. The meeting agenda shall include at least all of the
5 following matters:

6 (a) A determination of the permits that are required for the
7 project;

8 (b) A review of the permit application forms and other application
9 requirements of the agencies that are participating in the consolidated
10 permit process;

11 (c)(i) A determination of the timelines that will be used by the
12 consolidated permit agency and each participating permit agency to make
13 permit decisions, including the time periods required to determine if
14 the permit applications are complete, to review the application or
15 applications, and to process the component permits, and the timelines
16 that will be used by the consolidated permit agency to aggregate the
17 component permits into, and to issue the consolidated permit process.
18 In the development of this time line, full attention shall be given to
19 achieving the maximum efficiencies possible through concurrent studies,
20 consolidated applications, hearings, and comment periods. Except as
21 provided in (c)(ii) of this subsection, the timelines established under
22 this subsection, with the assent of the consolidated permit agency and
23 each participating permit agency, shall commit the consolidated permit
24 agency and each participating permit agency to act on the component
25 permit within time periods that are different than those required by
26 other applicable provisions of law.

27 (ii) An accelerated time period for the consideration of a permit
28 application may not be set if that accelerated time period would be
29 inconsistent with, or in conflict with, any time period or series of
30 time periods set by statute for that consideration, or with any
31 statute, rule, or regulation, or adopted state policy, standard, or
32 guideline that requires any of the following:

33 (A) Other agencies, interested persons, federally recognized Indian
34 tribes, or the public to be given adequate notice of the application;

35 (B) Other agencies to be given a role in, or be allowed to
36 participate in, the decision to approve or disapprove the application;
37 or

38 (C) Interested persons or the public to be provided the opportunity
39 to challenge, comment on, or otherwise voice their concerns regarding

1 the application;

2 (d) The scheduling of any public hearings that are required to
3 issue permits for the project and a determination of the feasibility of
4 coordinating or consolidating any of those required public hearings;
5 and

6 (e) A discussion of fee arrangements for the consolidated permit
7 process, including an estimate of the costs allowed under section 237
8 of this act and the billing schedule.

9 (2) Each agency shall send at least one representative qualified to
10 make decisions concerning the applicability and timelines associated
11 with all permits administered by that jurisdiction. At the request of
12 the applicant, the consolidated permit agency shall notify any relevant
13 federal agency of the date of the meeting and invite that agency's
14 participation in the process.

15 (3) If a permit agency or the applicant foresees, at any time, that
16 it will be unable to meet its obligations under the agreement, it shall
17 notify the consolidated permit agency of the problem. The coordinating
18 permit agency shall notify the permit agencies and the applicant and,
19 upon agreement of all parties, adjust the schedule, or, if necessary,
20 schedule another work plan meeting.

21 (4) The consolidated permit agency may request any information from
22 the applicant that is necessary to comply with its obligations under
23 this section, consistent with the timelines set pursuant to this
24 section.

25 (5) A summary of the decisions made under this section shall be
26 made available for public review upon the filing of the consolidated
27 permit process application or permit applications.

28 NEW SECTION. Sec. 235. (1) The permit applicant may withdraw from
29 the consolidated permit process by submitting to the consolidated
30 permit agency a written request that the process be terminated. Upon
31 receipt of the request, the consolidated permit agency shall notify the
32 center and each participating permit agency that a consolidated permit
33 process is no longer applicable to the project.

34 (2) The permit applicant may submit a written request to the
35 consolidated permit agency that the permit applicant wishes a
36 participating permit agency to withdraw from participation on the basis
37 of a reasonable belief that the issuance of the consolidated permit
38 process would be accelerated if the participating permit agency

1 withdraws. In that event, the participating permit agency shall
2 withdraw from participation if the consolidated permit agency approves
3 the request.

4 NEW SECTION. **Sec. 236.** The consolidated permit agency shall
5 ensure that the participating permit agencies make all the permit
6 decisions that are necessary for the incorporation of the permits into
7 the consolidated permit process and act on the component permits within
8 the time periods established pursuant to section 234 of this act.

9 NEW SECTION. **Sec. 237.** (1) The consolidated permit agency may
10 enter into a written agreement with the applicant to recover from the
11 applicant the reasonable costs incurred by the consolidated permit
12 agency in carrying out the requirements of this chapter.

13 (2) The consolidated permit agency may recover only the costs of
14 performing those consolidated permit services and shall be negotiated
15 with the permit applicant in the meeting required pursuant to section
16 234 of this act. The billing process shall provide for accurate time
17 and cost accounting and may include a billing cycle that provides for
18 progress payments.

19 NEW SECTION. **Sec. 238.** A petition by the permit applicant for
20 review of an agency action in issuing, denying, or amending a permit,
21 or any portion of a consolidated permit agency permit, shall be
22 submitted by the permit applicant to the consolidated permit agency or
23 the participating permit agency having jurisdiction over that permit
24 and shall be processed in accordance with the procedures of that permit
25 agency. Within thirty days of receiving the petition, the consolidated
26 permit agency shall notify the other environmental agencies
27 participating in the original consolidated permit process.

28 NEW SECTION. **Sec. 239.** If an applicant petitions for a
29 significant amendment or modification to a consolidated permit process
30 application or any of its component permit applications, the
31 consolidated permit agency shall reconvene a meeting of the
32 participating permit agencies, conducted in accordance with section 234
33 of this act.

34 NEW SECTION. **Sec. 240.** If an applicant fails to provide

1 information required for the processing of the component permit
2 applications for a consolidated permit process or for the designation
3 of a consolidated permit agency, the time requirements of this chapter
4 shall be tolled until such time as the information is provided.

5 NEW SECTION. **Sec. 241.** (1) The center, by rule, shall establish
6 an expedited appeals process by which a petitioner or applicant may
7 appeal any failure by a permit agency to take timely action on the
8 issuance or denial of a permit in accordance with the time limits
9 established under this chapter.

10 (2) If the center finds that the time limits under appeal have been
11 violated without good cause, it shall establish a date certain by which
12 the permit agency shall act on the permit application with adequate
13 provision for the requirements of section 234(1)(c)(ii) (A) through (C)
14 of this act, and provide for the full reimbursement of any filing or
15 permit processing fees paid by the applicant to the permit agency for
16 the permit application under appeal.

17 NEW SECTION. **Sec. 242.** By December 1, 1997, the center shall
18 submit a report to the appropriate committees of both houses of the
19 legislature detailing the following information:

20 (1) The number of instances in which a consolidated permit agency
21 has been requested and used, and the disposition of those cases;

22 (2) The amount of time elapsed between an initial request by a
23 permit applicant for a consolidated permit process and the ultimate
24 approval or disapproval of the permits included in the process;

25 (3) The number of instances in which the expedited appeals process
26 was requested, and the disposition of those cases; and

27 (4) Potential conflicts and perceived inconsistencies among
28 existing statutes.

29 NEW SECTION. **Sec. 243.** A new section is added to chapter 43.131
30 RCW to read as follows:

31 The permit assistance center and its powers and duties shall be
32 terminated June 30, 1999, as provided in section 244 of this act.

33 NEW SECTION. **Sec. 244.** A new section is added to chapter 43.131
34 RCW to read as follows:

35 The following acts or parts of acts, as now existing or hereafter

1 amended, are each repealed, effective June 30, 2000:

- 2 (1) RCW 90.---.--- and 1995 c -- s 228 (section 228 of this act);
- 3 (2) RCW 90.---.--- and 1995 c -- s 229 (section 229 of this act);
- 4 (3) RCW 90.---.--- and 1995 c -- s 230 (section 230 of this act);
- 5 (4) RCW 90.---.--- and 1995 c -- s 231 (section 231 of this act);
- 6 (5) RCW 90.---.--- and 1995 c -- s 232 (section 232 of this act);
- 7 (6) RCW 90.---.--- and 1995 c -- s 233 (section 233 of this act);
- 8 (7) RCW 90.---.--- and 1995 c -- s 234 (section 234 of this act);
- 9 (8) RCW 90.---.--- and 1995 c -- s 235 (section 235 of this act);
- 10 (9) RCW 90.---.--- and 1995 c -- s 236 (section 236 of this act);
- 11 (10) RCW 90.---.--- and 1995 c -- s 237 (section 237 of this act);
- 12 (11) RCW 90.---.--- and 1995 c -- s 238 (section 238 of this act);
- 13 (12) RCW 90.---.--- and 1995 c -- s 239 (section 239 of this act);
- 14 (13) RCW 90.---.--- and 1995 c -- s 240 (section 240 of this act);
- 15 and
- 16 (14) RCW 90.---.--- and 1995 c -- s 241 (section 241 of this act).

17 NEW SECTION. **Sec. 245.** The following acts or parts of acts are
18 each repealed:

- 19 (1) RCW 90.62.010 and 1982 c 179 s 1, 1977 c 54 s 1, & 1973 1st
20 ex.s. c 185 s 1;
- 21 (2) RCW 90.62.020 and 1994 c 264 s 96, 1988 c 36 s 71, 1977 c 54 s
22 2, & 1973 1st ex.s. c 185 s 2;
- 23 (3) RCW 90.62.030 and 1973 1st ex.s. c 185 s 3;
- 24 (4) RCW 90.62.040 and 1990 c 137 s 1, 1977 c 54 s 3, & 1973 1st
25 ex.s. c 185 s 4;
- 26 (5) RCW 90.62.050 and 1977 c 54 s 4 & 1973 1st ex.s. c 185 s 5;
- 27 (6) RCW 90.62.060 and 1982 c 179 s 2, 1977 c 54 s 5, & 1973 1st
28 ex.s. c 185 s 6;
- 29 (7) RCW 90.62.070 and 1973 1st ex.s. c 185 s 7;
- 30 (8) RCW 90.62.080 and 1987 c 109 s 156, 1977 c 54 s 6, & 1973 1st
31 ex.s. c 185 s 8;
- 32 (9) RCW 90.62.090 and 1977 c 54 s 7 & 1973 1st ex.s. c 185 s 9;
- 33 (10) RCW 90.62.100 and 1977 c 54 s 8 & 1973 1st ex.s. c 185 s 10;
- 34 (11) RCW 90.62.110 and 1973 1st ex.s. c 185 s 11;
- 35 (12) RCW 90.62.120 and 1973 1st ex.s. c 185 s 12;
- 36 (13) RCW 90.62.130 and 1977 c 54 s 9;
- 37 (14) RCW 90.62.900 and 1973 1st ex.s. c 185 s 13;
- 38 (15) RCW 90.62.901 and 1973 1st ex.s. c 185 s 14;

- 1 (16) RCW 90.62.904 and 1973 1st ex.s. c 185 s 15;
2 (17) RCW 90.62.905 and 1973 1st ex.s. c 185 s 16;
3 (18) RCW 90.62.906 and 1973 1st ex.s. c 185 s 18;
4 (19) RCW 90.62.907 and 1973 1st ex.s. c 185 s 19; and
5 (20) RCW 90.62.908 and 1977 c 54 s 10.

6 NEW SECTION. **Sec. 246.** Sections 101, 201 through 204, and 207
7 through 213 of this act shall constitute a new chapter in Title 36 RCW.

8 NEW SECTION. **Sec. 247.** Sections 228 through 241 of this act shall
9 constitute a new chapter in Title 90 RCW.

10 NEW SECTION. **Sec. 248.** RCW 36.70A.065 and 36.70A.440 are
11 recodified as sections within the new chapter created in section 246 of
12 this act.

13 NEW SECTION. **Sec. 249.** The department of community, trade, and
14 economic development shall provide training and technical assistance to
15 counties and cities to assist them in fulfilling the requirements of
16 chapter 36.-- RCW (sections 101, 201 through 204, and 207 through 213
17 of this act). The land use study commission created by section 401 of
18 this act shall monitor local government consolidated permit procedures
19 and the effectiveness of the timelines established by section 207 of
20 this act. The commission shall include in its report submitted to the
21 governor and the legislature on November 30, 1997, its recommendation
22 about what timelines, if any, should be imposed on the local government
23 consolidated permit process required by chapter 36.-- RCW (sections
24 101, 201 through 204, and 207 through 213 of this act).

25 **PART III - APPEALS**

26 NEW SECTION. **Sec. 301.** This chapter may be known and cited as the
27 land use petition act. A petition brought under this chapter must be
28 called a land use petition.

29 NEW SECTION. **Sec. 302.** The purpose of this chapter is to reform
30 the process for judicial review of land use decisions made by local
31 jurisdictions, by establishing uniform, expedited appeal procedures and
32 uniform criteria for reviewing such decisions, in order to provide

1 consistent, predictable, and timely judicial review.

2 NEW SECTION. **Sec. 303.** Unless the context clearly requires
3 otherwise, the definitions in this section apply throughout this
4 chapter.

5 (1) "Land use decision" means a final determination by a local
6 jurisdiction's body or officer with the highest level of authority to
7 make the determination, including those with authority to hear appeals,
8 on:

9 (a) An application for a development permit or other governmental
10 approval required by law before real property may be improved,
11 developed, modified, sold, transferred, or used, but excluding
12 applications for permits or approvals to use streets, parks, and
13 similar types of public property and excluding applications for
14 legislative approvals such as rezones;

15 (b) An interpretative or declaratory decision regarding the
16 application to a specific property of zoning or other ordinances or
17 rules regulating the development, modification, maintenance, or use of
18 real property; and

19 (c) The enforcement of ordinances regulating the development,
20 modification, maintenance, or use of real property. However, when a
21 local jurisdiction is required by law to enforce the ordinances in a
22 court of limited jurisdiction, a petition may not be brought under this
23 chapter.

24 (2) "Local jurisdiction" means a county, city, or town, or special
25 purpose district as defined in RCW 36.96.010.

26 (3) "Person" means an individual, partnership, corporation,
27 association, public or private organization, or governmental agency.

28 NEW SECTION. **Sec. 304.** (1) This chapter replaces the writ of
29 certiorari for judicial review of local jurisdictions' land use
30 decisions.

31 (2) This chapter does not apply to judicial review procedures
32 established by other laws, including, but not limited to judicial
33 review of:

34 (a) Land use decisions made by bodies that are not part of a local
35 jurisdiction;

36 (b) Land use decisions of a local jurisdiction that are subject to
37 review by a quasi-judicial body created by state law, such as the

1 shorelines hearings board or the growth management hearings board;

2 (c) Claims provided by any law for monetary damages or
3 compensation; or

4 (d) Applications for injunctive relief, including a writ of
5 prohibition or mandamus.

6 (3) If one or more claims for damages or compensation are set forth
7 in the same complaint with a land use petition brought under this
8 chapter, the procedures and standards, including deadlines, provided in
9 this chapter for review of the petition do not apply to the claims for
10 damages or compensation. The judge who hears the land use petition
11 may, if appropriate, preside at a trial for damages or compensation.

12 (4) The court rules govern procedural matters under this chapter to
13 the extent that the rules are consistent with this chapter.

14 NEW SECTION. **Sec. 305.** (1) Proceedings for review under this
15 chapter must be commenced by filing a land use petition in superior
16 court.

17 (2) A land use petition is barred, and the court may not grant
18 review, unless the petition is timely filed with the court. The
19 petition must be served on the following parties:

20 (a) The local jurisdiction, which for purposes of the petition
21 shall be the jurisdiction's corporate entity and not an individual
22 decision maker or department; and

23 (b) Each of the following, if not the petitioner:

24 (i) Any person identified by name and address in the local
25 jurisdiction's written decision as an applicant for the permit or
26 approval at issue or as a property owner of the property at issue;

27 (ii) If no person is named in the decision as provided in (b)(i) of
28 this subsection, any such person identified in the application for a
29 permit or approval at issue; and

30 (iii) Any person who filed an appeal to a quasi-judicial decision
31 maker regarding the land use decision at issue, unless the person has
32 abandoned the appeal or the person's claims were dismissed before the
33 quasi-judicial decision was rendered. Any person who later intervened
34 or joined in the appeal is not required to be made a party under this
35 subsection.

36 (3) The petition is timely if it is filed within twenty-one days of
37 the issuance of the land use decision.

38 (4) For the purposes of this section, a land use decision is issued

1 on the date on which a written decision is mailed or if not mailed, the
2 date on which the local jurisdiction provides notice that a written
3 decision is publicly available. However, if written notification is
4 not required to be provided, the decision is issued on the later of:

5 (a) The date that the decision is made at a public meeting; or

6 (b) The date that the decision is entered into the public record.

7 (5) Service on the local jurisdiction must be by delivery of a copy
8 of the petition pursuant to RCW 4.28.080. Service on other parties
9 must be in accordance with the civil rules or, for parties who provided
10 an address to the local jurisdiction during a quasi-judicial proceeding
11 regarding the land use decision at issue, service may be by deposit in
12 the United States mail to the address. Service by mail is effective on
13 the date of mailing. Proof of service must be evidenced by affidavit.

14 NEW SECTION. Sec. 306. Standing to bring a land use petition
15 under this chapter, and to intervene in a proceeding under this
16 chapter, is limited to the following parties:

17 (1) The applicant and the owner of property to which the land use
18 decision is directed;

19 (2) Another person aggrieved or adversely affected by the land use
20 decision, or who would be aggrieved or adversely affected by a reversal
21 or modification of the land use decision, and who will suffer direct
22 and substantial impacts from the decision, reversal, or modification.

23 NEW SECTION. Sec. 307. (1) A petitioner shall set forth in a land
24 use petition:

25 (a) The name and mailing address of the petitioner;

26 (b) The name and mailing address of the petitioner's attorney, if
27 any;

28 (c) The name and mailing address of the local jurisdiction whose
29 land use decision is at issue;

30 (d) Identification of the decision-making body or officer, together
31 with a duplicate copy of the decision, or if not a written decision, a
32 summary or brief description of it;

33 (e) Identification of persons who were named petitioners or
34 appellants in any quasi-judicial proceedings regarding the land use
35 decision at issue;

36 (f) Facts demonstrating that the petitioner is entitled to seek
37 judicial review; and

1 (g) A request for relief, specifying the type of relief requested.

2 (2) Within sixty days of service of a land use petition on the
3 local jurisdiction, the local jurisdiction must certify and submit to
4 the court and serve on all parties to the petition a complete record of
5 the proceedings leading to the decision identified in the land use
6 petition pursuant to subsection (1)(d) of this section.

7 (3) The local jurisdiction need not certify the record, if the
8 court determines that the petition should be dismissed for any reason,
9 including improper service, lack of standing, failure to join an
10 indispensable party, or failure to comply with subsection (1) of this
11 section.

12 (4) The court may grant additional time for the certification of
13 the record, if additional time is determined by the court to be
14 necessary.

15 (5) Within fifteen days of service of the petition, the local
16 jurisdiction shall notify the petitioner of the estimated cost of
17 preparing the record.

18 (6) The petitioner shall pay the cost of preparing the record
19 within fifteen days of service of the record on the petitioner.

20 NEW SECTION. **Sec. 308.** The court shall provide expedited review
21 of petitions filed under this chapter. If judicial review is granted,
22 the matter must be set for hearing within sixty days of the date set
23 for submitting the local jurisdiction's record, absent a showing of
24 compelling reasons for a different date or a stipulation of the
25 parties.

26 NEW SECTION. **Sec. 309.** (1) A petitioner for judicial review of a
27 land use decision may request the court to stay or suspend an action by
28 the local jurisdiction or another party to implement the decision under
29 review, by including the request in the petition. The request must set
30 forth a statement of grounds for the stay and the factual basis for the
31 request. The court shall rule on the request at the hearing on the
32 order to show cause.

33 (2) Another party to the judicial review proceedings may request a
34 stay by making a motion in accordance with the court rules. The motion
35 must be filed with the party's first pleading in the matter.

36 (3) The court shall deny a request for a stay that is made after
37 the times required by subsections (1) and (2) of this section unless

1 the party requesting the stay establishes that the reasons justifying
2 the stay did not exist, or could not have been discovered, at the times
3 set forth in subsections (1) and (2) of this section.

4 (4) A court may grant a stay only if the court finds that:

5 (a) The party requesting the stay is likely to prevail on the
6 merits;

7 (b) Without the stay the party requesting it will suffer
8 irreparable harm; and

9 (c) The grant of a stay will not substantially harm other parties
10 to the proceedings or the public.

11 (5) The court may grant the request for a stay upon such terms and
12 conditions, such as the filing of security, as are necessary to prevent
13 harm to other parties from the stay.

14 NEW SECTION. **Sec. 310.** (1) If the land use decision being
15 reviewed was made by a quasi-judicial body or officer who was making
16 factual determinations and the parties had the opportunity to make a
17 record on the factual issues, judicial review of factual issues, and
18 the conclusions drawn from the factual issues, must be confined to the
19 record created by the quasi-judicial body or officer, except as
20 provided in this section.

21 (2) For decisions described in subsection (1) of this section, the
22 record may be supplemented by additional evidence only if the
23 additional evidence relates to:

24 (a) Disputed factual issues regarding the authority or jurisdiction
25 of the body or officer that made the land use decision;

26 (b) Grounds for disqualification of a member of the body or of the
27 officer that made the land use decision;

28 (c) Unlawfulness of the procedure used to make the decision;

29 (d) Matters that were improperly excluded from the record after
30 being offered by a party to the quasi-judicial proceeding; or

31 (e) Matters that were outside the jurisdiction of the body or
32 officer that made the land use decision.

33 (3) For land use decisions other than those described in subsection
34 (1) of this section, the record for judicial review may be supplemented
35 by evidence of material facts that were not required to be made part of
36 the local jurisdiction's record.

37 (4) The parties may not conduct civil discovery prior to the
38 determination of the land use petition except in regard to the issues

1 listed in subsection (2) of this section. Requests made under chapter
2 42.17 RCW for records relating to the matters at issue in the pending
3 land use petition must be treated as requests for civil discovery and
4 must meet the requirements of this section and the court rules.

5 NEW SECTION. **Sec. 311.** (1) The superior court, acting without a
6 jury, shall review the record and such supplemental evidence as is
7 permitted under RCW 36.70B.100. The court may grant relief only if the
8 party seeking relief has carried the burden of establishing that one of
9 the standards set forth in (a), (b), and (c) of this subsection have
10 been met. The standards are:

11 (a) The party seeking relief has been substantially prejudiced as
12 a result of the claimed error or errors, and:

13 (i) The body or officer that made the land use decision engaged in
14 unlawful procedure or failed to follow a prescribed process;

15 (ii) The land use decision under review is a clearly erroneous
16 interpretation or application of the law, in light of the law's
17 purpose; or

18 (iii) The land use decision under review is not supported by
19 substantial evidence;

20 (b) The land use decision under review was outside the authority or
21 jurisdiction of the body or officer making the decision; and

22 (c) The land use decision violates the constitutional rights of the
23 party seeking relief.

24 (2) In order to grant relief under this chapter, it is not
25 necessary for the court to find that the local jurisdiction engaged in
26 arbitrary and capricious conduct.

27 NEW SECTION. **Sec. 312.** The court may affirm or reverse the land
28 use decision under review, modify it, or remand it for modification or
29 further proceedings. If the decision is remanded for modification or
30 further proceedings, the court may make the order as it finds necessary
31 to preserve the interests of the parties and the public, pending
32 further proceedings or action by the local jurisdiction.

33 **Sec. 313.** RCW 7.16.360 and 1989 c 175 s 38 are each amended to
34 read as follows:

35 This chapter does not apply to state agency action reviewable under
36 chapter 34.05 RCW or the land use decisions of local jurisdictions

1 reviewable under chapter 36.-- RCW (sections 301 through 312 of this
2 act).

3 **Sec. 314.** RCW 58.17.180 and 1983 c 121 s 5 are each amended to
4 read as follows:

5 Any decision approving or disapproving any plat shall be reviewable
6 for (~~(unlawful, arbitrary, capricious or corrupt action or nonaction by~~
7 ~~writ of review before)) under chapter 36.-- RCW (sections 301 through
8 312 of this act) by the superior court of the county in which such
9 matter is pending. (~~(Standing to bring the action is limited to the~~
10 ~~following parties:~~~~

11 ~~(1) The applicant or owner of the property on which the subdivision~~
12 ~~is proposed;~~

13 ~~(2) Any property owner entitled to special notice under RCW~~
14 ~~58.17.090;~~

15 ~~(3) Any property owner who deems himself aggrieved thereby and who~~
16 ~~will suffer direct and substantial impacts from the proposed~~
17 ~~subdivision.~~

18 ~~Application for a writ of review shall be made to the court within~~
19 ~~thirty days from any decision so to be reviewed. The cost of~~
20 ~~transcription of all records ordered certified by the court for such~~
21 ~~review shall be borne by the appellant.))~~

22 NEW SECTION. **Sec. 315.** A new section is added to chapter 4.84 RCW
23 to read as follows:

24 Notwithstanding any other provisions of this chapter, reasonable
25 attorneys fees and costs shall be awarded to the prevailing party or
26 substantially prevailing party on appeal before the superior court,
27 court of appeals, or the supreme court of a decision by a county, city,
28 or town to issue, condition, or deny a development permit involving a
29 site-specific rezone, zoning, plat, conditional use, variance,
30 shoreline permit, building permit, site plan, or similar land use
31 approval or decision.

32 NEW SECTION. **Sec. 316.** Sections 301 through 312 of this act
33 constitute a new chapter in Title 36 RCW.

34 **PART IV - STUDY**

1 NEW SECTION. **Sec. 401.** The land use study commission is hereby
2 established. The commission s goal shall be the integration and
3 consolidation of the state s land use and environmental laws into a
4 single, manageable statute. In fulfilling its responsibilities, the
5 commission shall evaluate the effectiveness of the growth management
6 act, the state environmental policy act, the shoreline management act,
7 and other state land use, planning, environmental, and permitting
8 statutes.

9 NEW SECTION. **Sec. 402.** The commission shall consist of not more
10 than thirteen members. Seven members of the commission shall be
11 appointed by the governor, two members shall be appointed by the
12 speaker of the house of representatives, and two members shall be
13 appointed by the president of the senate. Membership shall reflect the
14 interests of business, agriculture, labor, the environment, other
15 citizens, the legislature, cities, counties, federally recognized
16 Indian tribes, and state agencies. The director of the department of
17 community, trade, and economic development, or the director s designee,
18 shall serve in a nonvoting capacity as chair of the commission. The
19 director of the department of ecology, or the director s designee,
20 shall also be a member of the commission in a nonvoting capacity.
21 Staff for the commission shall be provided by the department of
22 community, trade, and economic development, with additional staff to be
23 provided by other state agencies and the legislature, as may be
24 required. State agencies shall provide the commission with information
25 and assistance as needed.

26 NEW SECTION. **Sec. 403.** The commission shall convene commencing
27 June 1, 1995, and shall complete its work by June 30, 1998. The
28 commission shall submit a report to the governor and the legislature
29 stating its findings, conclusions, and recommendations not later than
30 November 1 of each year. The commission shall submit its final report
31 to the governor and the legislature not later than November 1, 1997.

32 NEW SECTION. **Sec. 404.** The commission shall:
33 (1) Consider the effectiveness of state and local government
34 efforts to consolidate and integrate the growth management act, the
35 state environmental policy act, the shoreline management act, and other
36 land use, planning, environmental, and permitting laws.

1 (2) Identify the revisions and modifications needed in state land
2 use, planning, and environmental law and practice to adequately plan
3 for growth, to adequately assess environmental impacts of comprehensive
4 plans, development regulations, and growth, and to reduce the time and
5 cost of obtaining project permits.

6 (3) Draft a consolidated land use procedure, following these
7 guidelines:

8 (a) Conduct land use planning through the comprehensive planning
9 process under chapter 36.70A RCW rather than through review of
10 individual projects;

11 (b) Involve diverse sectors of the public in the planning process.
12 Early and informal environmental analysis should be incorporated into
13 planning and decision making;

14 (c) Recognize that different questions need to be answered and
15 different levels of detail applied at each planning phase, from the
16 initial development of plan concepts or plan elements to implementation
17 programs;

18 (d) Integrate and combine to the fullest extent possible the
19 processes, analysis, and documents currently required under chapters
20 36.70A and 43.21C RCW, so that subsequent plan decisions and subsequent
21 implementation will incorporate measures to promote the environmental,
22 economic, and other goals and to mitigate undesirable or unintended
23 adverse impacts on a community's quality of life;

24 (e) Focus environmental review and the level of detail needed for
25 different stages of plan and project decisions on the environmental
26 considerations most relevant to that stage of the process;

27 (f) Avoid duplicating review that has occurred for plan decisions
28 when specific projects are proposed;

29 (g) Use environmental review on projects to: (i) Review and
30 document consistency with comprehensive plans and development
31 regulations; (ii) provide prompt and coordinated review by agencies,
32 tribes, and the public on compliance with applicable environmental laws
33 and plans, including mitigation for site specific project impacts that
34 have not been considered and addressed at the plan or development
35 regulation level; and (iii) ensure accountability by local government
36 to applicants and the public for requiring and implementing mitigation
37 measures;

38 (h) Maintain or improve the quality of environmental analysis both
39 for plan and for project decisions, while integrating these analyses

1 with improved state and local planning and permitting processes;

2 (i) Examine existing land use and environmental permits for
3 necessity and utility. To the extent possible, existing permits should
4 be combined into fewer permits, assuring that the values and principles
5 intended to be protected by those permits remain protected; and

6 (j) Consolidate local government appeal processes to allow a single
7 appeal of permits at local government levels, a single state level
8 administrative appeal, and a final judicial appeal.

9 (4) These guidelines are intended to guide the work of the
10 commission, without limiting its charge to integrate and consolidate
11 Washington's land use and environmental laws into a single, manageable
12 code.

13 NEW SECTION. **Sec. 405.** Members of the commission shall be
14 reimbursed for travel expenses as provided in RCW 43.03.050 and
15 43.03.060.

16 NEW SECTION. **Sec. 406.** Sections 401 through 405 of this act shall
17 expire June 30, 1998.

18 **PART V - MISCELLANEOUS**

19 NEW SECTION. **Sec. 501.** If any provision of this act or its
20 application to any person or circumstance is held invalid, the
21 remainder of the act or the application of the provision to other
22 persons or circumstances is not affected.

23 NEW SECTION. **Sec. 502.** Part headings and the table of contents as
24 used in this act do not constitute any part of the law.

25 NEW SECTION. **Sec. 503.** Sections 401 through 406 of this act are
26 necessary for the immediate preservation of the public peace, health,
27 or safety, or support of the state government and its existing public
28 institutions, and shall take effect June 1, 1995."

29 **SHB 1724** - H AMD
30 By Representative

31

1 On page 1, line 3 of the title, after "review;" strike the
2 remainder of the title and insert "amending RCW 43.21C.075, 43.21C.031,
3 43.21C.110, 43.21C.080, 36.70A.140, 36.70A.300, 36.70A.330, 90.58.020,
4 90.58.030, 90.58.050, 90.58.060, 90.58.080, 90.58.090, 90.58.100,
5 90.58.120, 90.58.140, 90.58.180, 90.58.190, 34.05.461, 34.05.514,
6 36.70A.130, 36.70A.320, 82.02.090, 82.02.020, 36.70A.440, 36.70A.065,
7 58.17.090, 58.17.092, 58.17.100, 58.17.330, 35.63.130, 35A.63.170,
8 36.70.970, 7.16.360, and 58.17.180; reenacting and amending RCW
9 36.70A.030 and 36.70A.290; adding new sections to chapter 36.70A RCW;
10 adding a new section to chapter 43.21C RCW; adding a new section to
11 chapter 82.02 RCW; adding a new section to chapter 64.40 RCW; adding
12 new sections to chapter 43.131 RCW; adding a new section to chapter
13 4.84 RCW; adding new chapters to Title 36 RCW; adding a new chapter to
14 Title 90 RCW; creating new sections; recodifying RCW 82.02.020,
15 82.02.050, 82.02.060, 82.02.070, 82.02.080, 82.02.090, 82.02.100,
16 36.70A.065, and 36.70A.440; repealing RCW 90.58.145, 90.62.010,
17 90.62.020, 90.62.030, 90.62.040, 90.62.050, 90.62.060, 90.62.070,
18 90.62.080, 90.62.090, 90.62.100, 90.62.110, 90.62.120, 90.62.130,
19 90.62.900, 90.62.901, 90.62.904, 90.62.905, 90.62.906, 90.62.907, and
20 90.62.908; providing an effective date; providing an expiration date;
21 and declaring an emergency."

--- END ---