

2 **E2SSB 5632** - H COMM AMD **ADOPTED 4/12/95**  
3 By Committee on Agriculture & Ecology

4

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

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

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

18 (1) Each county that is required or chooses to plan under RCW  
19 36.70A.040, and each city within such county, shall adopt development  
20 regulations on or before September 1, 1991, to assure the conservation  
21 of agricultural, forest, and mineral resource lands designated under  
22 RCW 36.70A.170. Regulations adopted under this subsection may not  
23 prohibit uses legally existing on any parcel prior to their adoption  
24 and shall remain in effect until the county or city adopts development  
25 regulations pursuant to RCW 36.70A.120. Such regulations shall assure  
26 that the use of lands adjacent to agricultural, forest, or mineral  
27 resource lands shall not interfere with the continued use, in the  
28 accustomed manner and in accordance with best management practices, of  
29 these designated lands for the production of food, agricultural  
30 products, or timber, or for the extraction of minerals. Counties and  
31 cities shall require that all plats, short plats, development permits,  
32 and building permits issued for development activities on, or within  
33 three hundred feet of, lands designated as agricultural lands, forest  
34 lands, or mineral resource lands, contain a notice that the subject  
35 property is within or near designated agricultural lands, forest lands,

1 or mineral resource lands on which a variety of commercial activities  
2 may occur that are not compatible with residential development for  
3 certain periods of limited duration.

4 (2) Each county and city shall adopt development regulations that  
5 protect critical areas that are required to be designated under RCW  
6 36.70A.170. For counties and cities that are required or choose to  
7 plan under RCW 36.70A.040, such development regulations shall be  
8 adopted on or before September 1, 1991. For the remainder of the  
9 counties and cities, such development regulations shall be adopted on  
10 or before March 1, 1992.

11 (3) Such counties and cities shall review these designations and  
12 development regulations when adopting their comprehensive plans under  
13 RCW 36.70A.040 and implementing development regulations under RCW  
14 36.70A.120 and may alter such designations and development regulations  
15 to insure consistency.

16 (4) Forest land and agricultural land located within urban growth  
17 areas shall not be designated by a county or city as forest land or  
18 agricultural land of long-term commercial significance under RCW  
19 36.70A.170 unless the city or county has enacted a program authorizing  
20 transfer or purchase of development rights.

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

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

26 The comprehensive plan of a county or city that is required or  
27 chooses to plan under RCW 36.70A.040 shall consist of a map or maps,  
28 and descriptive text covering objectives, principles, and standards  
29 used to develop the comprehensive plan. The plan shall be an  
30 internally consistent document and all elements shall be consistent  
31 with the future land use map, and the comprehensive flood plain  
32 management plan adopted by the county under RCW 86.26.105. A  
33 comprehensive plan shall be adopted and amended with public  
34 participation as provided in RCW 36.70A.140.

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

37 (1) A land use element designating the proposed general  
38 distribution and general location and extent of the uses of land, where

1 appropriate, for agriculture, timber production, housing, commerce,  
2 industry, recreation, open spaces, public utilities, public facilities,  
3 and other land uses. The land use element shall include population  
4 densities, building intensities, and estimates of future population  
5 growth. The land use element shall provide for protection of the  
6 quality and quantity of ground water used for public water supplies.  
7 Where applicable, the land use element shall review drainage, flooding,  
8 and storm water run-off in the area and nearby jurisdictions and  
9 provide guidance for corrective actions to mitigate or cleanse those  
10 discharges that pollute waters of the state, including Puget Sound or  
11 waters entering Puget Sound.

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

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

34 (4) A utilities element consisting of the general location,  
35 proposed location, and capacity of all existing and proposed utilities,  
36 including, but not limited to, electrical lines, telecommunication  
37 lines, and natural gas lines.

38 (5) Counties shall include a rural element including lands that are  
39 not designated for urban growth, agriculture, forest, or mineral

1 resources. The rural element shall permit land uses that are  
2 compatible with the rural character of such lands and provide for a  
3 variety of rural densities.

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

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

8 (b) Facilities and services needs, including:

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

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

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

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

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

23 (c) Finance, including:

24 (i) An analysis of funding capability to judge needs against  
25 probable funding resources;

26 (ii) A multiyear financing plan based on the needs identified in  
27 the comprehensive plan, the appropriate parts of which shall serve as  
28 the basis for the six-year street, road, or transit program required by  
29 RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW  
30 35.58.2795 for public transportation systems;

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

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

38 (e) Demand-management strategies.

39 After adoption of the comprehensive plan by jurisdictions required

1 to plan or who choose to plan under RCW 36.70A.040, local jurisdictions  
2 must adopt and enforce ordinances which prohibit development approval  
3 if the development causes the level of service on a transportation  
4 facility to decline below the standards adopted in the transportation  
5 element of the comprehensive plan, unless transportation improvements  
6 or strategies to accommodate the impacts of development are made  
7 concurrent with the development. These strategies may include  
8 increased public transportation service, ride sharing programs, demand  
9 management, and other transportation systems management strategies.  
10 For the purposes of this subsection (6) "concurrent with the  
11 development" shall mean that improvements or strategies are in place at  
12 the time of development, or that a financial commitment is in place to  
13 complete the improvements or strategies within six years.

14 The transportation element described in this subsection, and the  
15 six-year plans required by RCW 35.77.010 for cities, RCW 36.81.121 for  
16 counties, and RCW 35.58.2795 for public transportation systems, must be  
17 consistent.

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

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

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

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

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

31 (d) Critical areas.

32 (2) In making the designations required by this section, counties  
33 and cities shall consider the guidelines established pursuant to RCW  
34 36.70A.050, and shall make such designations so that they are  
35 consistent with the flood plain management plan adopted by the county  
36 under RCW 86.26.105.

37 **Sec. 5.** RCW 43.21C.020 and 1971 ex.s. c 109 s 2 are each amended

1 to read as follows:

2 (1) The legislature, recognizing that (~~man~~) people depend(~~s~~) on  
3 (~~his~~) their biological and physical surroundings for food, shelter,  
4 and other needs, and for cultural enrichment as well(~~+~~), and  
5 recognizing further the profound impact of (~~man's~~) human activity on  
6 the interrelations of all components of the natural environment,  
7 particularly the profound influences of population growth, high-density  
8 urbanization, industrial expansion, resource utilization and  
9 exploitation, and new and expanding technological advances, and  
10 recognizing further the critical importance of restoring and  
11 maintaining environmental quality to the overall welfare and  
12 development of (~~man~~) people, declares that it is the continuing  
13 policy of the state of Washington, in cooperation with federal and  
14 local governments, and other concerned public and private  
15 organizations, to use all practicable means and measures, including  
16 financial and technical assistance, in a manner calculated to: (a)  
17 Foster and promote the general welfare; (b) (~~to~~) create and maintain  
18 conditions under which (~~man~~) people and nature can exist in  
19 productive harmony; and (c) fulfill the social, economic, and other  
20 requirements of present and future generations of Washington citizens.

21 (2) In order to carry out the policy set forth in this chapter, it  
22 is the continuing responsibility of the state of Washington and all  
23 agencies of the state to use all practicable means, consistent with  
24 other essential considerations of state policy, to improve and  
25 coordinate plans, functions, programs, and resources to the end that  
26 the state and its citizens may:

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

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

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

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

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

38 (f) Achieve a balance between population and resource use which  
39 will permit high standards of living and a wide sharing of life's

1 amenities; ((and))

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

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

6 (3) The legislature recognizes that each person has a fundamental  
7 and inalienable right to a healthful environment and that each person  
8 has a responsibility to contribute to the preservation and enhancement  
9 of the environment.

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

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

14 (1) "Bed" means the land below the ordinary high water lines of  
15 state waters. This definition does not include irrigation ditches,  
16 canals, storm water run-off devices, or other artificial watercourses  
17 except where they exist in a natural watercourse that has been altered  
18 by humans.

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

21 (3) "Emergency" means an immediate threat to life, public land, or  
22 private property, or an immediate threat of serious environmental  
23 degradation.

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

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

33 NEW SECTION. Sec. 7. A new section is added to chapter 75.20 RCW  
34 to read as follows:

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

37 (1) The permittee shall establish an excavation line. "Excavation

1 line" means a line on the dry bed, parallel to the water's edge unless  
2 otherwise stated, that changes with water level fluctuations.

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

5 (3) The permittee shall begin excavating at the excavation line and  
6 proceed toward the bank, perpendicular to the alignment of the  
7 watercourse.

8 (4) The permittee shall keep the maximum distance of excavation  
9 toward the bank from the excavation line approximately equal throughout  
10 the excavation zone. "Excavation zone" means the area between the  
11 excavation line and the bank.

12 (5) The permittee shall identify the excavation zone with boundary  
13 markers.

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

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

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

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

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

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

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

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

35 (1) In the event that any person or government agency desires to  
36 construct any form of hydraulic project or perform other work that will  
37 use, divert, obstruct, or change the natural flow or bed of any of the  
38 salt or fresh waters of the state, such person or government agency



1 shall, before commencing construction or work thereon and to ensure the  
2 proper protection of fish life, secure the written approval of the  
3 department as to the adequacy of the means proposed for the protection  
4 of fish life. The hydraulic project approval authority of the  
5 department shall be limited to construction or other work that occurs  
6 at or below the mean higher high water line in salt water and estuaries  
7 or at or below the ordinary high water line in fresh water. The  
8 department shall neither deny nor condition a hydraulic project  
9 approval on the basis of human or animal actions or environmental  
10 conditions that occur above the higher high water line in salt water  
11 and estuaries or above the ordinary high water line in fresh water.  
12 The department may not limit, condition, or otherwise affect the  
13 amount, timing, or delivery method of water diverted under chapter  
14 90.03 RCW. This approval shall not be unreasonably withheld. Except  
15 as provided in RCW 75.20.1001 (~~and 75.20.1002~~), the department shall  
16 grant or deny approval within forty-five calendar days of the receipt  
17 of a complete application and notice of compliance with any applicable  
18 requirements of the state environmental policy act, made in the manner  
19 prescribed in this section. The applicant may document receipt of  
20 application by filing in person or by registered mail. A complete  
21 application for approval shall contain general plans for the overall  
22 project, complete plans and specifications of the proposed construction  
23 or work within the mean higher high water line in salt water or within  
24 the ordinary high water line in fresh water, and complete plans and  
25 specifications for the proper protection of fish life. The forty-five  
26 day requirement shall be suspended if ~~((+1))~~ (a) after ten working  
27 days of receipt of the application, the applicant remains unavailable  
28 or unable to arrange for a timely field evaluation of the proposed  
29 project; ~~((+2))~~ (b) the site is physically inaccessible for  
30 inspection; or ~~((+3))~~ (c) the applicant requests delay. Immediately  
31 upon determination that the forty-five day period is suspended, the  
32 department shall notify the applicant in writing of the reasons for the  
33 delay. Approval is valid for a period of up to five years from date of  
34 issuance. The permittee must demonstrate substantial progress on  
35 construction of that portion of the project relating to the approval  
36 within two years of the date of issuance. If the department denies  
37 approval, the department shall provide the applicant, in writing, a  
38 statement of the specific reasons why and how the proposed project  
39 would adversely affect fish life. Protection of fish life shall be the

1 only ground upon which approval may be denied or conditioned.

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

4 (a) Presents no substantial risk to fish life and provides fish  
5 habitat productivity that is equivalent to preproject conditions at the  
6 project site within three years of the project's completion; or

7 (b)(i) Protects a residential, commercial, or industrial facility  
8 or structure that is likely to incur significant flood damage during  
9 the next flood season if the project is not completed; and (ii) lessens  
10 the loss of fish life or habitat as compared to a project resulting  
11 from an emergency request under this section.

12 The department shall approve a project if it determines that the  
13 project meets either (a) or (b) of this subsection. This subsection  
14 (2) shall apply only to projects that are consistent with a  
15 comprehensive food control management plan, as determined by the  
16 county.

17 (3) Chapter 34.05 RCW applies to any denial of project approval,  
18 conditional approval, or requirements for project modification upon  
19 which approval may be contingent. If any person or government agency  
20 commences construction on any hydraulic works or projects subject to  
21 this section without first having obtained written approval of the  
22 department as to the adequacy of the means proposed for the protection  
23 of fish life, or if any person or government agency fails to follow or  
24 carry out any of the requirements or conditions as are made a part of  
25 such approval, the person or director of the agency is guilty of a  
26 gross misdemeanor. If any such person or government agency is  
27 convicted of violating any of the provisions of this section and  
28 continues construction on any such works or projects without fully  
29 complying with the provisions hereof, such works or projects are hereby  
30 declared a public nuisance and shall be subject to abatement as such.

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

36 ~~The phrase "to construct any form of hydraulic project or perform~~  
37 ~~other work" shall not include the act of driving across an established~~  
38 ~~ford. Driving across streams or on wetted stream beds at areas other~~  
39 ~~than established fords requires approval. Work within the ordinary~~

1 ~~high water line of state waters to construct or repair a ford or~~  
2 ~~crossing requires approval.))~~

3 (4) In case of an emergency arising from weather or stream flow  
4 conditions or other natural conditions, upon request the department,  
5 through its authorized representatives, shall ~~((issue))~~ grant  
6 immediately ~~((upon request))~~, oral approval for removing any  
7 obstructions, repairing existing structures, restoring stream banks, or  
8 ~~((to protect))~~ protecting property threatened by the stream or a change  
9 in the stream flow without ~~((the necessity of obtaining))~~ requiring a  
10 written approval prior to commencing work. Conditions of an oral  
11 approval shall be reduced to writing within thirty days and complied  
12 with as provided for in this section. Oral approval shall be granted  
13 immediately upon request, for a stream crossing during an emergency  
14 situation.

15 (5) In granting approval for projects submitted by local flood  
16 control agencies, the department shall grant a special duration  
17 hydraulic permit approval if the submitted project is a multiyear  
18 maintenance program. The approval shall be granted for up to five  
19 years, or the actual number of years covered by the maintenance  
20 program, whichever is less.

21 (6) This section shall not apply to the repair of an existing flood  
22 control project if the project is determined by the county to be:

23 (a) Consistent with a currently approved comprehensive flood  
24 control management plan; and

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

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

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

36 (1) In the event that any person or government agency desires to  
37 construct any form of hydraulic project or other work that diverts  
38 water for agricultural irrigation or stock watering purposes, or when

1 such hydraulic project or other work is associated with streambank  
2 stabilization or flood damage reduction to protect farm and  
3 agricultural land as defined in RCW 84.34.020, and when such  
4 ~~((diversion or streambank stabilization))~~ hydraulic project will use,  
5 divert, obstruct, or change the natural flow or bed of any river or  
6 stream or will utilize any waters of the state or materials from the  
7 stream beds, the person or government agency shall, before commencing  
8 construction or work thereon and to ensure the proper protection of  
9 fish life, secure a written approval from the department as to the  
10 adequacy of the means proposed for the protection of fish life. The  
11 hydraulic project approval authority of the department shall be limited  
12 to construction or other work that occurs at or below the mean higher  
13 high water line in salt water and estuaries or at or below the ordinary  
14 high water line in fresh water. The department shall neither deny nor  
15 condition a hydraulic project approval on the basis of human or animal  
16 actions or environmental conditions that occur above the higher high  
17 water line in salt water and estuaries or above the ordinary high water  
18 line in fresh water. The department may not limit, condition, or  
19 otherwise affect the amount, timing, or delivery method of water  
20 diverted under chapter 90.03 RCW. This approval shall not be  
21 unreasonably withheld. Except as provided in RCW 75.20.1001 ~~((and~~  
22 ~~75.20.1002))~~, the department shall grant or deny the approval within  
23 forty-five calendar days of the receipt of a complete application ~~((and~~  
24 ~~notice of compliance with any applicable requirements of the state~~  
25 ~~environmental policy act,))~~ made in the manner prescribed in this  
26 section. The applicant may document receipt of application by filing  
27 in person or by registered mail.

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

29 (a) Contain general plans for the overall project, complete plans  
30 and specifications of the proposed construction or work within ordinary  
31 high water line, and complete plans and specifications for the proper  
32 protection of fish life; and

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

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

38 (a) After ten working days of receipt of the application, the  
39 applicant remains unavailable or unable to arrange for a timely field

1 evaluation of the proposed project; (~~(2)~~)

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

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

6 (d) The applicant requests delay.

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

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

12 (a) Presents no substantial risk to fish life and provides fish  
13 habitat productivity that is equivalent to preproject conditions at the  
14 project site within three years of the project's completion; or

15 (b)(i) Protects a residential, commercial, or industrial facility  
16 or structure that is likely to incur significant flood damage during  
17 the next flood season if the project is not completed; and (ii) lessens  
18 the loss of fish life or habitat as compared to a project resulting  
19 from an emergency request under this section.

20 The department shall approve a project if it determines that the  
21 project meets either (a) or (b) of this subsection. This subsection  
22 (5) shall apply only to projects that are consistent with a  
23 comprehensive flood control management plan, as determined by the  
24 county.

25 (6) An approval shall remain in effect without need for periodic  
26 renewal for projects that divert water for agricultural irrigation or  
27 stock watering purposes and that involve seasonal construction or other  
28 work. Approval for streambank stabilization projects shall remain in  
29 effect without need for periodic renewal if the problem causing the  
30 need for the streambank stabilization occurs on an annual or more  
31 frequent basis. The permittee must notify the appropriate agency  
32 before commencing the construction or other work within the area  
33 covered by the approval.

34 (7) The permittee must demonstrate substantial progress on  
35 construction of that portion of the project relating to the approval  
36 within two years of the date of issuance. If the department denies  
37 approval, the department shall provide the applicant, in writing, a  
38 statement of the specific reasons why and how the proposed project  
39 would adversely affect fish life. Protection of fish life shall be the

1 only ground upon which approval may be denied or conditioned.  
2 Issuance, denial, conditioning, or modification shall be appealable to  
3 the hydraulic appeals board established in RCW 43.21B.005 within thirty  
4 days of the notice of decision. The burden shall be upon the  
5 department to show that the denial or conditioning of an approval is  
6 solely aimed at the protection of fish life.

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

13 (9) A permittee may request modification of an approval due to  
14 changed conditions. The request shall be processed within forty-five  
15 calendar days of receipt of the written request. A decision by the  
16 department may be appealed to the hydraulic appeals board within thirty  
17 days of the notice of the decision. The burden is on the permittee to  
18 show that changed conditions warrant the requested modification and  
19 that such modification will not impair fish life.

20 (10) If any person or government agency commences construction on  
21 any hydraulic works or projects subject to this section without first  
22 having obtained written approval of the department as to the adequacy  
23 of the means proposed for the protection of fish life, or if any person  
24 or government agency fails to follow or carry out any of the  
25 requirements or conditions as are made a part of such approval, the  
26 person or director of the agency is guilty of a gross misdemeanor. If  
27 any such person or government agency is convicted of violating any of  
28 the provisions of this section and continues construction on any such  
29 works or projects without fully complying with the provisions hereof,  
30 such works or projects are hereby declared a public nuisance and shall  
31 be subject to abatement as such.

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

38 (12) In case of an emergency arising from weather or stream flow  
39 conditions or other natural conditions, the department, through its

1 authorized representatives, shall issue immediately upon request oral  
2 approval for removing any obstructions, repairing existing structures,  
3 restoring stream banks, or to protect property threatened by the stream  
4 or a change in the stream flow without the necessity of obtaining a  
5 written approval prior to commencing work. Conditions of an oral  
6 approval shall be reduced to writing within thirty days and complied  
7 with as provided for in this section. Oral approval shall be granted  
8 immediately upon request, for a stream crossing during an emergency.

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

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

16 (a) Consistent with a previously approved comprehensive flood  
17 control management plan; and

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

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

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

24 (2) The hydraulic appeals board shall consist of three members:  
25 The director of the department of ecology or the director's designee,  
26 the director of the department of agriculture or the director's  
27 designee, and the director or the director's designee of the department  
28 whose action is appealed under subsection (6) of this section. A  
29 decision must be agreed to by at least two members of the board to be  
30 final.

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

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

38 (5) The board has exclusive jurisdiction to hear appeals arising

1 from the approval, denial, conditioning, or modification of a hydraulic  
2 approval issued by the department under the authority granted in RCW  
3 75.20.103 for the diversion of water for agricultural irrigation or  
4 stock watering purposes or when associated with streambank  
5 stabilization to protect farm and agricultural land as defined in RCW  
6 84.34.020.

7 (6)(a) Any person aggrieved by the approval, denial, conditioning,  
8 or modification of a hydraulic approval pursuant to RCW 75.20.103 may  
9 seek review from the board by filing a request for the same within  
10 thirty days of notice of the approval, denial, conditioning, or  
11 modification of such approval.

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

15 (c) If a review proceeding authorized in (a) of this subsection  
16 finds for the aggrieved permit applicant, the applicant may be awarded  
17 any legal and engineering costs involved in challenging the permit  
18 decision.

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

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

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

25 (a) Encourage bank and island stabilization programs which rely  
26 mainly on natural vegetative systems as holding elements;

27 (b) Encourage research to develop alternative methods of channel  
28 control, utilizing natural systems of stabilization;

29 (c) Recognize natural plant and animal communities and other  
30 features that provide an ecological balance to a streamway in  
31 evaluating competing human uses and require protection from significant  
32 human impact; and

33 (d) Recognize that hydraulic conditions may require the  
34 installation of riprap or other similar measure to further protect  
35 natural systems of stabilization.

36 (3) No person may remove normal stream depositions of logs,  
37 uprooted tree snags, and stumps which abut on shorelands and do not  
38 intrude on the navigational channel or reduce flow, or adversely



1 redirect a river course, and are not harmful to life and property  
2 without the department's permission but the department must consider  
3 the need to protect the resultant dependent aquatic systems.

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

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

11 (6) No person may remove sand and gravel below the wetted perimeter  
12 of navigable rivers unless authorized by a hydraulics permit issued by  
13 either the department of fisheries or department of wildlife under RCW  
14 75.20.100 and 75.20.103. These removals may be authorized for  
15 maintenance and improvement of navigational channels or for creating  
16 backwater channels for fish rearing or improvement of the flow capacity  
17 of the channels.

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

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

23 (b) The removal provides recreational benefits;

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

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

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

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

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

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

36 (c) Removal will impact esthetics of nearby recreational  
37 facilities.

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

1 (10) The department shall condition sand and gravel removal leases  
2 to allow removal of only that amount which is naturally replenished on  
3 an annual basis, except in instances where a lapse in material removal  
4 has occurred. If such a lapse has occurred, then an amount of material  
5 equivalent to the amount estimated to have accumulated since the last  
6 material removal operation, including debris and vegetation, may be  
7 removed.

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

10 When gravel, rock, sand, silt or other material from any aquatic  
11 lands is removed by any public agency or under public contract for  
12 channel or harbor improvement, or flood control, use of such material  
13 may be authorized by the department of natural resources for a public  
14 purpose on land owned or leased by the state or any municipality,  
15 county, or public corporation: PROVIDED, That when no public land site  
16 is available for deposit of such material, its deposit on private land  
17 with the landowner's permission is authorized and may be designated by  
18 the department of natural resources to be for a public purpose. Prior  
19 to removal and use, the state agency, municipality, county, or public  
20 corporation contemplating or arranging such use shall first obtain  
21 written permission from the department of natural resources. No  
22 payment of royalty shall be required for such gravel, rock, sand, silt,  
23 or other material used for such public purpose, but a charge will be  
24 made if such material is subsequently sold or used for some other  
25 purpose: PROVIDED, That the department may authorize such public  
26 agency or private landowner to dispose of such material without charge  
27 when necessary to implement disposal of material. No charge shall be  
28 required for any use of the material obtained under the provisions of  
29 this chapter when used solely on an authorized site. No charge shall  
30 be required for any use of the material obtained under the provisions  
31 of this chapter if the material is used for public purposes by local  
32 governments. No charge may be required for removal or use of such  
33 material if the removal of the material is determined by the local  
34 government to be for flood control purposes. Public purposes include,  
35 but are not limited to, construction and maintenance of roads, dikes,  
36 and levies. Nothing in this section shall repeal or modify the  
37 provisions of RCW 75.20.100 or eliminate the necessity of obtaining a  
38 permit for such removal from other state or federal agencies as

1 otherwise required by law.

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

4       (1) The department of natural resources, upon application by any  
5 person or when determined by the department to be in the best interest  
6 of the state, may enter into a contract or lease providing for the  
7 removal and sale of rock, gravel, sand, and silt, or other valuable  
8 materials located within or upon beds of navigable waters, or upon any  
9 tidelands or shorelands belonging to the state and providing for  
10 payment to be made therefor by such royalty as the department may fix,  
11 by negotiation, by sealed bid, or at public auction. If application is  
12 made for the purchase of any valuable material situated within or upon  
13 aquatic lands the department shall inspect and appraise the value of  
14 the material in the application. The department may reduce or  
15 eliminate royalties in areas prone to flooding. Removal of material  
16 from within the ordinary high water mark must be construed as being  
17 removed for flood control purposes. The department may include a  
18 provision in contracts for the removal of rock, gravel, sand, or silt  
19 that allows for payment to be made as the material is sold.

20       (2) The department shall actively seek to encourage through permit  
21 requirements and adjusted fees the removal of accumulated materials  
22 from rivers and streams where there is a flood damage reduction  
23 benefit. The department shall develop policies to accomplish this  
24 goal.

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

27       Upon receipt of a petition asking that a zone be created, or upon  
28 motion of the board, the board shall adopt a resolution which shall  
29 describe the boundaries of such proposed zone; describe in general  
30 terms the flood control needs or requirements within the zone; set a  
31 date for public hearing upon the creation of such zone, which shall be  
32 not more than thirty days after the adoption of such resolution.  
33 Notice of such hearing and publication shall be had in the manner  
34 provided in RCW 36.32.120(7).

35       At the hearing scheduled upon the resolution, the board shall  
36 permit all interested parties to be heard. Thereafter, the board may  
37 reject the resolution or it may modify the boundaries of such zone and

1 make such other corrections or additions to the resolutions as they  
2 deem necessary to the accomplishment of the purpose of this chapter:  
3 PROVIDED, That if the boundaries of such zone are enlarged, the board  
4 shall hold an additional hearing following publication and notice of  
5 such new boundaries: PROVIDED FURTHER, That the boundaries of any zone  
6 shall generally follow the boundaries of the watershed area affected:  
7 PROVIDED FURTHER, That the immediately preceding proviso shall in no  
8 way limit or be construed to prohibit the formation of a county-wide  
9 flood control zone district authorized to be created by RCW 86.15.025.

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

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

15 The board (~~of county commissioners of each county~~) shall be ex  
16 officio, by virtue of their office, supervisors of the zones created in  
17 each county. The supervisors of the district shall conduct the  
18 business of the flood control zone district according to the regular  
19 rules and procedures that it adopts.

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

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

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

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

29 (3) Within any zone or participating zones an annual ad valorem  
30 property tax levy of not to exceed fifty cents per thousand dollars of  
31 assessed value when the levy will not take dollar rates that other  
32 taxing districts may lawfully claim and that will not cause the  
33 combined levies to exceed the constitutional and/or statutory  
34 limitations, and the additional levy, or any portion thereof, may also  
35 be made when dollar rates of other taxing units is released therefor by  
36 agreement with the other taxing units from their authorized levies  
37 under chapter 39.67 RCW;

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

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

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

19 (~~(A comprehensive flood control management plan shall determine the  
20 need for flood control work, consider alternatives to in-stream flood  
21 control work, identify and consider potential impacts of in-stream  
22 flood control work on the state's in-stream resources, and identify the  
23 river's meander belt or floodway.))~~) (1) A comprehensive flood control  
24 management plan shall be completed and adopted ((within at least three  
25 years of the certification that it is being prepared, as provided in  
26 RCW 86.26.050)) by any county that has experienced at least two  
27 presidentially declared flood disasters within the most recent ten-year  
28 period by December 31, 1999, or within two years of a second  
29 presidentially declared flood disaster.

30 (2) If ((after this three-year period has elapsed)), by December  
31 31, 1999, or within two years of a second presidentially declared flood  
32 disaster, such a comprehensive flood control plan has not been  
33 completed and adopted, grants for flood control maintenance projects  
34 shall not be made to the county or municipal corporations in the county  
35 until a comprehensive flood control plan is completed and adopted by  
36 the appropriate local authority. These limitations on grants shall not  
37 preclude allocations for emergency purposes made pursuant to RCW  
38 86.26.060, however, priority consideration for emergency assistance

1 shall be given to those counties that are required to plan, and have  
2 completed a plan, as required under this section.

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

5 (1) Any person aggrieved by the granting, denying, or rescinding of  
6 a permit on shorelines of the state pursuant to RCW 90.58.140 may seek  
7 review from the shorelines hearings board by filing a request for the  
8 same within thirty days of the date of filing as defined in RCW  
9 90.58.140(6).

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

35 (2) The department or the attorney general may obtain review of any  
36 final order granting a permit, or granting or denying an application  
37 for a permit issued by a local government by filing a written request  
38 with the shorelines hearings board and the appropriate local government

1 within thirty days from the date the final order was filed as provided  
2 in RCW 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.

8 (4) If the review proceedings authorized in subsection (1) of this  
9 section find for the requestor, and if the requestor is the permit  
10 applicant, the requestor may be awarded any legal and engineering costs  
11 involved in challenging the permit decision.

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

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

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

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

21 (c) Is arbitrary and capricious; or

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

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

25 the board shall enter a final decision declaring the rule, regulation,  
26 or guideline invalid, remanding the rule, regulation, or guideline to  
27 the department with a statement of the reasons in support of the  
28 determination, and directing the department to adopt, after a thorough  
29 consultation with the affected local government, a new rule,  
30 regulation, or guideline. Unless the board makes one or more of the  
31 determinations as hereinbefore provided, the board shall find the rule,  
32 regulation, or guideline to be valid and enter a final decision to that  
33 effect.

34 ~~((+5))~~ (6) Rules, regulations, and guidelines shall be subject to  
35 review in superior court, if authorized pursuant to RCW 34.05.570(2).  
36 No review shall be granted by a superior court on petition from a local  
37 government unless the local government shall first have obtained review  
38 under subsection ~~((+4))~~ (5) of this section and the petition for court  
39 review is filed within three months after the date of final decision by

1 the shorelines hearings board.

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

4 Each appropriate agency shall actively seek to encourage through  
5 permit requirements the removal of accumulated materials from rivers  
6 and streams where there is a flood damage reduction benefit. Each  
7 agency shall develop policies to accomplish this goal. Policies shall  
8 be developed from a designed, open-channel hydraulic engineering  
9 criteria to facilitate the natural downstream movement of detrimental  
10 material.

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

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

16 A comprehensive flood control management plan shall include the  
17 following elements:

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

21 (2) Establishment of a comprehensive scheme of flood control  
22 protection and improvements for the areas that are subject to such  
23 periodic flooding, that includes: (a) Determining the need for, and  
24 desirable location of, flood control improvements to protect or  
25 preclude flood damage to structures, works, and improvements, based  
26 upon a ~~((cost/benefit))~~ cost-benefit ratio between the expense of  
27 providing and maintaining these improvements and the benefits arising  
28 from these improvements; (b) establishing the level of flood protection  
29 that each portion of the system of flood control improvements will be  
30 permitted; (c) identifying alternatives to in-stream flood control  
31 work; (d) identifying areas where flood waters could be directed during  
32 a flood to avoid damage to buildings and other structures; ~~((and))~~ (e)  
33 identifying areas where a river may migrate into a new channel and  
34 developing options to prevent the creation of the new channel, and  
35 identifying practices that will avoid long-term accretion of sediments;  
36 and (f) identifying sources of revenue that will be sufficient to  
37 finance the comprehensive scheme of flood control protection and



1 improvements;

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

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

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

14 A comprehensive flood control management plan shall be subject to  
15 the minimum requirements for participation in the national flood  
16 insurance program, requirements exceeding the minimum national flood  
17 insurance program that have been adopted by the department of ecology  
18 for a specific flood plain pursuant to RCW 86.16.031, and rules adopted  
19 by the department of ecology pursuant to chapter 86.16 RCW and RCW  
20 86.26.050 relating to flood plain management activities. When a county  
21 plans under chapter 36.70A RCW, it (~~may~~) must incorporate the portion  
22 of its comprehensive flood control management plan relating to land use  
23 restrictions in its comprehensive plan and development regulations  
24 adopted pursuant to chapter 36.70A RCW.

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

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

29 (1) Administration:

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

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

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

35 (d) "Person" means an individual, partnership, corporation,  
36 association, organization, cooperative, public or municipal  
37 corporation, or agency of the state or local governmental unit however  
38 designated;

1 (e) "Hearing board" means the shoreline hearings board established  
2 by this chapter.

3 (2) Geographical:

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

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

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

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

28 (e) "Shorelines of state-wide significance" means the following  
29 shorelines of the state:

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

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

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

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

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

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

1 and

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

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

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

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

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

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

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

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

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

1 control devices maintained by or maintained under license from the  
2 federal government, the state, or a political subdivision of the state.

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) Improvements to dikes and levees if the improvement is  
32 determined by a county to be consistent with a flood control management  
33 plan developed under chapter 86.26 RCW;

34 (iii) Streambed maintenance including sediment removal, sediment  
35 disposal, and streambank stabilization if performed to provide public  
36 flood control benefit as determined by the appropriate county  
37 legislative authority;

38 (iv) Construction of stream flow regulation, retention, or  
39 detention facilities if consistent with a flood control management plan

1 developed under chapter 86.26 RCW;

2 (v) Construction of the normal protective bulkhead common to single  
3 family residences;

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

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

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

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

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

34 ~~((viii))~~ (xi) Operation, maintenance, or construction of canals,  
35 waterways, drains, reservoirs, or other facilities that now exist or  
36 are hereafter created or developed as a part of an irrigation system  
37 for the primary purpose of making use of system waters, including  
38 return flow and artificially stored ground water for the irrigation of  
39 lands;

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

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

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

16       NEW SECTION. Sec. 22. A new section is added to chapter 86.26 RCW  
17 to read as follows:

18       A flood protection project is work necessary to preserve, restore,  
19 or improve either natural or human-made stream banks or flood control  
20 facilities that repair or prevent flood damage as defined in RCW  
21 86.16.120 including but not limited to damage by erosion, stream flow,  
22 sheet runoff, or other damages by the sea or other bodies of water.

23       NEW SECTION. Sec. 23. A new section is added to chapter 86.12 RCW  
24 to read as follows:

25       Upon request by a county or city preparing a comprehensive flood  
26 management plan under chapter 86.12 RCW, the department of  
27 transportation shall:

28       (1) Provide an inventory of all state highways and bridges located  
29 in a floodplain as designated by the federal emergency management  
30 agency;

31       (2) Identify any state roads or bridges that may cause a  
32 constriction to the natural flow of flood waters;

33       (3) Identify state roads that, either by themselves or in  
34 conjunction with levees or other structures in the floodplain, may  
35 entrap floodwaters in areas originally intended to be flood-proofed;  
36 and

37       (4) Provide any other information available to the department to

1 assist in preventing or minimizing flood damages.

2 NEW SECTION. **Sec. 24.** A new section is added to chapter 75.20 RCW  
3 to read as follows:

4 By December 31, 1996, the departments of fish and wildlife, natural  
5 resources, and ecology shall jointly develop a memorandum of  
6 understanding to facilitate the consideration of projects that will aid  
7 in the minimization or prevention of flood damage as defined in RCW  
8 86.16.120. To reduce the duplication of information required by a  
9 project's permits, the departments must provide in their memorandum  
10 procedures to share data to the extent practicable among themselves and  
11 with other agencies that may be involved in approving or denying a  
12 permit application. The departments' memorandum must provide a plan to  
13 implement a comprehensive permit process that is streamlined and easily  
14 understandable to permit applicants.

15 NEW SECTION. **Sec. 25.** RCW 79.90.325 and 1984 c 212 s 10 are each  
16 repealed.

17 NEW SECTION. **Sec. 26.** This act is necessary for the immediate  
18 preservation of the public peace, health, or safety, or support of the  
19 state government and its existing public institutions, and shall take  
20 effect immediately."

21 **E2SSB 5632** - H COMM AMD  
22 By Committee on Agriculture & Ecology

23  
24 On page 1, line 1 of the title, after "reduction;" strike the  
25 remainder of the title and insert "amending RCW 36.70A.060, 36.70A.070,  
26 36.70A.170, 43.21C.020, 75.20.100, 75.20.103, 75.20.130, 79.90.150,  
27 79.90.300, 86.15.030, 86.15.050, 86.15.160, 86.26.105, 90.58.180,  
28 86.12.200, and 90.58.030; adding new sections to chapter 75.20 RCW;  
29 adding a new section to chapter 79.90 RCW; adding a new section to  
30 chapter 43.17 RCW; adding a new section to chapter 86.26 RCW; adding a  
31 new section to chapter 86.12 RCW; creating new sections; repealing RCW  
32 79.90.325; and declaring an emergency."

--- END ---