
HOUSE BILL 1350

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1997 Regular Session

By Representatives Koster, Johnson, Backlund, Sterk, Boldt, Cairnes, Smith, Lambert, Sherstad, McMorris, Mulliken and Thompson

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1 AN ACT Relating to flood damage reduction; amending RCW 36.70A.060,
2 36.70A.070, 36.70A.170, 43.21C.020, 75.20.100, 75.20.103, 75.20.130,
3 79.90.150, 79.90.300, 86.15.030, 86.15.050, 86.15.160, 86.26.105,
4 90.58.180, 86.12.200, and 90.58.030; adding new sections to chapter
5 75.20 RCW; adding a new section to chapter 79.90 RCW; adding a new
6 section to chapter 43.17 RCW; adding a new section to chapter 86.26
7 RCW; adding a new section to chapter 86.12 RCW; creating a new section;
8 repealing RCW 79.90.325; and declaring an emergency.

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

10 NEW SECTION. **Sec. 1.** The legislature finds that river and stream
11 systems can threaten public and private property during flood events.
12 River systems react in different ways: When some rivers flood, they
13 scour; others fill in by sediment deposition. The legislature further
14 finds that when placing or removing organic debris in a river that
15 scours, it may be appropriate to place more debris for fish habitat; if
16 it is a river that deposits sediments and tends to fill in then it may
17 be appropriate to remove deposits to create some deeper pools and a
18 better flow pattern, that will help fish habitat as well as lessen
19 flood danger. The legislature therefore declares that reducing flood

1 damage through the use of structural and nonstructural projects is in
2 the public interest and that it is the duty of the state to assist in
3 funding flood control projects. Structural and nonstructural projects
4 include but are not limited to: Streambank stabilization, river
5 channel maintenance, land use restrictions, land buy-outs, flood
6 easements, and emergency notification. The legislature further
7 declares that counties be given the flexibility to make those decisions
8 that are best for their particular rivers, rather than prescribe or
9 constrain local government to the point where they cannot manage their
10 different types of rivers. The legislature further declares that local
11 governments should coordinate flood planning and flood projects so that
12 the projects do not cause flooding in other areas. Counties and cities
13 are encouraged to coordinate using watershed planning areas to provide
14 consistent planning throughout a water's course.

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

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

1 (2) Each county and city shall adopt development regulations that
2 protect critical areas that are required to be designated under RCW
3 36.70A.170. For counties and cities that are required or choose to
4 plan under RCW 36.70A.040, such development regulations shall be
5 adopted on or before September 1, 1991. For the remainder of the
6 counties and cities, such development regulations shall be adopted on
7 or before March 1, 1992.

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

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

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

21 **Sec. 3.** RCW 36.70A.070 and 1996 c 239 s 1 are each amended to read
22 as follows:

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

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

34 (1) A land use element designating the proposed general
35 distribution and general location and extent of the uses of land, where
36 appropriate, for agriculture, timber production, housing, commerce,
37 industry, recreation, open spaces, general aviation airports, public
38 utilities, public facilities, and other land uses. The land use

1 element shall include population densities, building intensities, and
2 estimates of future population growth. The land use element shall
3 provide for protection of the quality and quantity of ground water used
4 for public water supplies. Where applicable, the land use element
5 shall review drainage, flooding, and storm water run-off in the area
6 and nearby jurisdictions and provide guidance for corrective actions to
7 mitigate or cleanse those discharges that pollute waters of the state,
8 including Puget Sound or waters entering Puget Sound.

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

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

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

36 (5) Counties shall include a rural element including lands that are
37 not designated for urban growth, agriculture, forest, or mineral
38 resources. The rural element shall permit appropriate land uses that
39 are compatible with the rural character of such lands and provide for

1 a variety of rural densities and uses and may also provide for
2 clustering, density transfer, design guidelines, conservation
3 easements, and other innovative techniques that will accommodate
4 appropriate rural uses not characterized by urban growth.

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

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

9 (b) Facilities and services needs, including:

10 (i) An inventory of air, water, and ground transportation
11 facilities and services, including transit alignments and general
12 aviation airport facilities, to define existing capital facilities and
13 travel levels as a basis for future planning;

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

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

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

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

25 (c) Finance, including:

26 (i) An analysis of funding capability to judge needs against
27 probable funding resources;

28 (ii) A multiyear financing plan based on the needs identified in
29 the comprehensive plan, the appropriate parts of which shall serve as
30 the basis for the six-year street, road, or transit program required by
31 RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW
32 35.58.2795 for public transportation systems;

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

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

1 (e) Demand-management strategies.

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

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

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

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

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

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

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

33 (d) Critical areas.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (3) The permittee shall begin excavating at the excavation line and
9 proceed toward the bank, perpendicular to the alignment of the
10 watercourse.

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

15 (5) The permittee shall identify the excavation zone with boundary
16 markers.

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

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

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

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

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

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

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

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

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

1 within two years of the date of issuance. If the department denies
2 approval, the department shall provide the applicant, in writing, a
3 statement of the specific reasons why and how the proposed project
4 would adversely affect fish life. Protection of fish life shall be the
5 only ground upon which approval may be denied or conditioned.

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

8 (a) Presents no substantial risk to fish life and provides fish
9 habitat productivity that is equivalent to preproject conditions at the
10 project site within two years of the project's completion; or

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

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

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

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

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

1 ~~than established fords requires approval. Work within the ordinary~~
2 ~~high water line of state waters to construct or repair a ford or~~
3 ~~crossing requires approval.))~~

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

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

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

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

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

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

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

37 (1) In the event that any person or government agency desires to
38 construct any form of hydraulic project or other work that diverts

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

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

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

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

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

1 (a) After ten working days of receipt of the application, the
2 applicant remains unavailable or unable to arrange for a timely field
3 evaluation of the proposed project; ((+2))

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

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

8 (d) The applicant requests delay.

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

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

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

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

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

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

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

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

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

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

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

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

37 (12) In case of an emergency arising from weather or stream flow
38 conditions or other natural conditions, the department, through its
39 authorized representatives, shall issue immediately upon request oral

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

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

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

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

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

18 **Sec. 10.** RCW 75.20.130 and 1996 c 276 s 2 are each amended to read
19 as follows:

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

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

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

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

37 (5) The board has exclusive jurisdiction to hear appeals arising
38 from the approval, denial, conditioning, or modification of a hydraulic

1 approval issued by the department: (a) Under the authority granted in
2 RCW 75.20.103 for the diversion of water for agricultural irrigation or
3 stock watering purposes or when associated with streambank
4 stabilization to protect farm and agricultural land as defined in RCW
5 84.34.020; or (b) under the authority granted in RCW 75.20.190 for off-
6 site mitigation proposals.

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

1 permit for such removal from other state or federal agencies as
2 otherwise required by law.

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

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

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

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

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

36 At the hearing scheduled upon the resolution, the board shall
37 permit all interested parties to be heard. Thereafter, the board may

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

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

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

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

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

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

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

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

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

1 agreement with the other taxing units from their authorized levies
2 under chapter 39.67 RCW;

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

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

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

21 ~~((A comprehensive flood control management plan shall determine the
22 need for flood control work, consider alternatives to in-stream flood
23 control work, identify and consider potential impacts of in-stream
24 flood control work on the state's in-stream resources, and identify the
25 river's meander belt or floodway.))~~ (1) A comprehensive flood control
26 management plan shall be completed and adopted ~~((within at least three
27 years of the certification that it is being prepared, as provided in
28 RCW 86.26.050))~~ by any county that has experienced at least two
29 presidentially declared flood disasters within the most recent ten-year
30 period by December 31, 2001, or within two years of a second
31 presidentially declared flood disaster.

32 (2) If ~~((after this three-year period has elapsed)),~~ by December
33 31, 2001, or within two years of a second presidentially declared flood
34 disaster, such a comprehensive flood control plan has not been
35 completed and adopted, grants for flood control maintenance projects
36 shall not be made to the county or municipal corporations in the county
37 until a comprehensive flood control plan is completed and adopted by
38 the appropriate local authority. These limitations on grants shall not

1 preclude allocations for emergency purposes made pursuant to RCW
2 86.26.060, however, priority consideration for emergency assistance
3 shall be given to those counties that are required to plan, and have
4 completed a plan, as required under this section.

5 **Sec. 18.** RCW 90.58.180 and 1995 c 347 s 310 are each amended to
6 read as follows:

7 (1) Any person aggrieved by the granting, denying, or rescinding of
8 a permit on shorelines of the state pursuant to RCW 90.58.140 may seek
9 review from the shorelines hearings board by filing a petition for
10 review within twenty-one days of the date of filing as defined in RCW
11 90.58.140(6).

12 Within seven days of the filing of any petition for review with the
13 board as provided in this section pertaining to a final decision of a
14 local government, the petitioner shall serve copies of the petition on
15 the department and the office of the attorney general. The department
16 and the attorney general may intervene to protect the public interest
17 and insure that the provisions of this chapter are complied with at any
18 time within fifteen days from the date of the receipt by the department
19 or the attorney general of a copy of the petition for review filed
20 pursuant to this section. The shorelines hearings board shall schedule
21 review proceedings on the petition for review without regard as to
22 whether the period for the department or the attorney general to
23 intervene has or has not expired.

24 (2) The department or the attorney general may obtain review of any
25 final decision granting a permit, or granting or denying an application
26 for a permit issued by a local government by filing a written petition
27 with the shorelines hearings board and the appropriate local government
28 within twenty-one days from the date the final decision was filed as
29 provided in RCW 90.58.140(6).

30 (3) The review proceedings authorized in subsections (1) and (2) of
31 this section are subject to the provisions of chapter 34.05 RCW
32 pertaining to procedures in adjudicative proceedings. Judicial review
33 of such proceedings of the shorelines hearings board is governed by
34 chapter 34.05 RCW. The board shall issue its decision on the appeal
35 authorized under subsections (1) and (2) of this section within one
36 hundred eighty days after the date the petition is filed with the board
37 or a petition to intervene is filed by the department or the attorney
38 general, whichever is later. The time period may be extended by the

1 board for a period of thirty days upon a showing of good cause or may
2 be waived by the parties.

3 (4) Any person may appeal any rules, regulations, or guidelines
4 adopted or approved by the department within thirty days of the date of
5 the adoption or approval. The board shall make a final decision within
6 sixty days following the hearing held thereon.

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

11 (6) The board shall find the rule, regulation, or guideline to be
12 valid and enter a final decision to that effect unless it determines
13 that the rule, regulation, or guideline:

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

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

17 (c) Is arbitrary and capricious; or

18 (d) Was developed without fully considering and evaluating all
19 material submitted to the department during public review and comment;
20 or

21 (e) Was not adopted in accordance with required procedures.

22 (~~((+6))~~) (7) If the board makes a determination under subsection
23 (~~((+5))~~) (6)(a) through (e) of this section, it shall enter a final
24 decision declaring the rule, regulation, or guideline invalid,
25 remanding the rule, regulation, or guideline to the department with a
26 statement of the reasons in support of the determination, and directing
27 the department to adopt, after a thorough consultation with the
28 affected local government and any other interested party, a new rule,
29 regulation, or guideline consistent with the board's decision.

30 (~~((+7))~~) (8) A decision of the board on the validity of a rule,
31 regulation, or guideline shall be subject to review in superior court,
32 if authorized pursuant to chapter 34.05 RCW. A petition for review of
33 the decision of the shorelines hearings board on a rule, regulation, or
34 guideline shall be filed within thirty days after the date of final
35 decision by the shorelines hearings board.

36 NEW SECTION. Sec. 19. A new section is added to chapter 43.17 RCW
37 to read as follows:

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

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

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

13 A comprehensive flood control management plan shall include the
14 following elements:

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

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

36 (3) Establishing land use regulations that preclude the location of
37 structures, works, or improvements in critical portions of such areas

1 subject to periodic flooding, including a river's meander belt or
2 floodway, and permitting only flood-compatible land uses in such areas;

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

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

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

22 **Sec. 21.** RCW 90.58.030 and 1996 c 265 s 1 are each amended to read
23 as follows:

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

26 (1) Administration:

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

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

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

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

36 (e) "Hearing board" means the shoreline hearings board established
37 by this chapter.

38 (2) Geographical:

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

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

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

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

25 (e) "Shorelines of state-wide significance" means the following
26 shorelines of the state:

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

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

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

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

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

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

37 and

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

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

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

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

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

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

16 (vi) Those shorelands associated with (i), (ii), (iv), and (v) of
17 this subsection (2)(e);

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

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

1 (h) "Wetlands" means areas that are inundated or saturated by
2 surface water or ground water at a frequency and duration sufficient to
3 support, and that under normal circumstances do support, a prevalence
4 of vegetation typically adapted for life in saturated soil conditions.
5 Wetlands generally include swamps, marshes, bogs, and similar areas.
6 Wetlands do not include those artificial wetlands intentionally created
7 from nonwetland sites, including, but not limited to, irrigation and
8 drainage ditches, grass-lined swales, canals, detention facilities,
9 wastewater treatment facilities, farm ponds, and landscape amenities,
10 or those wetlands created after July 1, 1990, that were unintentionally
11 created as a result of the construction of a road, street, or highway.
12 Wetlands may include those artificial wetlands intentionally created
13 from nonwetland areas to mitigate the conversion of wetlands.

14 (3) Procedural terms:

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

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

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

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

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

1 (i) Normal maintenance or repair of existing structures or
2 developments, including damage by accident, fire, or elements;
3 (ii) Improvements to dikes and levees if the improvement is
4 determined by a county to be consistent with a flood control management
5 plan developed under chapter 86.26 RCW;
6 (iii) Streambed maintenance including sediment removal, sediment
7 disposal, and streambank stabilization if performed to provide public
8 flood control benefit as determined by the appropriate county
9 legislative authority;
10 (iv) Construction of stream flow regulation, retention, or
11 detention facilities if consistent with a flood control management plan
12 developed under chapter 86.26 RCW;
13 (v) Construction of the normal protective bulkhead common to single
14 family residences;
15 (~~(iii)~~) (vi) Emergency construction necessary to protect property
16 from damage by the elements;
17 (~~(iv)~~) (vii) Construction and practices normal or necessary for
18 farming, irrigation, and ranching activities, including agricultural
19 service roads and utilities on shorelands, and the construction and
20 maintenance of irrigation structures including but not limited to head
21 gates, pumping facilities, and irrigation channels. A feedlot of any
22 size, all processing plants, other activities of a commercial nature,
23 alteration of the contour of the shorelands by leveling or filling
24 other than that which results from normal cultivation, shall not be
25 considered normal or necessary farming or ranching activities. A
26 feedlot shall be an enclosure or facility used or capable of being used
27 for feeding livestock hay, grain, silage, or other livestock feed, but
28 shall not include land for growing crops or vegetation for livestock
29 feeding and/or grazing, nor shall it include normal livestock wintering
30 operations;
31 (~~(v)~~) (viii) Construction or modification of navigational aids
32 such as channel markers and anchor buoys;
33 (~~(vi)~~) (ix) Construction on shorelands by an owner, lessee, or
34 contract purchaser of a single family residence for his own use or for
35 the use of his family, which residence does not exceed a height of
36 thirty-five feet above average grade level and which meets all
37 requirements of the state agency or local government having
38 jurisdiction thereof, other than requirements imposed pursuant to this
39 chapter;

1 (~~(vii)~~) (x) Construction of a dock, including a community dock,
2 designed for pleasure craft only, for the private noncommercial use of
3 the owner, lessee, or contract purchaser of single and multiple family
4 residences. This exception applies if either: (A) In salt waters, the
5 fair market value of the dock does not exceed two thousand five hundred
6 dollars; or (B) in fresh waters, the fair market value of the dock does
7 not exceed ten thousand dollars, but if subsequent construction having
8 a fair market value exceeding two thousand five hundred dollars occurs
9 within five years of completion of the prior construction, the
10 subsequent construction shall be considered a substantial development
11 for the purpose of this chapter;

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

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

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

25 (~~(xi)~~) (xiv) Site exploration and investigation activities that
26 are prerequisite to preparation of an application for development
27 authorization under this chapter, if:

28 (A) The activity does not interfere with the normal public use of
29 the surface waters;

30 (B) The activity will have no significant adverse impact on the
31 environment including, but not limited to, fish, wildlife, fish or
32 wildlife habitat, water quality, and aesthetic values;

33 (C) The activity does not involve the installation of a structure,
34 and upon completion of the activity the vegetation and land
35 configuration of the site are restored to conditions existing before
36 the activity;

37 (D) A private entity seeking development authorization under this
38 section first posts a performance bond or provides other evidence of

1 financial responsibility to the local jurisdiction to ensure that the
2 site is restored to preexisting conditions; and

3 (E) The activity is not subject to the permit requirements of RCW
4 90.58.550;

5 ((~~(xii)~~)) (xv) The process of removing or controlling an aquatic
6 noxious weed, as defined in RCW 17.26.020, through the use of an
7 herbicide or other treatment methods applicable to weed control that
8 are recommended by a final environmental impact statement published by
9 the department of agriculture or the department jointly with other
10 state agencies under chapter 43.21C RCW.

11 NEW SECTION. **Sec. 22.** A new section is added to chapter 86.26 RCW
12 to read as follows:

13 A flood protection project is work necessary to preserve, restore,
14 or improve either natural or human-made stream banks or flood control
15 facilities that repair or prevent flood damage as defined in RCW
16 86.16.120 including but not limited to damage by erosion, stream flow,
17 sheet runoff, or other damages by the sea or other bodies of water.

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

20 Upon request by a county or city preparing a comprehensive flood
21 management plan under this chapter, the department of transportation
22 shall:

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

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

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

32 (4) Provide any other information available to the department to
33 assist in preventing or minimizing flood damages.

34 NEW SECTION. **Sec. 24.** RCW 79.90.325 and 1984 c 212 s 10 are each
35 repealed.

1 NEW SECTION. **Sec. 25.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of the
3 state government and its existing public institutions, and takes effect
4 immediately.

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