
SUBSTITUTE HOUSE BILL 1597

State of Washington

54th Legislature

1995 Regular Session

By House Committee on Agriculture & Ecology (originally sponsored by Representatives Johnson, Koster, Chandler, Boldt, Sheldon, Mastin, Basich, McMorris, Thompson, Beeksma, Kremen, Hatfield, McMahan, Hymes, Honeyford, D. Schmidt, Skinner, Clements, Buck, Stevens, Mielke and Kessler)

Read first time 03/01/95.

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 new sections;
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 The legislature therefore declares that reducing flood damage through
13 the use of structural and nonstructural projects is in the public
14 interest and that it is the duty of the state to properly fund flood
15 control projects. Structural and nonstructural projects include but
16 are not limited to: Streambank stabilization, river channel
17 maintenance, land use restrictions, land buy-outs, flood easements, and
18 emergency notification.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (b) Facilities and services needs, including:

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

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

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

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

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

6 (c) Finance, including:

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

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

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

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

21 (e) Demand-management strategies.

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

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

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

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

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

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

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

14 (d) Critical areas.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (3) Chapter 34.05 RCW applies to any denial of project approval,
2 conditional approval, or requirements for project modification upon
3 which approval may be contingent. If any person or government agency
4 commences construction on any hydraulic works or projects subject to
5 this section without first having obtained written approval of the
6 department as to the adequacy of the means proposed for the protection
7 of fish life, or if any person or government agency fails to follow or
8 carry out any of the requirements or conditions as are made a part of
9 such approval, the person or director of the agency is guilty of a
10 gross misdemeanor. If any such person or government agency is
11 convicted of violating any of the provisions of this section and
12 continues construction on any such works or projects without fully
13 complying with the provisions hereof, such works or projects are hereby
14 declared a public nuisance and shall be subject to abatement as such.

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

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

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

38 (5) In granting approval for projects submitted by local flood
39 control agencies, the department shall grant a special duration

1 hydraulic permit approval if the submitted project is a multiyear
2 maintenance program. The approval shall be granted for up to five
3 years, or the actual number of years covered by the maintenance
4 program, whichever is less.

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

7 (a) Consistent with a currently approved comprehensive flood
8 control management plan; and

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

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

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

20 (1) In the event that any person or government agency desires to
21 construct any form of hydraulic project or other work that diverts
22 water for agricultural irrigation or stock watering purposes, or when
23 such hydraulic project or other work is associated with streambank
24 stabilization or flood damage reduction to protect farm and
25 agricultural land as defined in RCW 84.34.020, and when such
26 ((~~diversion or streambank stabilization~~)) hydraulic project will use,
27 divert, obstruct, or change the natural flow or bed of any river or
28 stream or will utilize any waters of the state or materials from the
29 stream beds, the person or government agency shall, before commencing
30 construction or work thereon and to ensure the proper protection of
31 fish life, secure a written approval from the department as to the
32 adequacy of the means proposed for the protection of fish life. The
33 hydraulic project approval authority of the department shall be limited
34 to construction or other work that occurs at or below the mean higher
35 high water line in salt water and estuaries or at or below the ordinary
36 high water line in fresh water. The department shall neither deny nor
37 condition a hydraulic project approval on the basis of human or animal
38 actions or environmental conditions that occur above the higher high

1 water line in salt water and estuaries or above the ordinary high water
2 line in fresh water. The department may not limit, condition, or
3 otherwise affect the amount, timing, or delivery method of water
4 diverted under chapter 90.03 RCW. This approval shall not be
5 unreasonably withheld. Except as provided in RCW 75.20.1001 ((and
6 75.20.1002)), the department shall grant or deny the approval within
7 forty-five calendar days of the receipt of a complete application ((and
8 notice of compliance with any applicable requirements of the state
9 environmental policy act,)) made in the manner prescribed in this
10 section. The applicant may document receipt of application by filing
11 in person or by registered mail.

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

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

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

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

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

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

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

29 (d) The applicant requests delay.

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

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

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

38 (b)(i) Protects a residential, commercial, or industrial facility
39 or structure that is likely to incur significant flood damage during

1 the next flood season if the project is not completed; and (ii) lessens
2 the loss of fish life or habitat as compared to a project resulting
3 from an emergency request under this section.

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

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

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

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

36 (9) A permittee may request modification of an approval due to
37 changed conditions. The request shall be processed within forty-five
38 calendar days of receipt of the written request. A decision by the
39 department may be appealed to the hydraulic appeals board within thirty

1 days of the notice of the decision. The burden is on the permittee to
2 show that changed conditions warrant the requested modification and
3 that such modification will not impair fish life.

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

16 (11) 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 (12) In case of an emergency arising from weather or stream flow
23 conditions or other natural conditions, the department, through its
24 authorized representatives, shall issue immediately upon request oral
25 approval for removing any obstructions, repairing existing structures,
26 restoring stream banks, or to protect property threatened by the stream
27 or a change in the stream flow without the necessity of obtaining a
28 written approval prior to commencing work. Conditions of an oral
29 approval shall be reduced to writing within thirty days and complied
30 with as provided for in this section. Oral approval shall be granted
31 immediately upon request, for a stream crossing during an emergency.

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

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

- 1 (a) Consistent with a previously approved comprehensive flood
2 control management plan; and
3 (b) Necessary to avoid flood damage during the next flood season.

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

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

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

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

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

23 (5) The board has exclusive jurisdiction to hear appeals arising
24 from the approval, denial, conditioning, or modification of a hydraulic
25 approval issued by the department under the authority granted in RCW
26 75.20.103 for the diversion of water for agricultural irrigation or
27 stock watering purposes or when associated with streambank
28 stabilization to protect farm and agricultural land as defined in RCW
29 84.34.020.

30 (6)(a) Any person aggrieved by the approval, denial, conditioning,
31 or modification of a hydraulic approval pursuant to RCW 75.20.103 may
32 seek review from the board by filing a request for the same within
33 thirty days of notice of the approval, denial, conditioning, or
34 modification of such approval.

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

1 (c) If a review proceeding authorized in (a) of this subsection
2 finds for the aggrieved permit applicant, the applicant may be awarded
3 any legal and engineering costs involved in challenging the permit
4 decision.

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

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

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

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

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

15 (c) Recognize natural plant and animal communities and other
16 features that provide an ecological balance to a streamway in
17 evaluating competing human uses and require protection from significant
18 human impact; and

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

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

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

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

35 (6) No person may remove sand and gravel below the wetted perimeter
36 of navigable rivers unless authorized by a hydraulics permit issued by
37 either the department of fisheries or department of wildlife under RCW
38 75.20.100 and 75.20.103. These removals may be authorized for

1 maintenance and improvement of navigational channels or for creating
2 backwater channels for fish rearing or improvement of the flow capacity
3 of the channels.

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

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

9 (b) The removal provides recreational benefits;

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

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

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

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

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

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

22 (c) Removal will impact esthetics of nearby recreational
23 facilities.

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

26 (10) The department shall condition sand and gravel removal leases
27 to allow removal of only that amount which is naturally replenished on
28 an annual basis, except in instances where a lapse in material removal
29 has occurred. If such a 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. 12.** RCW 79.90.150 and 1991 c 337 s 1 are each amended to read
34 as follows:

35 When gravel, rock, sand, silt or other material from any aquatic
36 lands is removed by any public agency or under public contract for
37 channel or harbor improvement, or flood control, use of such material
38 may be authorized by the department of natural resources for a public

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

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

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

1 the material in the application. The department may reduce or
2 eliminate royalties in areas prone to flooding. Removal of material
3 from within the ordinary high water mark must be construed as being
4 removed for flood control purposes. The department may include a
5 provision in contracts for the removal of rock, gravel, sand, or silt
6 that allows for payment to be made as the material is sold.

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

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

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

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

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

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

3 The board (~~((of county commissioners of each county))~~) shall be ex
4 officio, by virtue of their office, supervisors of the zones created in
5 each county. The supervisors of the district shall conduct the
6 business of the flood control zone district according to the regular
7 rules and procedures that it adopts.

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

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

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

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

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

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

36 (5) The creation of local improvement districts and utility local
37 improvement districts, the issuance of improvement district bonds and
38 warrants, and the imposition, collection, and enforcement of special

1 assessments on all property, including any state-owned or other
2 publicly-owned property, specially benefited from improvements in the
3 same manner as provided for counties by chapter 36.94 RCW.

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

6 ~~((A comprehensive flood control management plan shall determine the
7 need for flood control work, consider alternatives to in stream flood
8 control work, identify and consider potential impacts of in stream
9 flood control work on the state's in stream resources, and identify the
10 river's meander belt or floodway.))~~ (1) A comprehensive flood control
11 management plan shall be completed and adopted ~~((within at least three
12 years of the certification that it is being prepared, as provided in
13 RCW 86.26.050))~~ by any county that has experienced at least two
14 presidentially declared flood disasters within the most recent ten-year
15 period by December 31, 1999, or within two years of a second
16 presidentially declared flood disaster.

17 (2) ~~If ((after this three year period has elapsed)),~~ by December
18 31, 1999, or within two years of a second presidentially declared flood
19 disaster, such a comprehensive flood control plan has not been
20 completed and adopted, grants for flood control maintenance projects
21 shall not be made to the county or municipal corporations in the county
22 until a comprehensive flood control plan is completed and adopted by
23 the appropriate local authority. These limitations on grants shall not
24 preclude allocations for emergency purposes made pursuant to RCW
25 86.26.060, however, priority consideration for emergency assistance
26 shall be given to those counties that are required to plan, and have
27 completed a plan, as required under this section.

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

30 (1) Any person aggrieved by the granting, denying, or rescinding of
31 a permit on shorelines of the state pursuant to RCW 90.58.140 may seek
32 review from the shorelines hearings board by filing a request for the
33 same within thirty days of the date of filing as defined in RCW
34 90.58.140(6).

35 Concurrently with the filing of any request for review with the
36 board as provided in this section pertaining to a final order of a
37 local government, the requestor shall file a copy of his or her request

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

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

29 (3) The review proceedings authorized in subsections (1) and (2) of
30 this section are subject to the provisions of chapter 34.05 RCW
31 pertaining to procedures in adjudicative proceedings. Judicial review
32 of such proceedings of the shorelines hearings board is governed by
33 chapter 34.05 RCW.

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

38 (5) A local government may appeal to the shorelines hearings board
39 any rules, regulations, or guidelines adopted or approved by the

1 department within thirty days of the date of the adoption or approval.
2 The board shall make a final decision within sixty days following the
3 hearing held thereon.

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

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

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

8 (c) Is arbitrary and capricious; or

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

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

12 the board shall enter a final decision declaring the rule, regulation,
13 or guideline invalid, remanding the rule, regulation, or guideline to
14 the department with a statement of the reasons in support of the
15 determination, and directing the department to adopt, after a thorough
16 consultation with the affected local government, a new rule,
17 regulation, or guideline. Unless the board makes one or more of the
18 determinations as hereinbefore provided, the board shall find the rule,
19 regulation, or guideline to be valid and enter a final decision to that
20 effect.

21 ~~((+5))~~ (6) Rules, regulations, and guidelines shall be subject to
22 review in superior court, if authorized pursuant to RCW 34.05.570(2).
23 No review shall be granted by a superior court on petition from a local
24 government unless the local government shall first have obtained review
25 under subsection ~~((+4))~~ (5) of this section and the petition for court
26 review is filed within three months after the date of final decision by
27 the shorelines hearings board.

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

30 Each appropriate agency shall actively seek to encourage through
31 permit requirements the removal of accumulated materials from rivers
32 and streams where there is a flood damage reduction benefit. Each
33 agency shall develop policies to accomplish this goal. Policies shall
34 be developed from a designed, open-channel hydraulic engineering
35 criteria to facilitate the natural downstream movement of detrimental
36 material.

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

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

6 A comprehensive flood control management plan shall include the
7 following elements:

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

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

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

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

36 (5) Establishing restrictions on land clearing activities and
37 development practices that exacerbate flood problems by increasing the
38 flow or accumulation of flood waters, or the intensity of drainage, on

1 low-lying areas. Land clearing activities do not include forest
2 practices as defined in chapter 76.09 RCW.

3 A comprehensive flood control management plan shall be subject to
4 the minimum requirements for participation in the national flood
5 insurance program, requirements exceeding the minimum national flood
6 insurance program that have been adopted by the department of ecology
7 for a specific flood plain pursuant to RCW 86.16.031, and rules adopted
8 by the department of ecology pursuant to chapter 86.16 RCW and RCW
9 86.26.050 relating to flood plain management activities. When a county
10 plans under chapter 36.70A RCW, it (~~may~~) must incorporate the portion
11 of its comprehensive flood control management plan relating to land use
12 restrictions in its comprehensive plan and development regulations
13 adopted pursuant to chapter 36.70A RCW.

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

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

18 (1) Administration:

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

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

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

24 (d) "Person" means an individual, partnership, corporation,
25 association, organization, cooperative, public or municipal
26 corporation, or agency of the state or local governmental unit however
27 designated;

28 (e) "Hearing board" means the shoreline hearings board established
29 by this chapter.

30 (2) Geographical:

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

33 (b) "Ordinary high water mark" on all lakes, streams, and tidal
34 water is that mark that will be found by examining the bed and banks
35 and ascertaining where the presence and action of waters are so common
36 and usual, and so long continued in all ordinary years, as to mark upon
37 the soil a character distinct from that of the abutting upland, in
38 respect to vegetation as that condition exists on June 1, 1971, as it

1 may naturally change thereafter, or as it may change thereafter in
2 accordance with permits issued by a local government or the department:
3 PROVIDED, That in any area where the ordinary high water mark cannot be
4 found, the ordinary high water mark adjoining salt water shall be the
5 line of mean higher high tide and the ordinary high water mark
6 adjoining fresh water shall be the line of mean high water;

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

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

17 (e) "Shorelines of state-wide significance" means the following
18 shorelines of the state:

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

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

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

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

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

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

29 and

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

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

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

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

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

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

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

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

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

33 (3) Procedural terms:

34 (a) "Guidelines" means those standards adopted to implement the
35 policy of this chapter for regulation of use of the shorelines of the
36 state prior to adoption of master programs. Such standards shall also
37 provide criteria to local governments and the department in developing
38 master programs;

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

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

8 (d) "Development" means a use consisting of the construction or
9 exterior alteration of structures; dredging; drilling; dumping;
10 filling; removal of any sand, gravel, or minerals; bulkheading; driving
11 of piling; placing of obstructions; or any project of a permanent or
12 temporary nature which interferes with the normal public use of the
13 surface of the waters overlying lands subject to this chapter at any
14 state of water level;

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

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

23 (ii) Improvements to dikes and levees if the improvement is
24 determined by a county to be consistent with a flood control management
25 plan developed under chapter 86.26 RCW;

26 (iii) Streambed maintenance including sediment removal, sediment
27 disposal, and streambank stabilization if performed to provide public
28 flood control benefit as determined by the appropriate county
29 legislative authority;

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

33 (v) Construction of the normal protective bulkhead common to single
34 family residences;

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

37 ~~((iv))~~ (vii) Construction and practices normal or necessary for
38 farming, irrigation, and ranching activities, including agricultural
39 service roads and utilities on wetlands, and the construction and

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

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

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

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

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

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

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

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

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

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

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

18 Upon request by a county or city preparing a comprehensive flood
19 management plan under chapter 86.12 RCW, the department of
20 transportation shall:

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

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

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

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

32 NEW SECTION. Sec. 24. A new section is added to chapter 75.20 RCW
33 to read as follows:

34 By December 31, 1996, the departments of fish and wildlife, natural
35 resources, and ecology shall jointly develop a memorandum of
36 understanding to facilitate the consideration of projects that will aid

1 in the minimization or prevention of flood damage as defined in RCW
2 86.16.120. To reduce the duplication of information required by a
3 project's permits, the departments must provide in their memorandum
4 procedures to share data to the extent practicable among themselves and
5 with other agencies that may be involved in approving or denying a
6 permit application. The departments' memorandum must provide a plan to
7 implement a comprehensive permit process that is streamlined and easily
8 understandable to permit applicants.

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

11 NEW SECTION. **Sec. 26.** This act is necessary for the immediate
12 preservation of the public peace, health, or safety, or support of the
13 state government and its existing public institutions, and shall take
14 effect immediately.

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