
ENGROSSED SUBSTITUTE HOUSE BILL 1724

State of Washington

54th Legislature

1995 Regular Session

By House Committee on Government Operations (originally sponsored by Representatives Reams, Rust, L. Thomas, Goldsmith, Ogden, Patterson, Poulsen, Scott, Regala, Mastin, Valle and Chopp; by request of Governor Lowry)

Read first time 03/01/95.

1 AN ACT Relating to implementing the recommendations of the
2 governor's task force on regulatory reform on integrating growth
3 management planning and environmental review; amending RCW 43.21C.075,
4 43.21C.031, 43.21C.110, 43.21C.080, 36.70A.140, 36.70A.300, 36.70A.330,
5 90.58.020, 90.58.030, 90.58.050, 90.58.060, 90.58.080, 90.58.090,
6 90.58.100, 90.58.120, 90.58.140, 90.58.180, 90.58.190, 34.05.461,
7 34.05.514, 36.70A.130, 36.70A.320, 82.02.090, 82.02.020, 35.44.020,
8 36.70A.440, 36.70A.065, 58.17.090, 58.17.092, 58.17.100, 58.17.330,
9 35.63.130, 35A.63.170, 36.70.970, 7.16.360, and 58.17.180; reenacting
10 and amending RCW 36.70A.030 and 36.70A.290; adding new sections to
11 chapter 36.70A RCW; adding a new section to chapter 43.21C RCW; adding
12 a new section to chapter 82.02 RCW; adding a new section to chapter
13 64.40 RCW; adding new sections to chapter 43.131 RCW; adding a new
14 section to chapter 4.84 RCW; adding new chapters to Title 36 RCW;
15 adding a new chapter to Title 90 RCW; creating new sections;
16 recodifying RCW 82.02.020, 82.02.050, 82.02.060, 82.02.070, 82.02.080,
17 82.02.090, 82.02.100, 36.70A.065, and 36.70A.440; repealing RCW
18 90.58.145, 90.62.010, 90.62.020, 90.62.030, 90.62.040, 90.62.050,
19 90.62.060, 90.62.070, 90.62.080, 90.62.090, 90.62.100, 90.62.110,
20 90.62.120, 90.62.130, 90.62.900, 90.62.901, 90.62.904, 90.62.905,

1 90.62.906, 90.62.907, and 90.62.908; providing an effective date;
2 providing an expiration date; and declaring an emergency.

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

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

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

19 NEW SECTION. **Sec. 101.** In reviewing a development permit
20 application and making permit decisions, a county or city planning
21 under RCW 36.70A.040 shall rely on its development regulations and
22 comprehensive plan to determine permitted land uses, including
23 conditional and special uses, allowable densities, system improvements
24 related to the proposal if the comprehensive plan and development
25 regulations provide for funding of these improvements, and other
26 matters. During the project review the county or city shall not
27 reexamine alternatives to or hear appeals on these matters, except for
28 code interpretation.

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

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

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

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

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

31 For purposes of this section, a deficiency in a comprehensive plan
32 or development regulation refers to the absence of required or
33 potentially desirable contents of a comprehensive plan or development
34 regulation. It does not refer to whether a development regulation
35 addresses a project's probable site-specific adverse environmental
36 impacts that the permitting agency could mitigate in the normal project
37 review process.

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

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

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

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

37 (a)(i) The local government has considered the probable adverse
38 environmental impacts of the proposed action and has determined that
39 these impacts are adequately addressed by the development regulations

1 or other applicable requirements of the comprehensive plan, subarea
2 plan element of the comprehensive plan, or other local, state, or
3 federal rules or laws; and

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

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

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

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

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

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

35 (1) Because a major purpose of this chapter is to combine
36 environmental considerations with public decisions, any appeal brought
37 under this chapter shall be linked to a specific governmental action.
38 The State Environmental Policy Act provides a basis for challenging

1 whether governmental action is in compliance with the substantive and
2 procedural provisions of this chapter. The State Environmental Policy
3 Act is not intended to create a cause of action unrelated to a specific
4 governmental action.

5 (2) Unless otherwise provided by this section:

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

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

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

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

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

33 (c) Shall provide for the preparation of a record for use in any
34 subsequent appeal proceedings, and shall provide for any subsequent
35 appeal proceedings to be conducted on the record, consistent with other
36 applicable law. An adequate record consists of findings and
37 conclusions, testimony under oath, and taped or written transcript. An
38 electronically recorded transcript will suffice for purposes of review
39 under this subsection; and

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

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

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

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

32 (b) If there is no time period for appealing the underlying
33 governmental action, and a notice of action under RCW 43.21C.080 ((may
34 be used. If a notice of action)) is used, ((judicial)) appeals shall
35 be commenced within the time period specified by RCW 43.21C.080((
36 unless there is a time period for appealing the underlying governmental
37 action in which case (a) of this subsection shall apply.

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

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

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

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

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

38 (8) For purposes of this section and RCW 43.21C.080, the words
39 "action", "decision", and "determination" mean substantive agency

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

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

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

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

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

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

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

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

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

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

17 (iv) Are located within an urban growth area, as defined in RCW
18 36.70A.030;

19 (v) Are not essential public facilities, as defined in RCW
20 36.70A.200; and

21 (vi) Are consistent with a comprehensive plan adopted under chapter
22 36.70A RCW.

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

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

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

34 (1) To adopt and amend thereafter rules of interpretation and
35 implementation of this chapter (~~((the state environmental policy act of~~
36 ~~1971))~~), subject to the requirements of chapter 34.05 RCW, for the
37 purpose of providing uniform rules and guidelines to all branches of
38 government including state agencies, political subdivisions, public and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (b) By filing notice of such action with the department of ecology
2 at its main office in Olympia prior to the date of the last newspaper
3 publication; and

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

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

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

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

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

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

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

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

11 NOTICE OF ACTION BY

12

13 (Government agency or entity)

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

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

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

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

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

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

29 (3) Said action pertained to property commonly known as:
30
31
32
33

34 (Sufficient description to locate property, but complete legal
35 description not required)

36 (4) Pertinent documents may be examined during regular business
37 hours at the office of: located at:

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

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

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

16 (2) If it determines that advice from scientific or other experts
17 is necessary or will be of substantial assistance in reaching its
18 decision, a growth management hearings board may retain scientific or
19 other expert advice to assist in reviewing a petition under RCW
20 36.70A.290 that involves critical areas.

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

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

1 land use plan or development regulations invalid if the spirit of the
2 program and procedures is observed.

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

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

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

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

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

35 (3) A determination of invalidity shall:

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

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

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

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

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

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

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

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

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

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

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

8 NEW SECTION. Sec. 112. A new section is added to chapter 36.70A
9 RCW to read as follows:

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

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

21 NEW SECTION. Sec. 113. A new section is added to chapter 36.70A
22 RCW to read as follows:

23 Nothing in this chapter shall preclude public sanitary sewer
24 systems and public domestic water systems designed for and serving
25 rural uses in areas included within the rural area designated under RCW
26 36.70A.070(5).

27 NEW SECTION. Sec. 114. A new section is added to chapter 36.70A
28 RCW to read as follows:

29 Urban growth areas designated under RCW 36.70A.110 shall include
30 transition areas that are designed to eventually have urban growth but
31 which are temporarily zoned to lower densities and lower intensities of
32 land use.

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

1 Unless the context clearly requires otherwise, the definitions in
2 this section apply throughout this chapter.

3 (1) "Adopt a comprehensive land use plan" means to enact a new
4 comprehensive land use plan or to update an existing comprehensive land
5 use plan.

6 (2) "Agricultural land" means land primarily devoted to the
7 commercial production of horticultural, viticultural, floricultural,
8 dairy, apiary, vegetable, or animal products or of berries, grain, hay,
9 straw, turf, seed, Christmas trees not subject to the excise tax
10 imposed by RCW 84.33.100 through 84.33.140, finfish in upland
11 hatcheries, or livestock, and that has long-term commercial
12 significance for agricultural production.

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

14 (4) "Comprehensive land use plan," "comprehensive plan," or "plan"
15 means a generalized coordinated land use policy statement of the
16 governing body of a county or city that is adopted pursuant to this
17 chapter.

18 (5) "Critical areas" include the following areas and ecosystems:
19 (a) Wetlands; (b) areas with a critical recharging effect on aquifers
20 used for potable water; (c) fish and wildlife habitat conservation
21 areas; (d) frequently flooded areas; and (e) geologically hazardous
22 areas.

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

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

34 (8) "Development regulations" means any controls placed on
35 development or land use activities by a county or city, including, but
36 not limited to, zoning ordinances, official controls, planned unit
37 development ordinances, subdivision ordinances, and binding site plan
38 ordinances.

1 (9) "Forest land" means land primarily devoted to growing trees for
2 long-term commercial timber production on land that can be economically
3 and practically managed for such production, including Christmas trees
4 subject to the excise tax imposed under RCW 84.33.100 through
5 84.33.140, and that has long-term commercial significance. In
6 determining whether forest land is primarily devoted to growing trees
7 for long-term commercial timber production on land that can be
8 economically and practically managed for such production, the following
9 factors shall be considered: (a) The proximity of the land to urban,
10 suburban, and rural settlements; (b) surrounding parcel size and the
11 compatibility and intensity of adjacent and nearby land uses; (c) long-
12 term local economic conditions that affect the ability to manage for
13 timber production; and (d) the availability of public facilities and
14 services conducive to conversion of forest land to other uses.

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

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

24 (12) "Minerals" include gravel, sand, and valuable metallic
25 substances.

26 (13) "Public facilities" include streets, roads, highways,
27 sidewalks, street and road lighting systems, traffic signals, domestic
28 water systems, storm and sanitary sewer systems, parks and recreational
29 facilities, and schools.

30 (14) "Public services" include fire protection and suppression, law
31 enforcement, public health, education, recreation, environmental
32 protection, and other governmental services.

33 (15) "Urban growth" refers to growth that makes intensive use of
34 land for the location of buildings, structures, and impermeable
35 surfaces to such a degree as to be incompatible with the primary use of
36 such land for the production of food, other agricultural products, or
37 fiber, or the extraction of mineral resources. When allowed to spread
38 over wide areas, urban growth typically requires urban governmental
39 services. "Characterized by urban growth" refers to land having urban

1 growth located on it, or to land located in relationship to an area
2 with urban growth on it as to be appropriate for urban growth.

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

5 (17) "Urban governmental services" include those governmental
6 services historically and typically delivered by cities, and include
7 storm and sanitary sewer systems, domestic water systems, street
8 cleaning services, fire and police protection services, public transit
9 services, and other public utilities associated with urban areas and
10 normally not associated with nonurban areas.

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

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

29 The legislature finds that the shorelines of the state are among
30 the most valuable and fragile of its natural resources and that there
31 is great concern throughout the state relating to their utilization,
32 protection, restoration, and preservation. In addition it finds that
33 ever increasing pressures of additional uses are being placed on the
34 shorelines necessitating increased coordination in the management and
35 development of the shorelines of the state. The legislature further
36 finds that much of the shorelines of the state and the uplands adjacent
37 thereto are in private ownership; that unrestricted construction on the
38 privately owned or publicly owned shorelines of the state is not in the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (1) Administration:

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

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

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

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

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

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

5 (2) Geographical:

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

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

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

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

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

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

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

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

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

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

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

5 (h) "Wetlands" means areas defined as wetlands under section 401 of
6 the clean water act, 33 U.S.C. Sec. 1344. Wetlands do not include
7 inadvertent wetlands unintentionally created after July 1, 1990, as a
8 result of development activity, including the construction of roads,
9 streets, or highways.

10 (3) Procedural terms:

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

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

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

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

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

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

38 (ii) Construction of the normal protective bulkhead common to
39 single family residences;

- 1 (iii) Emergency construction necessary to protect property from
2 damage by the elements;
- 3 (iv) Construction and practices normal or necessary for farming,
4 irrigation, and ranching activities, including agricultural service
5 roads and utilities on ((~~wetlands~~)) shorelands, and the construction
6 and maintenance of irrigation structures including but not limited to
7 head gates, pumping facilities, and irrigation channels(~~(:—PROVIDED,~~
8 ~~That)~~). A feedlot of any size, all processing plants, other activities
9 of a commercial nature, alteration of the contour of the ((~~wetlands~~))
10 shorelands by leveling or filling other than that which results from
11 normal cultivation, shall not be considered normal or necessary farming
12 or ranching activities. A feedlot shall be an enclosure or facility
13 used or capable of being used for feeding livestock hay, grain, silage,
14 or other livestock feed, but shall not include land for growing crops
15 or vegetation for livestock feeding and/or grazing, nor shall it
16 include normal livestock wintering operations;
- 17 (v) Construction or modification of navigational aids such as
18 channel markers and anchor buoys;
- 19 (vi) Construction on ((~~wetlands~~)) shorelands by an owner, lessee,
20 or contract purchaser of a single family residence for his own use or
21 for the use of his family, which residence does not exceed a height of
22 thirty-five feet above average grade level and which meets all
23 requirements of the state agency or local government having
24 jurisdiction thereof, other than requirements imposed pursuant to this
25 chapter;
- 26 (vii) Construction of a dock, including a community dock, designed
27 for pleasure craft only, for the private noncommercial use of the
28 owner, lessee, or contract purchaser of single and multiple family
29 residences, the cost of which does not exceed two thousand five hundred
30 dollars;
- 31 (viii) Operation, maintenance, or construction of canals,
32 waterways, drains, reservoirs, or other facilities that now exist or
33 are hereafter created or developed as a part of an irrigation system
34 for the primary purpose of making use of system waters, including
35 return flow and artificially stored ground water for the irrigation of
36 lands;
- 37 (ix) The marking of property lines or corners on state owned lands,
38 when such marking does not significantly interfere with normal public
39 use of the surface of the water;

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

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

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

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

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

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

29 (a) Development of master programs for regulation of the uses of
30 shorelines; and

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

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

36 (a) The department shall mail copies of the proposal to all cities,
37 counties, and federally recognized Indian tribes, and to any other

1 person who has requested a copy, and shall publish the proposed
2 guidelines in the Washington state register. Comments shall be
3 submitted in writing to the department within sixty days from ((receipt
4 of such proposed guidelines, local governments shall submit to the
5 department in writing proposed changes, if any, and comments upon the
6 proposed guidelines.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (e) If the department recommends changes to the proposed master
18 program or amendment, within thirty days after the department mails the
19 written findings and conclusions to the local government, the local
20 government may:

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

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

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

35 (3) The department shall approve the segment of a master program
36 relating to shorelines unless it determines that the submitted segments
37 are not consistent with the policy of RCW 90.58.020 and the applicable
38 guidelines. ((If approval is denied, the department shall state within
39 ninety days from the date of submission in detail the precise facts

1 upon which that decision is based, and shall submit to the local
2 government suggested modifications to the program to make it consistent
3 with said policy and guidelines. The local government shall have
4 ninety days after it receives recommendations from the department to
5 make modifications designed to eliminate the inconsistencies and to
6 resubmit the program to the department for approval. Any resubmitted
7 program shall take effect when and in such form and content as is
8 approved by the department.

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

28 ~~((+3))~~ (5) In the event a local government has not complied with
29 the requirements of RCW 90.58.070 it may thereafter upon written notice
30 to the department elect to adopt a master program for the shorelines
31 within its jurisdiction, in which event it shall comply with the
32 provisions established by this chapter for the adoption of a master
33 program for such shorelines.

34 Upon approval of such master program by the department it shall
35 supersede such master program as may have been adopted by the
36 department for such shorelines.

37 (6) A master program or amendment to a master program takes effect
38 when and in such form as approved or adopted by the department. The
39 department shall maintain a record of each master program, the action

1 taken on any proposal for adoption or amendment of the master program,
2 and any appeal of the department's action. The department's approved
3 document of record constitutes the official master program.

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

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

11 (a) Utilize a systematic interdisciplinary approach which will
12 insure the integrated use of the natural and social sciences and the
13 environmental design arts;

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

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

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

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

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

28 (2) The master programs shall include, when appropriate, the
29 following:

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

34 (b) A public access element making provision for public access to
35 publicly owned areas;

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

1 (d) A circulation element consisting of the general location and
2 extent of existing and proposed major thoroughfares, transportation
3 routes, terminals, and other public utilities and facilities, all
4 correlated with the shoreline use element;

5 (e) A use element which considers the proposed general distribution
6 and general location and extent of the use on shorelines and adjacent
7 land areas for housing, business, industry, transportation,
8 agriculture, natural resources, recreation, education, public buildings
9 and grounds, and other categories of public and private uses of the
10 land;

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

14 (g) An historic, cultural, scientific, and educational element for
15 the protection and restoration of buildings, sites, and areas having
16 historic, cultural, scientific, or educational values;

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

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

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

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

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

38 (6) Each master program shall contain standards governing the
39 protection of single family residences and appurtenant structures

1 against damage or loss due to shoreline erosion. The standards shall
2 govern the issuance of substantial development permits for shoreline
3 protection, including structural methods such as construction of
4 bulkheads, and nonstructural methods of protection. The standards
5 shall provide for methods which achieve effective and timely protection
6 against loss or damage to single family residences and appurtenant
7 structures due to shoreline erosion. The standards shall provide a
8 preference for permit issuance for measures to protect single family
9 residences occupied prior to January 1, 1992, where the proposed
10 measure is designed to minimize harm to the shoreline natural
11 environment.

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

14 All rules, regulations, ~~((master programs))~~ designations, and
15 guidelines, issued by the department, and master programs and
16 amendments adopted by the department pursuant to RCW 90.58.070(2) or
17 90.58.090(4) shall be adopted or approved in accordance with the
18 provisions of RCW 34.05.310 through 34.05.395 insofar as such
19 provisions are not inconsistent with the provisions of this chapter.
20 In addition:

21 (1) Prior to the ~~((approval or))~~ adoption by the department of a
22 master program, or portion thereof pursuant to RCW 90.58.070(2) or
23 90.58.090(4), at least one public hearing shall be held in each county
24 affected by a program or portion thereof for the purpose of obtaining
25 the views and comments of the public. Notice of each such hearing
26 shall be published at least once in each of the three weeks immediately
27 preceding the hearing in one or more newspapers of general circulation
28 in the county in which the hearing is to be held.

29 (2) All guidelines, regulations, designations, or master programs
30 adopted or approved under this chapter shall be available for public
31 inspection at the office of the department or the appropriate county
32 ~~((auditor))~~ and city ~~((clerk))~~. The terms "adopt" and "approve" for
33 purposes of this section, shall include modifications and rescission of
34 guidelines.

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

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

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

8 A permit shall be granted:

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

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

18 (3) The local government shall establish a program, consistent with
19 rules adopted by the department, for the administration and enforcement
20 of the permit system provided in this section. The administration of
21 the system so established shall be performed exclusively by the local
22 government.

23 (4) Except as otherwise specifically provided in subsection
24 ~~((+13))~~ (11) of this section, the local government shall require
25 notification of the public of all applications for permits governed by
26 any permit system established pursuant to subsection (3) of this
27 section by ensuring that~~((+)~~

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

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

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

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

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

4 The notices shall include a statement that any person desiring to
5 submit written comments concerning an application, or desiring to
6 receive (~~a copy~~) notification of the final (~~order~~) decision
7 concerning an application as expeditiously as possible after the
8 issuance of the (~~order~~) decision, may submit the comments or requests
9 for (~~orders~~) decisions to the local government within thirty days of
10 the last date the notice is to be published pursuant to (~~subsection~~
11 ~~a of~~) this subsection. The local government shall forward, in a
12 timely manner following the issuance of (~~an order~~) a decision, a copy
13 of the (~~order~~) decision to each person who submits a request for the
14 (~~order~~) decision.

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

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

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

30 (b) Construction may be commenced thirty days after the date the
31 appeal of the board's decision is filed if a permit is granted by the
32 local government and (i) the granting of the permit is appealed to the
33 shorelines hearings board within (~~thirty~~) twenty-one days of the date
34 of filing, (ii) the hearings board approves the granting of the permit
35 by the local government or approves a portion of the substantial
36 development for which the local government issued the permit, and (iii)
37 an appeal for judicial review of the hearings board decision is filed
38 pursuant to chapter 34.05 RCW(~~, the permittee~~). The appellant may
39 request, within ten days of the filing of the appeal with the court, a

1 hearing before the court to determine whether construction (~~(may~~
2 ~~begin~~)) pursuant to the permit approved by the hearings board or to a
3 revised permit issued pursuant to the order of the hearings board
4 should not commence. If, at the conclusion of the hearing, the court
5 finds that construction pursuant to such a permit would (~~(not~~)) involve
6 a significant, irreversible damaging of the environment, the court
7 (~~(may allow~~)) shall prohibit the permittee (~~(to begin~~) from commencing
8 the construction pursuant to the approved or revised permit (~~(as the~~
9 ~~court deems appropriate. The court may require the permittee to post~~
10 ~~bonds, in the name of the local government that issued the permit,~~
11 ~~sufficient to remove the substantial development or to restore the~~
12 ~~environment if the permit is ultimately disapproved by the courts, or~~
13 ~~to alter the substantial development if the alteration is ultimately~~
14 ~~ordered by the courts))~~ until all review proceedings are final.
15 Construction pursuant to a permit revised at the direction of the
16 hearings board may begin only on that portion of the substantial
17 development for which the local government had originally issued the
18 permit, and construction pursuant to such a revised permit on other
19 portions of the substantial development may not begin until after all
20 review proceedings are terminated. In such a hearing before the court,
21 the burden of proving whether the construction may involve significant
22 irreversible damage to the environment and demonstrating whether such
23 construction would or would not be appropriate is on the appellant;

24 (c) (~~(If a permit is granted by the local government and the~~
25 ~~granting of the permit is appealed directly to the superior court for~~
26 ~~judicial review pursuant to the proviso in RCW 90.58.180(1), the~~
27 ~~permittee may request the court to remand the appeal to the shorelines~~
28 ~~hearings board, in which case the appeal shall be so remanded and~~
29 ~~construction pursuant to such a permit shall be governed by the~~
30 ~~provisions of subsection (b) of this subsection or may otherwise begin~~
31 ~~after review proceedings before the hearings board are terminated if~~
32 ~~judicial review is not thereafter requested pursuant to chapter 34.05~~
33 ~~RCW;~~

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

1 If a permittee begins construction pursuant to subsections (a),
2 (b), or (c) ~~((, or (d)))~~ of this subsection, the construction is begun
3 at the permittee's own risk. If, as a result of judicial review, the
4 courts order the removal of any portion of the construction or the
5 restoration of any portion of the environment involved or require the
6 alteration of any portion of a substantial development constructed
7 pursuant to a permit, the permittee is barred from recovering damages
8 or costs involved in adhering to such requirements from the local
9 government that granted the permit, the hearings board, or any
10 appellant or intervener.

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

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

29 (8) Any permit may, after a hearing with adequate notice to the
30 permittee and the public, be rescinded by the issuing authority upon
31 the finding that a permittee has not complied with conditions of a
32 permit. If the department is of the opinion that noncompliance exists,
33 the department shall provide written notice to the local government and
34 the permittee. If the department is of the opinion that the
35 noncompliance continues to exist thirty days after the date of the
36 notice, and the local government has taken no action to rescind the
37 permit, the department may petition the hearings board for a rescission
38 of the permit upon written notice of the petition to the local
39 government and the permittee if the request by the department is made

1 to the hearings board within fifteen days of the termination of the
2 thirty-day notice to the local government.

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

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

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

12 ~~(b) The development is completed within two years after June 1,
13 1971.~~

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

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

25 ~~((13)) (11)(a) An application for a substantial development
26 permit for a limited utility extension or for the construction of a
27 bulkhead or other measures to protect a single family residence and its
28 appurtenant structures from shoreline erosion shall be subject to the
29 following procedures:~~

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

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

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

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

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

9 (ii) Will serve an existing use in compliance with this chapter;
10 and

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

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

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

20 ~~((Concurrently with))~~ Within seven days of the filing of any
21 ~~((request))~~ petition for review with the board as provided in this
22 section pertaining to a final ~~((order))~~ decision of a local government,
23 the ~~((requestor))~~ petitioner shall ~~((file a copy))~~ serve copies of
24 ~~((his or her request with))~~ the petition on the department and the
25 office of the attorney general. ~~((If it appears to the department or~~
26 ~~the attorney general that the requestor has valid reasons to seek~~
27 ~~review, either the department or the attorney general may certify the~~
28 ~~request within thirty days after its receipt to the shorelines hearings~~
29 ~~board following which the board shall then, but not otherwise, review~~
30 ~~the matter covered by the requestor. The failure to obtain such~~
31 ~~certification shall not preclude the requestor from obtaining a review~~
32 ~~in the superior court under any right to review otherwise available to~~
33 ~~the requestor.))~~ The department and the attorney general may intervene
34 to protect the public interest and insure that the provisions of this
35 chapter are complied with at any time within fifteen days from the date
36 of the receipt by the department or the attorney general of a copy of
37 the ~~((request))~~ petition for review filed pursuant to this section.
38 The shorelines hearings board shall ~~((initially))~~ schedule review

1 proceedings on (~~such requests~~) the petition for review without regard
2 as to whether (~~such requests have or have not been certified or as to~~
3 ~~whether~~) the period for the department or the attorney general to
4 intervene has or has not expired(~~(, unless such review is to begin~~
5 ~~within thirty days of such scheduling. If at the end of the thirty day~~
6 ~~period for certification neither the department nor the attorney~~
7 ~~general has certified a request for review, the hearings board shall~~
8 ~~remove the request from its review schedule))~~).

9 (2) The department or the attorney general may obtain review of any
10 final (~~order~~) decision granting a permit, or granting or denying an
11 application for a permit issued by a local government by filing a
12 written (~~request~~) petition with the shorelines hearings board and the
13 appropriate local government within (~~thirty~~) twenty-one days from the
14 date the final (~~order~~) decision was filed as provided in RCW
15 90.58.140(6).

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

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

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

- 35 (a) Is clearly erroneous in light of the policy of this chapter; or
36 (b) Constitutes an implementation of this chapter in violation of
37 constitutional or statutory provisions; or
38 (c) Is arbitrary and capricious; or

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

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

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

16 ~~((5) Rules, regulations, and guidelines))~~ (7) A decision of the
17 board on the validity of a rule, regulation, or guideline shall be
18 subject to review in superior court, if authorized pursuant to ((RCW
19 34.05.570(2).— No review shall be granted by a superior court on
20 petition from a local government unless the local government shall
21 first have obtained review under subsection (4) of this section and the
22 petition for court review is)) chapter 34.05 RCW. A petition for
23 review of the decision of the shorelines hearings board on a rule,
24 regulation, or guideline shall be filed within ((three months)) thirty
25 days after the date of final decision by the shorelines hearings board.

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

28 (1) (~~((The department and each local government shall periodically~~
29 ~~review any master programs under its jurisdiction and make such~~
30 ~~adjustments thereto as are necessary. Any adjustments proposed by a~~
31 ~~local government to its master program shall be forwarded to the~~
32 ~~department for review. The department shall approve, reject, or~~
33 ~~propose modification to the adjustment. If the department either~~
34 ~~rejects or proposes modification to the master program adjustment, it~~
35 ~~shall provide substantive written comments as to why the proposal is~~
36 ~~being rejected or modified.))~~) The appeal of the department s decision
37 to adopt a master program or amendment pursuant to RCW 90.58.070(2) or
38 90.58.090(4) is governed by RCW 34.05.510 through 34.05.598.

1 (2)(a) The department's decision to approve, reject, or modify a
2 proposed master program or amendment adopted by a local government
3 planning under RCW 36.70A.040 shall be appealed to the growth
4 management hearings board with jurisdiction over the local government.
5 The appeal shall be initiated by filing a petition as provided in RCW
6 36.70A.250 through 36.70A.320.

7 (b) If the appeal to the growth management hearings board concerns
8 shorelines, the growth management hearings board shall review the
9 proposed master program or amendment for compliance with the
10 requirements of this chapter and chapter 36.70A RCW, the policy of RCW
11 90.58.020 and the applicable guidelines, and chapter 43.21C RCW as it
12 relates to the adoption of master programs and amendments under chapter
13 90.58 RCW.

14 (c) If the appeal to the growth management hearings board concerns
15 a shoreline of state-wide significance, the board shall uphold the
16 decision by the department unless the board, by clear and convincing
17 evidence, determines that the decision of the department is
18 inconsistent with the policy of RCW 90.58.020 and the applicable
19 guidelines.

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

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

25 (3)(a) Except as provided in subsection (2) of this section, any
26 local government not planning under RCW 36.70A.040 that is aggrieved by
27 the department's decision to approve, reject, or modify ((a)) its
28 proposed master program or master program ((adjustment)) amendment may
29 appeal the department's decision by filing a petition to the shorelines
30 hearings board within thirty days of the date of the department s
31 written notice to the local government of the department s decision to
32 approve, reject, or modify a proposed master program or master program
33 amendment as provided in RCW 90.58.090(2).

34 (b) In an appeal relating to shorelines, the shorelines hearings
35 board shall review the proposed master program or master program
36 ((adjustment)) amendment and, after full consideration of the
37 presentations of the local government and the department, shall
38 determine the validity of the local government's ((adjustment)) master

1 program or amendment in light of the policy of RCW 90.58.020 and the
2 applicable guidelines.

3 (c) In an appeal relating to shorelines of state-wide significance,
4 the shorelines hearings board shall uphold the decision by the
5 department unless ~~((a local government shall))~~ the board determines, by
6 clear and convincing evidence ~~((and argument, persuade the board))~~ that
7 the decision of the department is inconsistent with the policy of RCW
8 90.58.020 and the applicable guidelines.

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

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

19 ~~((+3))~~ (4) A master program amendment shall become effective after
20 the approval of the department or after the decision of the shorelines
21 hearings board to uphold the master program or master program
22 ~~((adjustment))~~ amendment, provided that the board may remand the master
23 program or master program adjustment to the local government or the
24 department for modification prior to the final adoption of the master
25 program or master program ~~((adjustment))~~ amendment.

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

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

29 (a) If the presiding officer is the agency head or one or more
30 members of the agency head, the presiding officer may enter an initial
31 order if further review is available within the agency, or a final
32 order if further review is not available;

33 (b) If the presiding officer is a person designated by the agency
34 to make the final decision and enter the final order, the presiding
35 officer shall enter a final order; and

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

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

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

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

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

34 (6) If a person serving or designated to serve as presiding officer
35 becomes unavailable for any reason before entry of the order, a
36 substitute presiding officer shall be appointed as provided in RCW
37 34.05.425. The substitute presiding officer shall use any existing
38 record and may conduct any further proceedings appropriate in the
39 interests of justice.

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

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

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

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

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

15 (1) Except as provided in subsection (2) of this section ((and RCW
16 36.70A.300(3))), proceedings for review under this chapter shall be
17 instituted by filing a petition in the superior court, at the
18 petitioner's option, for (a) Thurston county, (b) the county of the
19 petitioner's residence or principal place of business, or (c) in any
20 county where the property owned by the petitioner and affected by the
21 contested decision is located.

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

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

28 For shorelines of the state, the goals and policies of the
29 shoreline management act as set forth in RCW 90.58.020 are added as one
30 of the goals of this chapter as set forth in RCW 36.70A.020. The
31 comprehensive plan of a county or city planning under RCW 36.70A.040
32 must also include a separate shorelines element consisting of the
33 goals, policies, and use guidelines segments of the shoreline master
34 program adopted under chapter 90.58 RCW. All other portions of the
35 shoreline master program, including regulations, shall be considered
36 part of the county's or city's development regulations.

1 The shoreline master program shall be adopted pursuant to the
2 procedures of chapter 90.58 RCW rather than the procedures set forth in
3 this chapter for the adoption of a comprehensive plan and development
4 regulations, including approval by the department of ecology, except
5 that an appeal from the actions by the department of ecology are
6 appealable to the appropriate growth management hearings board rather
7 than the shorelines hearings board.

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

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

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

16 (2)(a) Each county and city shall establish and broadly disseminate
17 to the public a public participation program identifying procedures
18 whereby proposed amendments or revisions of the comprehensive plan are
19 considered by the governing body of the county or city no more
20 frequently than once every year except under the following
21 circumstances:

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

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

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

32 (3) Each county that designates urban growth areas under RCW
33 36.70A.110 shall review, at least every ten years, its designated urban
34 growth area or areas, and the densities permitted within both the
35 incorporated and unincorporated portions of each urban growth area. In
36 conjunction with this review by the county, each city located within an
37 urban growth area shall review the densities permitted within its
38 boundaries, and the extent to which the urban growth occurring within

1 the county has located within each city and the unincorporated portions
2 of the urban growth areas. The county comprehensive plan designating
3 urban growth areas, and the densities permitted in the urban growth
4 areas by the comprehensive plans of the county and each city located
5 within the urban growth areas, shall be revised to accommodate the
6 urban growth projected to occur in the county for the succeeding
7 twenty-year period.

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

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

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

18 (a) Except as provided in (c) of this subsection, the date of
19 publication for a city shall be the date the city publishes the
20 ordinance, or summary of the ordinance, adopting the comprehensive plan
21 or development regulations, or amendment thereto, as is required to be
22 published.

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

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

30 (c) For local governments planning under RCW 36.70A.040, promptly
31 after approval or disapproval of a local government s shoreline master
32 program or amendment thereto by the department of ecology as provided
33 in RCW 90.58.090, the local government shall publish a notice that the
34 shoreline master program or amendment thereto has been approved or
35 disapproved by the department of ecology. For purposes of this
36 section, the date of publication for the adoption or amendment of a
37 shoreline master program is the date the local government publishes

1 notice that the shoreline master program or amendment thereto has been
2 approved or disapproved by the department of ecology.

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

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

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

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

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

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

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

32 Unless the context clearly requires otherwise, the following
33 definitions shall apply ~~((in RCW 82.02.050 through 82.02.090))~~
34 throughout this chapter:

35 (1) "Development" means any proposed change in use of land for
36 which review of environmental impacts is required under chapter 43.21C

1 RCW, any proposed construction or expansion of a building, structure,
2 or use, or any proposed change in use of a building or structure.

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

7 ~~((+2))~~ (3) "Development approval" means any written authorization
8 from a county, city, or town which authorizes the commencement of
9 development activity.

10 ~~((+3))~~ (4) "Environmental analysis" means review under chapter
11 43.21C RCW of environmental impacts of an action required or authorized
12 by chapter 36.70A RCW.

13 (5) "Environmental analysis fees" means a payment of money imposed
14 on development as a condition of development approval to pay for
15 environmental analysis needed to establish the system capacity
16 projected to accommodate implementation of a comprehensive plan adopted
17 under chapter 36.70A RCW.

18 (6) "Impact fee" means a payment of money imposed upon development
19 as a condition of development approval to pay for public facilities
20 needed to serve new growth and development, and that is reasonably
21 related to the new development that creates additional demand and need
22 for public facilities, that is a proportionate share of the cost of the
23 public facilities, and that is used for facilities that reasonably
24 benefit the new development. "Impact fee" does not include a
25 reasonable permit or application fee.

26 ~~((+4))~~ (7) "Owner" means the owner of record of real property,
27 although when real property is being purchased under a real estate
28 contract, the purchaser shall be considered the owner of the real
29 property if the contract is recorded.

30 ~~((+5))~~ (8) "Proportionate share" means that portion of the cost of
31 public facility improvements that are reasonably related to the service
32 demands and needs of new development.

33 ~~((+6))~~ (9) "Project improvements" mean site improvements and
34 facilities that are planned and designed to provide service for a
35 particular development project and that are necessary for the use and
36 convenience of the occupants or users of the project, and are not
37 system improvements. No improvement or facility included in a capital
38 facilities plan approved by the governing body of the county, city, or
39 town shall be considered a project improvement.

1 ~~((7))~~ (10) "Public facilities" means the following capital
2 facilities owned or operated by government entities: (a) Public
3 streets and roads; (b) publicly owned parks, open space, and recreation
4 facilities; (c) school facilities; and (d) fire protection facilities
5 in jurisdictions that are not part of a fire district.

6 ~~((8))~~ (11) "Service area" means a geographic area defined by a
7 county, city, town, or intergovernmental agreement in which a defined
8 set of public facilities provide service to development within the
9 area. Service areas shall be designated on the basis of sound planning
10 or engineering principles.

11 ~~((9))~~ (12) "System capacity" means the capacity of a county,
12 city, or town to accommodate new development determined by the limiting
13 capacities of specific natural or built systems identified in the
14 comprehensive plan adopted pursuant to RCW 36.70A.040.

15 (13) "System improvements" mean public facilities that are included
16 in the capital facilities plan and are designed to provide service to
17 service areas within the community at large, in contrast to project
18 improvements.

19 NEW SECTION. Sec. 134. A new section is added to chapter 82.02
20 RCW to read as follows:

21 Except only as expressly provided in RCW 67.28.180 and 67.28.190
22 and in chapter 82.14 RCW, the state preempts the field of imposing
23 taxes upon retail sales of tangible personal property, the use of
24 tangible personal property, parimutuel wagering authorized pursuant to
25 RCW 67.16.060, conveyances, and cigarettes, and no county, town, or
26 other municipal subdivision has the right to impose taxes of that
27 nature.

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

30 ~~((Except only as expressly provided in RCW 67.28.180 and 67.28.190
31 and the provisions of chapter 82.14 RCW, the state preempts the field
32 of imposing taxes upon retail sales of tangible personal property, the
33 use of tangible personal property, parimutuel wagering authorized
34 pursuant to RCW 67.16.060, conveyances, and cigarettes, and no county,
35 town, or other municipal subdivision shall have the right to impose
36 taxes of that nature.))~~ (1) Except as provided in ~~((RCW 82.02.050
37 through 82.02.090))~~ this chapter, ~~((no))~~ a county, city, town, or other

1 municipal corporation shall not impose any tax, fee, or charge, either
2 direct or indirect, on the construction or reconstruction of
3 residential buildings, commercial buildings, industrial buildings, or
4 on any other building or building space or appurtenance thereto, or on
5 the development, subdivision, classification, or reclassification of
6 land. However, this section does not preclude dedications of land or
7 easements within the proposed development or plat which the county,
8 city, town, or other municipal corporation can demonstrate are
9 reasonably necessary as a direct result of the proposed development or
10 plat to which the dedication of land or easement is to apply.

11 (2) This section does not prohibit voluntary agreements with
12 ~~((counties, cities, towns))~~ a county, city, town, or other municipal
13 corporation~~((s))~~ that allows a payment in lieu of a dedication of land
14 or to mitigate a direct impact that has been identified as a
15 consequence of a proposed development, subdivision, or plat. A local
16 government shall not use such voluntary agreements for local off-site
17 transportation improvements within the geographic boundaries of the
18 area or areas covered by an adopted transportation program authorized
19 by chapter 39.92 RCW. Any such voluntary agreement is subject to the
20 following provisions:

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

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

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

31 ~~((No))~~ (3) A county, city, town, or other municipal corporation
32 shall not require any payment as part of such a voluntary agreement
33 which the county, city, town, or other municipal corporation cannot
34 establish is reasonably necessary as a direct result of the proposed
35 development or plat.

36 (4)(a) Nothing in this section prohibits cities, towns, counties,
37 or other municipal corporations from collecting reasonable fees from an
38 applicant for a permit or other governmental approval to cover the cost
39 to the city, town, county, or other municipal corporation of processing

1 applications, inspecting and reviewing plans, or preparing detailed
2 statements required by chapter 43.21C RCW.

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

7 (c) Nothing in this section prohibits counties, cities, or towns
8 from imposing or permits counties, cities, or towns to impose water,
9 sewer, natural gas, drainage utility, and drainage system charges(~~(+
10 PROVIDED, That))~~). No such charge (~~(shall)~~) may exceed the
11 proportionate share of such utility or system's capital costs which the
12 county, city, or town can demonstrate are attributable to the property
13 being charged(~~(+ PROVIDED FURTHER, That))~~). These provisions shall not
14 be interpreted to expand or contract any existing authority of
15 counties, cities, or towns to impose such charges.

16 (d) Nothing in this section prohibits a transportation benefit
17 district from imposing fees or charges authorized in RCW 36.73.120 nor
18 prohibits the legislative authority of a county, city, or town from
19 approving the imposition of such fees within a transportation benefit
20 district.

21 (e) Nothing in this section prohibits counties, cities, or towns
22 from imposing transportation impact fees authorized pursuant to chapter
23 39.92 RCW.

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

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

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

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

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

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

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

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

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

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

21 (2) Therefore it is the intent of the legislature by enacting this
22 chapter to authorize counties, cities, and towns planning under RCW
23 36.70A.040 to assess environmental analysis fees at the time of project
24 review, issue both general indebtedness and revenue indebtedness
25 payable from the environmental analysis fees, and assist in financing
26 the enhanced environmental review of comprehensive plans, subarea
27 plans, and development regulations.

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

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

36 (3) Environmental analysis fees shall be proportionate to the
37 amount of system capacity or capacities projected to be consumed by the
38 new development.

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

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

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

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

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

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

18 (c) The amount of the total cost of environmental analysis
19 allocated to each capacity element used to determine the amount of the
20 fee;

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

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

28 NEW SECTION. **Sec. 139.** A county, city, or town planning under RCW
29 36.70A.040 may issue general obligations and revenue obligations
30 payable from environmental analysis fees to assist in financing the
31 enhanced environmental review of comprehensive plans, subarea plans,
32 and development regulations that is in sufficient detail to allow the
33 environmental impact statement to be used in whole or in part by an
34 applicant for a development within the geographic area covered by the
35 plan or regulations that receives the enhanced environmental review.
36 The comprehensive plan, subarea plan, or development regulations must
37 include mechanisms to monitor the usefulness of the enhanced

1 environmental review by applicants for development permits authorizing
2 development consistent with the plan and regulations.

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

6 At least twenty-five percent of the funding for the enhanced
7 environmental review must come from sources other than the
8 environmental analysis fees.

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

11 The growth management planning and environmental review loan fund
12 is hereby established in the state treasury. Moneys may be placed in
13 the fund from the proceeds of bond sales, tax revenues, budget
14 transfers, federal appropriations, gifts, or any other lawful source.
15 Moneys in the fund may be spent only after appropriation. Moneys in
16 the fund shall be used to make low-interest loans to counties and
17 cities for the purposes set forth in section 103 of this act or RCW
18 43.21C.031. Loans from the fund shall be made by loan agreement under
19 chapter 39.69 RCW.

20 NEW SECTION. **Sec. 141.** A new section is added to chapter 36.70A
21 RCW to read as follows:

22 (1) The department of community, trade, and economic development
23 shall provide management services for the fund created by section 140
24 of this act. The department by rule shall establish procedures for
25 fund management.

26 (2) A county or city applicant must be making substantial progress
27 towards compliance with the requirements of chapter 36.70A RCW in order
28 to qualify for financial assistance from the fund established pursuant
29 to section 140 of this act. A county or city that is more than six
30 months out of compliance with a requirement of this chapter is deemed
31 not to be making substantial progress towards compliance.

32 (3) The department by loan agreement may permit a deferred payment
33 on the principal repayment of any loan for a period not to exceed two
34 years. Interest shall continue to accrue during this period.

35 **Sec. 142.** RCW 35.44.020 and 1987 c 242 s 4 are each amended to
36 read as follows:

1 There shall be included in the cost and expense of every local
2 improvement for assessment against the property in the district created
3 to pay the same, or any part thereof:

4 (1) The cost of all of the construction or improvement authorized
5 for the district including, but not limited to, that portion of the
6 improvement within the street intersections;

7 (2) The estimated cost and expense of all engineering and surveying
8 necessary for the improvement done under the supervision of the city or
9 town engineer;

10 (3) The estimated cost and expense of ascertaining the ownership of
11 the lots or parcels of land included in the assessment district;

12 (4) The estimated cost and expense of advertising, mailing, and
13 publishing all necessary notices;

14 (5) The estimated cost and expense of accounting, clerical labor,
15 and of books and blanks extended or used on the part of the city or
16 town clerk and city or town treasurer in connection with the
17 improvement;

18 (6) All cost of the acquisition of rights of way, property,
19 easements, or other facilities or rights, including without limitation
20 rights to use property, facilities, or other improvements appurtenant,
21 related to, and/or useful in connection with the local improvement,
22 whether by eminent domain, purchase, gift, payment of connection
23 charges, capacity charges, or other similar charges, or in any other
24 manner;

25 (7) The cost for legal, financial, and appraisal services and any
26 other expenses incurred by the city, town, or public corporation for
27 the district or in the formation thereof, or by the city, town, or
28 public corporation in connection with such construction or improvement
29 and in the financing thereof, including the issuance of any bonds and
30 the cost of providing for increases in the local improvement guaranty
31 fund, or providing for a separate reserve fund or other security for
32 the payment of principal of and interest on such bonds.

33 Any of the costs set forth in this section may be excluded from the
34 cost and expense to be assessed against the property in such local
35 improvement district and may be paid from any other moneys available
36 therefor if the legislative body of the city or town so designates by
37 ordinance at any time.

1 government for a project action, including but not limited to building
2 permits, subdivisions, binding site plans, planned unit developments,
3 conditional uses, shoreline substantial development permits, and other
4 land use applications, but does not include proposed amendments to
5 comprehensive plans or the adoption or amendment of development
6 regulations.

7 (3) "Development regulations" means the controls placed on
8 development or land use activities by a local government, including,
9 but not limited to, zoning ordinances, critical areas ordinances,
10 shoreline master programs, official controls, planned unit development
11 ordinances, subdivision ordinances, and binding site plan ordinances,
12 together with any amendments, but does not include decisions to approve
13 a development permit application, even though such decisions may be
14 expressed in a resolution or ordinance of the legislative body of the
15 local government.

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

17 (5) "Open record hearing" means a hearing conducted by a hearing
18 body or officer of the local government that creates a record through
19 testimony and submission of evidence and information, whether the
20 hearing is open to members of the general public for purposes of
21 hearing public comments prior to a decision on a development permit
22 application or is limited to those filing an appeal of a staff
23 decision.

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

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

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

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

35 NEW SECTION. **Sec. 204.** Not later than December 31, 1996, each
36 local government planning under RCW 36.70A.040 shall establish by

1 ordinance or resolution an integrated and consolidated development
2 permit process that includes the following required elements:

3 (1) A notice of completion to the applicant as required by RCW
4 36.70A.440 (as recodified by this act);

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

7 (3) With the exception of a determination of significance, which
8 shall be issued in advance of the agency decision or recommendation on
9 the project action as provided in chapter 43.21C RCW, a single report
10 by the decision maker that combines the local government's threshold
11 determination, if required under chapter 43.21C RCW, with the agency's
12 decision or recommendation on all development permits included in the
13 consolidated permit review and also includes any mitigation required
14 pursuant to the development regulations or the agency's authority under
15 RCW 43.21C.060;

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

21 (5) Except for the appeal of a determination of significance as
22 provided in RCW 43.21C.075, if a local government elects to provide an
23 appeal of its threshold determinations or development permit decisions,
24 the local government shall provide for no more than one consolidated
25 open record hearing before a single hearing body or officer. The local
26 government need not provide for any further appeal. If a closed record
27 appeal is provided, the appeal shall be on the record before a single
28 decision-making body or officer;

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

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

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

36 ~~((Each city and county))~~ (1) Within twenty-eight days after
37 receiving a development permit application, a local government planning
38 pursuant to RCW 36.70A.040 shall~~((, within twenty working days of~~

1 ~~receiving a development permit application as defined in RCW~~
2 ~~36.70A.030(7),)~~ mail or provide in person a written ~~((notice))~~
3 determination to the applicant, stating either:

4 (a) That the application is complete; or

5 (b) That the application is incomplete and what is necessary to
6 make the application complete.

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

11 (b) Within ten days after an applicant has submitted to a local
12 government additional information identified by the local government as
13 being necessary for a complete application, the local government shall
14 notify the applicant whether the information submitted adequately
15 responds to the notice given under (a) of this subsection and thereby
16 makes the application complete or what additional information is
17 necessary.

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

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

24 Development regulations adopted pursuant to RCW 36.70A.040 shall
25 establish time periods consistent with section 207 of this act for
26 local government actions on specific development permit applications
27 and provide timely and predictable procedures to determine whether a
28 completed development permit application meets the requirements of
29 those development regulations. Such development regulations shall
30 specify the contents of a completed development permit application
31 necessary for the application of such time periods and procedures.

32 NEW SECTION. **Sec. 207.** (1) Except as otherwise provided in
33 subsection (2) of this section, a local government planning under RCW
34 36.70A.040 shall issue its notice of final decision within one hundred
35 twenty days after the local government notifies the applicant for a
36 project that the application is complete or is deemed complete, as
37 provided in RCW 36.70A.440 (as recodified by this act). In determining

1 the number of days that have elapsed after the local government has
2 notified the applicant that the application is complete, the following
3 periods shall be excluded:

4 (a) Any period during which an environmental impact statement is
5 being prepared following a determination of significance pursuant to
6 chapter 43.21C RCW, if the local government by ordinance or resolution
7 has established time periods for completion of environmental impact
8 statements, or if the local government and the applicant in writing
9 agree to a time period for completion of an environmental impact
10 statement; and

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

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

16 (a) Requires an amendment to the comprehensive plan or a
17 development regulation;

18 (b) Involves a new fully contained community as provided in RCW
19 36.70A.350, a master planned resort as provided in RCW 36.70A.360, or
20 the siting of an essential public facility as provided in RCW
21 36.70A.200; or

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

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

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

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

4 (6) The notice of completeness may include the following as
5 optional information:

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

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

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

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

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

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

19 (a) The date of application;

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

24 (c) The identification of other development or related permits not
25 included in the application to the extent known by the local
26 government;

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

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

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

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

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

7 (4) A local government shall use reasonable methods to give the
8 notice of application to the public and agencies with jurisdiction and
9 may use its existing notice procedures. A local government may use
10 different types of notice for different categories of development
11 permits or types or project actions. Examples of reasonable methods to
12 inform the public are:

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

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

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

18 (d) Notifying the news media;

19 (e) Placing notices in appropriate regional or neighborhood
20 newspapers or trade journals;

21 (f) Publishing notice in agency newsletters or sending notice to
22 agency mailing lists, either general lists or lists for specific
23 proposals or subject areas; and

24 (g) Mailing to neighboring property owners.

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

28 (6) The local government may not issue its threshold determination
29 or issue a decision or recommendation on a development permit until
30 expiration of the public comment period. Comments shall be as specific
31 as possible. If an agency with jurisdiction or a member of the public
32 does not respond with written comments within the public comment
33 period, the local government shall assume that such agency or person
34 has no objection to the proposed development permit if the procedures
35 of this section have been met.

36 NEW SECTION. **Sec. 209.** (1) Each local government planning under
37 RCW 36.70A.040 shall establish a permit review process that provides
38 for the integrated and consolidated review and decision on two or more

1 development permits relating to a proposed project action, including a
2 single application review and approval process covering all development
3 permits requested by an applicant for all or part of a project action
4 and a designated permit coordinator. If an applicant elects the
5 consolidated permit review process, the notice of completion, notice of
6 application, and notice of final decision must include all development
7 permits being reviewed through the consolidated permit review process.

8 (2) Consolidated permit review may provide different procedures for
9 different categories of development permits, but if a project action
10 requires development permits from more than one category, the local
11 government shall provide for consolidated permit review with a single
12 open record hearing and no more than one closed record appeal. Each
13 local government shall determine which development permits are subject
14 to an open record hearing and a closed record appeal. Examples of
15 categories of development permits include but are not limited to:

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

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

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

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

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

30 (4) A local government may provide by ordinance or resolution for
31 the same or a different decision maker or hearing body or officer for
32 different categories of development permits. In the case of
33 consolidated development permit review, the local government shall
34 specify which decision makers shall make the decision or
35 recommendation, conduct the hearing, or decide the appeal to ensure
36 that consolidated permit review occurs as provided in this section.
37 The consolidated permit review may combine an open record public
38 hearing with an open record appeal hearing. In such cases, the local

1 government by ordinance or resolution shall specify which development
2 permits, if any, shall be subject to a closed record appeal.

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

6 NEW SECTION. **Sec. 210.** A local government planning under RCW
7 36.70A.040 shall provide a notice of decision, which may be a copy of
8 the report, recommendation, or decision, to the applicant and to any
9 person requesting notice of the decision prior to the rendering of the
10 decision. The local government may publish or otherwise provide for
11 additional notice of its decision.

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

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

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

28 NEW SECTION. **Sec. 212.** A local government not planning under RCW
29 36.70A.040 may incorporate some or all of the provisions of sections
30 204 and 207 through 210 of this act and RCW 36.70A.065 and 36.70A.440
31 (as recodified by this act) into its procedures for review of
32 development permits or other project actions.

33 NEW SECTION. **Sec. 213.** (1) Each local government is encouraged to
34 adopt further project review provisions to provide prompt, coordinated
35 review and ensure accountability to applicants and the public,

1 including expedited review for development permits for projects that
2 are consistent with adopted development regulations and within the
3 capacity of system-wide infrastructure improvements.

4 (2) Nothing in this chapter is intended or shall be construed to
5 prevent a local government from requiring by rule, ordinance, or
6 resolution a preapplication conference or meeting, design review, or
7 hearing on some or all proposed projects to obtain public comments on
8 scoping or a draft environmental impact statement pursuant to chapter
9 43.21C RCW and its applicable rules.

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

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

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

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

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

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

27 (1) Upon receipt of an application for preliminary plat approval
28 the administrative officer charged by ordinance with responsibility for
29 administration of regulations pertaining to platting and subdivisions
30 shall provide public notice and set a date for a public hearing.
31 Except as provided in section 208 of this act, at a minimum, notice of
32 the hearing shall be given in the following manner:

33 ((+1)) (a) Notice shall be published not less than ten days prior
34 to the hearing in a newspaper of general circulation within the county
35 and a newspaper of general circulation in the area where the real
36 property which is proposed to be subdivided is located; and

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

13 (2) All hearings shall be public. All hearing notices shall
14 include a description of the location of the proposed subdivision. The
15 description may be in the form of either a vicinity location sketch or
16 a written description other than a legal description.

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

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

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

27 If a city, town or county has established a planning commission or
28 planning agency in accordance with state law or local charter, such
29 commission or agency shall review all preliminary plats and make
30 recommendations thereon to the city, town or county legislative body to
31 assure conformance of the proposed subdivision to the general purposes
32 of the comprehensive plan and to planning standards and specifications
33 as adopted by the city, town or county. Reports of the planning
34 commission or agency shall be advisory only: PROVIDED, That the
35 legislative body of the city, town or county may, by ordinance, assign
36 to such commission or agency, or any department official or group of
37 officials, such administrative functions, powers and duties as may be

1 appropriate, including the holding of hearings, and recommendations for
2 approval or disapproval of preliminary plats of proposed subdivisions.

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

20 Every decision or recommendation made under this section shall be
21 in writing and shall include findings of fact and conclusions to
22 support the decision or recommendation.

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

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

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

30 (1) As an alternative to those provisions of this chapter requiring
31 a planning commission to hear and issue recommendations for plat
32 approval, the county or city legislative body may adopt a hearing
33 examiner system and shall specify by ordinance the legal effect of the
34 decisions made by the examiner. (~~Except as provided in subsection (2)~~
35 ~~of this section,~~) The legal effect of such decisions shall include one
36 of the following:

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

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

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

6 The legislative authority shall prescribe procedures to be followed by
7 a hearing examiner.

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

13 ~~(3))~~ Each final decision of a hearing examiner shall be in writing
14 and shall include findings and conclusions, based on the record, to
15 support the decision. Each final decision of a hearing examiner,
16 unless a longer period is mutually agreed to by the applicant and the
17 hearing examiner, shall be rendered within ten working days following
18 conclusion of all testimony and hearings.

19 NEW SECTION. Sec. 219. The legislature finds that the lack of
20 certainty in the approval of development projects can result in a waste
21 of public and private resources, escalate housing costs for consumers
22 and discourage the commitment to comprehensive planning which would
23 make maximum efficient use of resources at the least economic cost to
24 the public. Assurance to a development project applicant that upon
25 government approval the project may proceed in accordance with existing
26 policies and regulations, and subject to conditions of approval, all as
27 set forth in a development agreement, will strengthen the public
28 planning process, encourage private participation and comprehensive
29 planning, and reduce the economic costs of development. Further, the
30 lack of public facilities and services is a serious impediment to
31 development of new housing and commercial uses. Project applicants and
32 local governments may include provisions and agreements whereby
33 applicants are reimbursed over time for financing public facilities.
34 It is the intent of the legislature by sections 220 through 224 of this
35 act to allow local governments and owners and developers of real
36 property to enter into development agreements.

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

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

11 (2) Sections 219 through 222 of this act do not affect the validity
12 of a contract rezone, concomitant agreement, annexation agreement, or
13 other agreement in existence on the effective date of sections 219
14 through 222 of this act, or adopted under separate authority, that
15 includes some or all of the development standards provided in
16 subsection (3) of this section.

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

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

21 (b) The amount and payment of impact fees imposed or agreed to in
22 accordance with chapter 36.-- RCW (the new chapter created in section
23 144 of this act) or any other applicable provisions of state law, other
24 financial contributions by the property owner, inspection fees, or
25 dedications;

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

28 (d) Design standards such as maximum heights, setbacks, drainage
29 and water quality requirements, landscaping, and other development
30 features;

31 (e) Affordable housing;

32 (f) Parks and open space preservation;

33 (g) Phasing;

34 (h) Review procedures and standards for implementing decisions;

35 (i) A build-out or vesting period for applicable standards; and

36 (j) Any other appropriate development requirement or procedure.

37 (4) The execution of a development agreement is a proper exercise
38 of county and city police power and contract authority. A development
39 agreement may obligate a party to fund or provide services,

1 infrastructure, or other facilities. A development agreement shall
2 reserve authority to impose new or different regulations to the extent
3 required by a serious threat to public health and safety.

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

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

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

18 A development agreement may be recorded with the real property
19 records of the county in which the property is located. During the
20 term of the development agreement, the agreement is binding on and will
21 inure to the benefit of the parties and their successors, including a
22 city that assumes jurisdiction through incorporation or annexation of
23 the area covering the property covered by the development agreement.

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

26 A county or city shall only approve a development agreement by
27 ordinance or resolution after a public hearing. The county or city
28 legislative body or a planning commission, hearing examiner, or other
29 body designated by the legislative body to conduct the public hearing
30 may conduct the hearing. If the development agreement relates to a
31 development permit application, the provisions of chapter 36.-- RCW
32 (sections 301 through 312 of this act) shall apply to the appeal of the
33 decision on the development agreement.

34 NEW SECTION. **Sec. 224.** Nothing in sections 219 through 223 of
35 this act is intended to authorize local governments to impose impact

1 fees, inspection fees, or dedications or to require any other financial
2 contributions or mitigation measures except as authorized in RCW
3 82.02.020 (as recodified by this act) and as otherwise expressly
4 authorized by other applicable provisions of state law.

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

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

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

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

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

24 The legislative body shall prescribe procedures to be followed by
25 the hearing examiner.

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

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

34 (b) The decision may be given the effect of an administrative
35 decision appealable within a specified time limit to the legislative
36 body((-

37 ~~(2) The legislative body may specify the legal effect of a hearing~~
38 ~~examiner's procedural determination under the state environmental~~

1 ~~policy act, as defined in RCW 43.21C.075(3)(a). It may have the effect~~
2 ~~under subsection (1) (a) or (b) of this section, or))~~; or

3 (c) The decision may be given the effect of a final decision of the
4 legislative body, except that applications for rezones may not be given
5 the effect of a final decision of a legislative body.

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

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

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

27 (a) Applications for conditional uses, variances, subdivisions,
28 shoreline permits, or any other class of applications for or pertaining
29 to development of land or land use((s which the legislative body
30 believes should be reviewed and decided by a hearing examiner));

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

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

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

1 (2) Each city legislative body electing to use a hearing examiner
2 pursuant to this section shall by ordinance specify the legal effect of
3 the decisions made by the examiner. (~~Except as provided in subsection~~
4 ~~(2) of this section,~~) The legal effect of such decisions may vary for
5 the different classes of applications decided by the examiner but shall
6 include one of the following:

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

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

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

17 (c) The decision may be given the effect of a final decision of the
18 legislative body, except that applications for a rezone may not be
19 given the effect of a final decision of a legislative body.

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

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

31 (1) As an alternative to those provisions of this chapter relating
32 to powers or duties of the planning commission to hear and issue
33 recommendations on applications for plat approval and applications for
34 amendments to the zoning ordinance, the county legislative authority
35 may adopt a hearing examiner system under which a hearing examiner or
36 hearing examiners may hear and issue decisions on proposals for plat
37 approval and for amendments to the zoning ordinance when the amendment
38 which is applied for is not of general applicability. In addition, the

1 legislative authority may vest in a hearing examiner the power to hear
2 and decide those issues it believes should be reviewed and decided by
3 a hearing examiner, including but not limited to:

4 (a) Applications for conditional uses (~~((applications))~~), variances
5 (~~((applications))~~), (~~((applications for))~~) shoreline permits, or any other
6 class of applications for or pertaining to development of land or land
7 use((s));

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

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

11 The legislative authority shall prescribe procedures to be followed
12 by a hearing examiner.

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

16 (2) Each county legislative authority electing to use a hearing
17 examiner pursuant to this section shall by ordinance specify the legal
18 effect of the decisions made by the examiner. (~~(Except as provided in~~
19 subsection (2) of this section,) Such legal effect may vary for the
20 different classes of applications decided by the examiner but shall
21 include one of the following:

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

24 (b) The decision may be given the effect of an administrative
25 decision appealable within a specified time limit to the legislative
26 authority(~~(-~~

27 ~~(2) The legislative authority may specify the legal effect of a~~
28 ~~hearing examiner's procedural determination under the state~~
29 ~~environmental policy act, as defined in RCW 43.21C.075(3)(a). It may~~
30 ~~have the effect under subsection (1) (a) or (b) of this section, or))i~~
31 or

32 (c) The decision may be given the effect of a final decision of the
33 legislative authority, except that applications for rezones may not be
34 given the effect of a final decision of a legislative authority.

35 (3) Each final decision of a hearing examiner shall be in writing
36 and shall include findings and conclusions, based on the record, to
37 support the decision. Such findings and conclusions shall also set
38 forth the manner in which the decision would carry out and conform to
39 the county's comprehensive plan and the county's development

1 regulations. Each final decision of a hearing examiner, unless a
2 longer period is mutually agreed to in writing by the applicant and the
3 hearing examiner, shall be rendered within ten working days following
4 conclusion of all testimony and hearings.

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

6 (1) Washington's environmental protection programs have established
7 strict standards to reduce pollution and protect the public health and
8 safety and the environment. The single-purpose programs instituted to
9 achieve these standards have been successful in many respects, and have
10 produced significant gains in protecting Washington's environment in
11 the face of substantial population growth.

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

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

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

31 (5) The purpose of this chapter is to require the department of
32 ecology to institute new, efficient procedures that will assist
33 businesses and public agencies in complying with the environmental
34 quality laws in an expedited fashion, without reducing protection of
35 public health and safety and the environment.

36 (6) Those procedures need to provide a permit process that promotes
37 effective dialogue and ensures ease in the transfer and clarification
38 of technical information, while preventing duplication. It is

1 necessary that the procedures establish a process for preliminary and
2 ongoing meetings between the applicant, the consolidated permit agency,
3 and the participating permit agencies, but do not preclude the
4 applicant or participating permit agencies from individually
5 coordinating with each other.

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

10 (8) It is necessary to provide a reliable and consolidated source
11 of information concerning the environmental and land use laws and
12 procedures that apply to any given proposal. This information is to be
13 current and encompass all state and local jurisdictions. To the extent
14 possible, it is to encompass federal jurisdictions and functions, as
15 well.

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

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

26 NEW SECTION. **Sec. 229.** Unless the context clearly requires
27 otherwise, the definitions in this section apply throughout this
28 chapter.

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

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

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

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

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

4 (6) "Permit agency" means:

5 (a) The department of ecology, an air pollution control authority,
6 the department of natural resources, the department of fish and
7 wildlife, and the department of health; and

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

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

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

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

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

28 (3) Work closely and cooperatively with the business license center
29 and the business assistance center in providing efficient and
30 nonduplicative service to the public; and

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

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

34 (b) Share permit coordination experiences;

35 (c) Improve the quality and efficiency of project facilitation; and

36 (d) Certify project facilitators.

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

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

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

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

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

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

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

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

32 NEW SECTION. **Sec. 233.** (1) A permit applicant who requests the
33 designation of a consolidated permit agency shall provide the center
34 with a description of the project, a preliminary list of the permits
35 that the project may require, the identity of any public agency that
36 has been designated the lead agency for the project pursuant to chapter
37 43.21C RCW, and the identity of the participating permit agencies. The

1 center may request any information from the permit applicant that is
2 necessary to make the designation under this section, and may convene
3 a scoping meeting of the likely consolidated permit agency and
4 participating permit agencies in order to make that designation.

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

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

37 NEW SECTION. **Sec. 234.** (1) Within twenty-one days of the date
38 that the consolidated permit agency is designated, it shall convene a

1 meeting with the permit applicant for the project and the participating
2 permit agencies. The meeting agenda shall include at least all of the
3 following matters:

4 (a) A determination of the permits that are required for the
5 project;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 withdraw from participation if the consolidated permit agency approves
2 the request.

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

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

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

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

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

33 NEW SECTION. **Sec. 240.** If an applicant fails to provide
34 information required for the processing of the component permit

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

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

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

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

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

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

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

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

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

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

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

34 The following acts or parts of acts, as now existing or hereafter
35 amended, are each repealed, effective June 30, 2000:

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

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

- 18 (1) RCW 90.62.010 and 1982 c 179 s 1, 1977 c 54 s 1, & 1973 1st
19 ex.s. c 185 s 1;
- 20 (2) RCW 90.62.020 and 1994 c 264 s 96, 1988 c 36 s 71, 1977 c 54 s
21 2, & 1973 1st ex.s. c 185 s 2;
- 22 (3) RCW 90.62.030 and 1973 1st ex.s. c 185 s 3;
- 23 (4) RCW 90.62.040 and 1990 c 137 s 1, 1977 c 54 s 3, & 1973 1st
24 ex.s. c 185 s 4;
- 25 (5) RCW 90.62.050 and 1977 c 54 s 4 & 1973 1st ex.s. c 185 s 5;
- 26 (6) RCW 90.62.060 and 1982 c 179 s 2, 1977 c 54 s 5, & 1973 1st
27 ex.s. c 185 s 6;
- 28 (7) RCW 90.62.070 and 1973 1st ex.s. c 185 s 7;
- 29 (8) RCW 90.62.080 and 1987 c 109 s 156, 1977 c 54 s 6, & 1973 1st
30 ex.s. c 185 s 8;
- 31 (9) RCW 90.62.090 and 1977 c 54 s 7 & 1973 1st ex.s. c 185 s 9;
- 32 (10) RCW 90.62.100 and 1977 c 54 s 8 & 1973 1st ex.s. c 185 s 10;
- 33 (11) RCW 90.62.110 and 1973 1st ex.s. c 185 s 11;
- 34 (12) RCW 90.62.120 and 1973 1st ex.s. c 185 s 12;
- 35 (13) RCW 90.62.130 and 1977 c 54 s 9;
- 36 (14) RCW 90.62.900 and 1973 1st ex.s. c 185 s 13;
- 37 (15) RCW 90.62.901 and 1973 1st ex.s. c 185 s 14;
- 38 (16) RCW 90.62.904 and 1973 1st ex.s. c 185 s 15;

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

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

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

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

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

24 **PART III - APPEALS**

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

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

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

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

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

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

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

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

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

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

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

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

35 (b) Land use decisions of a local jurisdiction that are subject to
36 review by a quasi-judicial body created by state law, such as the
37 shorelines hearings board or the growth management hearings board;

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

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

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

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

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

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

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

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

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

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

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

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

37 (4) For the purposes of this section, a land use decision is issued
38 on the date on which a written decision is mailed or if not mailed, the

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

- 4 (a) The date that the decision is made at a public meeting; or
- 5 (b) The date that the decision is entered into the public record.

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

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

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

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

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

- 24 (a) The name and mailing address of the petitioner;
- 25 (b) The name and mailing address of the petitioner's attorney, if
26 any;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 the stay did not exist, or could not have been discovered, at the times
2 set forth in subsections (1) and (2) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (4) The parties may not conduct civil discovery prior to the
37 determination of the land use petition except in regard to the issues
38 listed in subsection (2) of this section. Requests made under chapter

1 42.17 RCW for records relating to the matters at issue in the pending
2 land use petition must be treated as requests for civil discovery and
3 must meet the requirements of this section and the court rules.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 **PART IV - STUDY**

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

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

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

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

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

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

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

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

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

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

24 (e) Focus environmental review and the level of detail needed for
25 different stages of plan and project decisions on the environmental
26 considerations most relevant to that stage of the process;

27 (f) Avoid duplicating review that has occurred for plan decisions
28 when specific projects are proposed;

29 (g) Use environmental review on projects to: (i) Review and
30 document consistency with comprehensive plans and development
31 regulations; (ii) provide prompt and coordinated review by agencies,
32 tribes, and the public on compliance with applicable environmental laws
33 and plans, including mitigation for site specific project impacts that
34 have not been considered and addressed at the plan or development
35 regulation level; and (iii) ensure accountability by local government
36 to applicants and the public for requiring and implementing mitigation
37 measures;

1 (h) Maintain or improve the quality of environmental analysis both
2 for plan and for project decisions, while integrating these analyses
3 with improved state and local planning and permitting processes;

4 (i) Examine existing land use and environmental permits for
5 necessity and utility. To the extent possible, existing permits should
6 be combined into fewer permits, assuring that the values and principles
7 intended to be protected by those permits remain protected; and

8 (j) Consolidate local government appeal processes to allow a single
9 appeal of permits at local government levels, a single state level
10 administrative appeal, and a final judicial appeal.

11 (4) These guidelines are intended to guide the work of the
12 commission, without limiting its charge to integrate and consolidate
13 Washington's land use and environmental laws into a single, manageable
14 code.

15 NEW SECTION. **Sec. 405.** Members of the commission shall be
16 reimbursed for travel expenses as provided in RCW 43.03.050 and
17 43.03.060.

18 NEW SECTION. **Sec. 406.** Sections 401 through 405 of this act shall
19 expire June 30, 1998.

20 **PART V - MISCELLANEOUS**

21 NEW SECTION. **Sec. 501.** If any provision of this act or its
22 application to any person or circumstance is held invalid, the
23 remainder of the act or the application of the provision to other
24 persons or circumstances is not affected.

25 NEW SECTION. **Sec. 502.** Part headings and the table of contents as
26 used in this act do not constitute any part of the law.

27 NEW SECTION. **Sec. 503.** Sections 401 through 406 of this act are
28 necessary for the immediate preservation of the public peace, health,
29 or safety, or support of the state government and its existing public
30 institutions, and shall take effect June 1, 1995.

--- END ---