

FINAL REPORT

Membership:

Co-Chairs:

Representative Rob Johnson
Senator Ann Anderson

Senator Cliff Bailey
Senator Patrick McMullen
Senator Sylvia Skratek

Representative Nancy Rust
Representative Peggy Johnson
Representative John Wynne

Bob Berg
David Brookings
Jim Kramer
Jeanette Nelson
Darrell Turner
Shirley VanZanten
Jim Youngsman

Staff:

Randy Acker
Rick Anderson
Cheri Keller
Audrey Kovach
John Stuhlmueller



JOINT SELECT COMMITTEE ON
FLOOD DAMAGE
REDUCTION

TABLE OF CONTENTS

| | |
|---|----|
| EXECUTIVE SUMMARY | 1 |
| SECTION 1 - INTRODUCTION | 5 |
| Legislative History | 7 |
| 1991 Meetings | 8 |
| 1992 Meetings | 9 |
| SECTION 2 - PROBLEM STATEMENTS | 10 |
| WATERSHEDS | 11 |
| RIVER CHANNELS | 12 |
| FLOOD PLAINS | 13 |
| FUNDING/PLANNING | 14 |
| SECTION 3 - COMMITTEE RECOMMENDATIONS | 15 |
| LAND-USE PLANNING | |
| Provide for comprehensive watershed management | 16 |
| Establish a zero-rise floodway | 17 |
| Amend Forest Practices rules | 19 |
| Expand county flood plan requirements | 21 |
| Restrict annexations within flood plains | 23 |
| Require new development to control run-off | 23 |
| Adopt a state flood plain definition. | 23 |
| Require DOT to assess flood impacts. | 24 |
| Require state agencies to assess flood impacts of buildings/permits | 24 |
| PERMITTING | |
| Provide balance in hydraulic project decisions | 26 |
| Coordinate flood responsibilities within state agencies | 32 |
| Provide levee exemption in Shorelines Management Act | 32 |
| Authorize recovery of citizen appeal costs | 34 |
| Encourage gravel removal | 36 |
| FUNDING | |
| Broaden activities eligible for state flood funds | 38 |
| Increase FCAAP funds and change its funding mechanism | 39 |
| Increase capital budget funds | 39 |
| Request change in federal flood policies | 42 |
| Clarify the DOT's funding responsibilities | 43 |
| Streamline creation of flood control zone districts | 44 |
| FLOOD HAZARD INFORMATION | |
| Expand flood disclosure requirements | 46 |
| MINORITY REPORTS | |

EXECUTIVE SUMMARY



SB 5411, enacted by the 1991 Legislature, created the Joint Select Committee on Flood Damage Reduction. The legislation directed the committee to "consider the development of . . . a comprehensive and coordinated flood damage reduction plan."

Section 1 of this report describes the committee's legislative responsibilities and summarizes the subject matter addressed during 1991-1992 meetings. Section 2 is the list of problem statements identified by the committee. Section 3 contains the committee's comprehensive and coordinated flood damage reduction plan. The highlights of that plan are summarized below.

1. **ADOPT A "ZERO-RISE FLOODWAY" POLICY** (See page 17)

The committee finds that current state policies regarding flood plain development increase the potential for significant flood damage. (Current state law allows the flood plain to be filled in a manner that causes up to a one foot rise in flood waters.

- The committee recommends that *new development located within a flood plain* be built in a manner that will not back up water during a flood event. A number of exemptions are provided, including agricultural activities, certain types of construction, certain types and sizes of lots.

2. **REQUIRE INCREASED NOTIFICATION OF FLOOD HAZARDS TO POTENTIAL PROPERTY BUYERS** (See page 46)

The committee finds that potential buyers in real estate transactions are often not properly notified that the property is subject to flooding. The committee recommends that:

- The Land Development Act be amended to expressly state that location of a development wholly or partially within the 100 hundred year flood plain must be disclosed as a physical hazard.
- Each earnest money agreement and each document conveying real property that is located in the one hundred year flood plain must be required to contain a warning that the property is located in such an area. The seller of a property in a 100 year flood plain must disclose the location as a hidden defect in the property.

- Ecology be required to file maps of the 100 year flood plain with the county auditor of each county. This information will appear on the title insurance policy.

3. EXPAND COUNTY INVOLVEMENT IN FOREST PRACTICES REGULATION (See page 21)

The committee finds that forest practices may play a role in exacerbating flood events. The committee recommends that:

- A specific procedure be established for counties to submit data or other information for inclusion into a forest practices cumulative effects assessment.

4. INCREASE STATE FLOOD FUNDS TO LOCAL GOVERNMENTS (See page 40)

The committee finds that the state flood policy has historically attempted to control floods through structural methods such as dikes and levees, and that this policy should be expanded to include non-structural methods such as land buy-outs, land-use restrictions, and improved flood notification. The committee finds that a policy based on reducing flood hazards will save money over the long-term but will cost more to implement on the short-term. The committee recommends that:

- State general funds be increased from 4 to 10 million dollars per biennium and that funds be available for implementing county flood plans.
- Flood projects be eligible for loans from the state Public Works Trust Fund and that utility taxes be increased to pay for these loans.

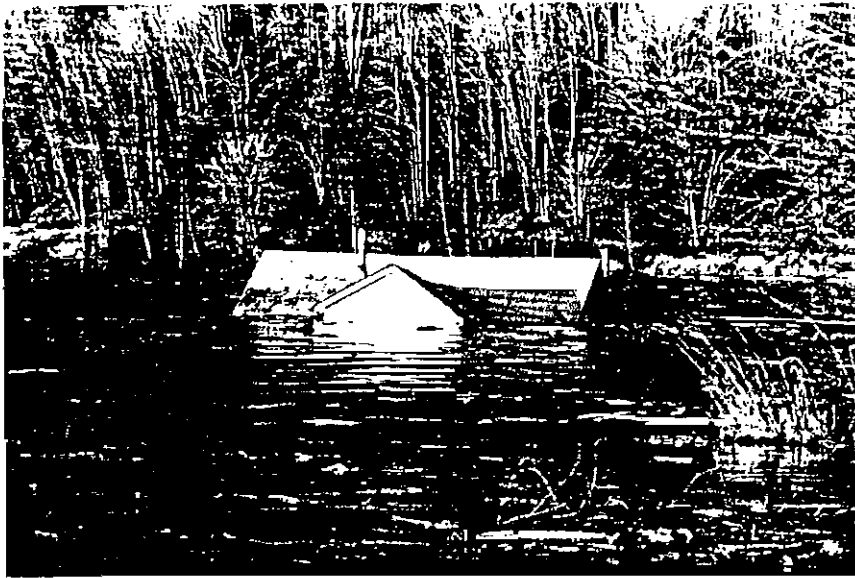
5. PROMOTE MANAGEMENT OF WATER RESOURCES ON A WATERSHED BASIS (See page 16)

The committee finds that flood and stormwater issues are interconnected with drinking water, wetlands, groundwater, and other water resource issues. The committee also finds that the planning, permitting, and funding for these water resources is not well coordinated. The committee recommends that:

- The Department of Ecology convene a task force to coordinate and consolidate planning and permitting requirements for a number of water resource programs.

SECTION 1

INTRODUCTION



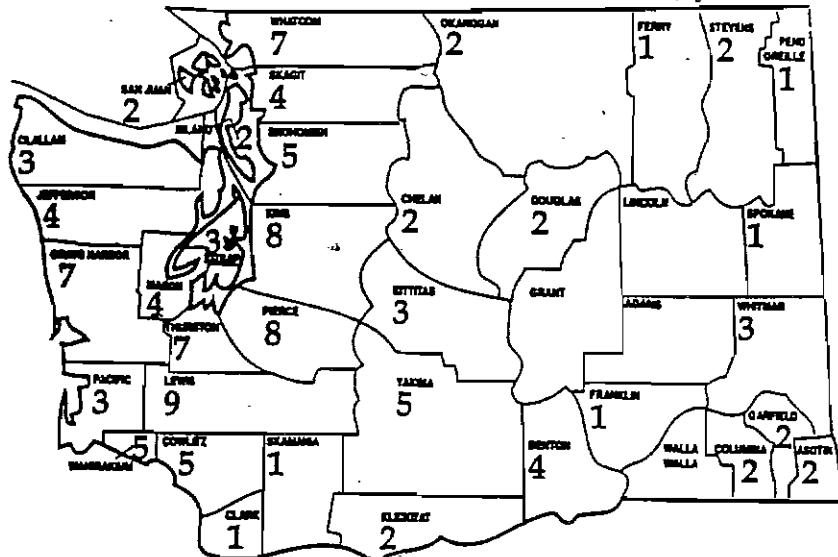
Floods: Benefits and Damages

Floods are a natural and recurring phenomenon. The heavy rainfall and the mountainous topography of the Pacific Northwest create conditions that lead to frequent flood events. In the past twenty years nearly every county in the state has had a presidential disaster declared due to flooding (see chart below). These flood events create benefits that are not completely understood and damages that, while certainly more recognizable, are still not completely quantified.

It is common knowledge that the rich soil of the state's flood plains are the result of floods. Less commonly known is the dynamic interaction between rivers and flood plains. Recent studies indicate that rivers and flood plains exchange material throughout most of the year but particularly during flood events; the ecological health of rivers, fish, and wildlife are directly related to this exchange. Floods also enhance biodiversity. Flood events create localized disturbances such as logjams, gravel bars, and inundated flood plains which provide habitat for a variety of species.

Since 1970, an estimated **96.7 million** dollars has been spent by federal, state, and local governments to repair publicly owned facilities damaged by floods. This damage estimate *does not* include damage to private facilities or contributions made by federal agencies other than the Federal Emergency Management Agency (FEMA). It is estimated that the three flood events occurring in 1990 caused **160 million** dollars in damage to public *and* private facilities.

**FEDERALLY DECLARED FLOOD DISASTERS
IN WASHINGTON STATE (1971-1990)**



Legislative History

SB 5411 was enacted as a response to the 1990 floods. The Joint Select Committee on Flood Damage Reduction was created through passage of SB 5411 during the 1991 legislative session. The committee is composed of sixteen members, eight legislators and eight non-legislators. The members are: Senator Ann Anderson- Co-chair; Representative Rob Johnson- Co-chair; Senator Cliff Bailey; Representative Peggy Johnson; Senator Pat McMullen; Representative Nancy Rust; Senator Sylvia Skratek; Representative John Wynne; Bob Berg; David Brookings; Jim Kramer; Larry Kunzler; Jeannette Nelson; Darrell Turner; Jim Youngsman; and Shirley VanZanten.

SB 5411 directed the committee to develop a "comprehensive and coordinated flood damage reduction plan," to include the following elements:

- (1) Structural and nonstructural flood damage reduction projects;
- (2) Forest practice effects on watershed hydraulics as determined by applicable research projects conducted under the timber-fish-wildlife cooperative monitoring, evaluation, and research program, including: (a) Percentage of watershed clearcut; (b) logging in very steep areas; and (c) logging in slide-prone areas;
- (3) Growth management and land uses, including: (a) Flood plain development patterns; (b) loss of potential natural flood water storage areas; (c) future development restrictions in flood-prone areas; and (d) coordination with the state's growth management act and county flood comprehensive planning;
- (4) Comprehensive watershed and flood damage management;
- (5) Storm water runoff pattern alterations and accompanying liabilities, including an analysis of: (a) Increases in peak flood flows caused by inadequate storm water planning and controls; (b) the need for minimum standards for land use development activities employing natural watercourses for storm water conveyance; and (c) the need for a statutory cause of action to provide a remedy for downstream property owners who are damaged by accelerated storm water runoff caused by cumulative upstream activities, including a modification of the court-adopted "common enemy" doctrine;

- (6) Analysis of the federal, state, and local permitting requirements necessary for projects designed to reduce future flood damage or to restore areas damaged by floods, including any conflicting requirements that may exist;
- (7) Emergency work and coordination, and emergency preparedness planning;
- (8) Determination of the need for requirements to disclose the flood hazard to purchasers or renters of flood-prone property;
- (9) The role of dredging in flood damage reduction, including environmental effects, funding sources, and upstream uses that alter its effectiveness;
- (10) The role of dikes, levees, and streambank protection in flood damage reduction, including environmental effects, construction and maintenance standards, sources of funding for construction and maintenance, and resultant upstream and downstream hydrologic effects;
- (11) Review criteria for evaluating and approving local plans and projects funded by grants from the flood control account; and
- (12) Public acquisition of properties to reduce flood damage.

1991 Meetings

Committee members were appointed in August and conducted three meetings during 1991. The 1991 meetings focused on 4 subject areas: 1) state, federal, and local responses to the 1990 floods; 2) river hydraulics and hydrology; 3) the permitting processes at the local, state, and federal levels; and 4) the relationship of forest practices and flooding.

In addition, each of the 1991 committee hearings included public testimony. The public testimony was the basis for many of the problems identified by committee members during the 1992 meetings.

1992 Meetings

Beginning in April, the committee held monthly meetings, except for November when the committee held two meetings. Meetings in April, May, and June were devoted to examining the 12 subject areas outlined in SB 5411. Rather than examining each subject area separately, the committee chose to group them into one of three geographical categories: watershed, river channel, and flood plain. The April meeting focused on flood issues within the watershed. Meetings in May and June focused on issues within the river channel and the flood plain. Each of the three meetings included site visitations to afford the committee first hand experience with flood problems.

In July, the committee began creating its comprehensive plan by identifying a series of problem statements; Section 2 contains the list of problems identified by the committee. In subsequent meetings the committee developed and refined solutions to those problems. The product of this process was the committee's comprehensive flood plan. The recommendations of that plan are in Section 3 of this report.

SECTION 2

PROBLEM STATEMENTS



WATERSHEDS

The committee identified the following flood-related problems within the watershed:

- The Forest Practices Board regulates forest practices within the state but does not have adequate authority to address forest practices that may contribute to flood damage to non public resources.
- State and local management programs for shorelines, wetlands, stormwater, drinking water, floods, and watersheds are often handled independently and result in policies that are often duplicative or contradictory.
- The peak rate and volume of run-off reaching rivers and streams has increased dramatically in some watersheds due to land management and use practices.
- The long term benefits of improving the ability to manage the seasonal rate of water flow (including reduction of flood damage, meeting increased needs for electricity, providing adequate water supplies for both instream and off stream needs) are often not given adequate consideration in watershed management planning.

RIVER CHANNEL

The committee identified the following flood-related problems within the river channel:

- Levees can create a false sense of security.
- Some types of levees do not allow floodwaters onto the flood plain in a safe manner thereby increasing flood damage when they fail.
- The permit process is made more difficult by a lack of easily accessible information and the need for multiple permits.
- The effects of proposed flood control projects on upstream and downstream property owners are not being assessed during the permitting process.
- Definition of "emergency" for permitting purposes has created confusion.
- Many flood control projects are expensive to construct and maintain.
- Contrary to state policy, some federal policies such as those enforced by the U.S. Army Corps of Engineers force rebuilding preexisting structures rather than fixing the problem.
- River channel migration can endanger properties located outside of the mapped flood plain.
- Large accumulations of sediments, logs, and other debris can increase flooding and erosion risks to public infrastructure and riverside properties.
- The Shorelines Management Act unnecessarily restricts certain public flood projects.
- Under current law it is difficult to balance the desire to protect resources with the desire to minimize flood damage during the permit process for streambank protection projects and other flood control projects because the narrow focus of some permit requirements does not allow equal consideration of the broader public needs.

FLOOD PLAINS

The committee identified the following flood-related problems within flood plains:

- The public is generally not well-informed of flood hazards: prospective residents and businesses are not always aware of known or potential flood risks to property.
- Inappropriate development continues to occur in flood hazard areas:
 - 1) Increasing the number of structures subject to potential damage;
 - 2) Raising the flow of floodwater and increasing the risk of damage to existing development; and
 - 3) Changing the flow of floodwaters.
- Cities are able to annex property and allow construction in the flood plains.
- Existing development is subject to flood hazards, even in the absence of new development.
- State and federal flood plain definitions do not identify all areas subject to flooding.
- State regulatory definitions of flood plain are inconsistent
- Emergency notification is too slow.
- The Department of Transportation's responsibility to participate financially in flood control projects is not fully defined.

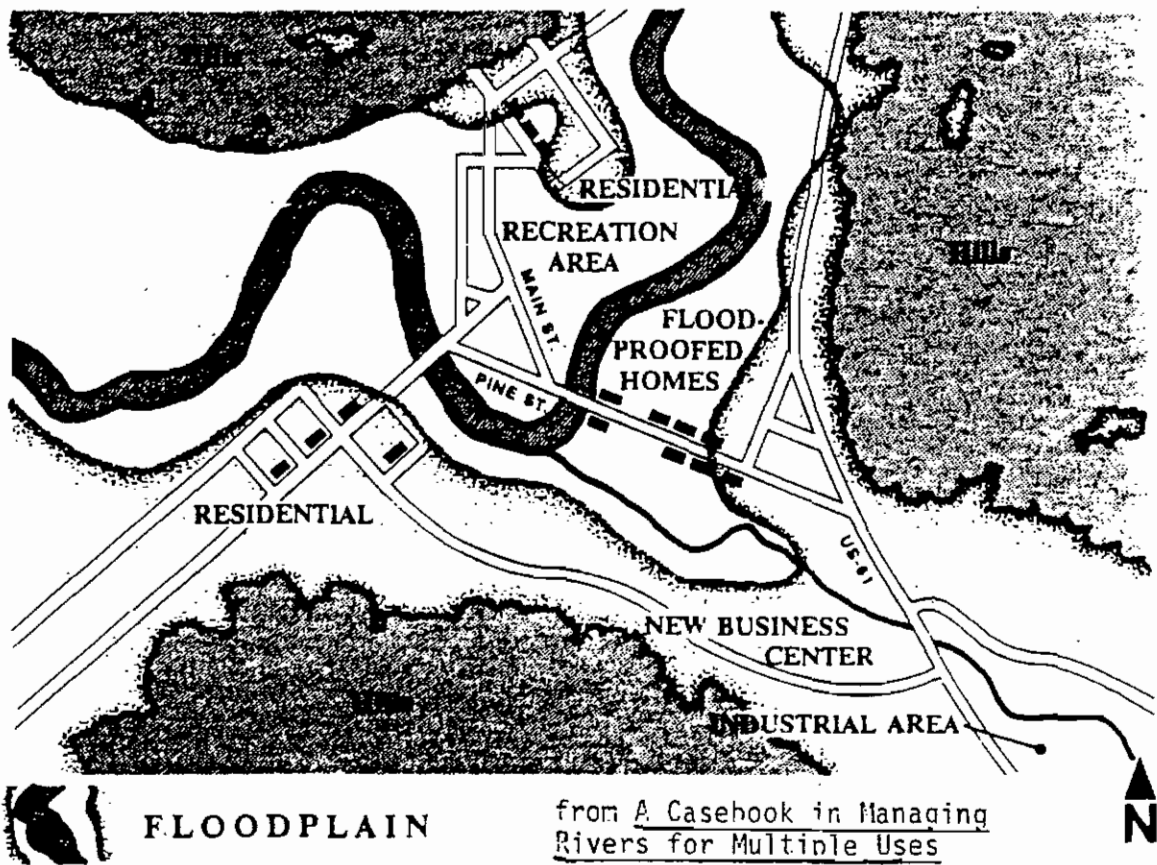
FUNDING/PLANNING

The committee identified the following problems in current approaches to funding and planning for floods:

- Local government funding authority for flood management activities is limited.
- State and local criteria for making funding decisions are often lacking and result in inconsistency.
- The amount and uses of state FCAAP funds are limited.
- Local planning often focuses on flood control rather than flood management.
- Counties often do not coordinate flood planning for shared river systems.
- Administrative requirements of FCAAP funds need to be updated to improve the effectiveness of those funds.

SECTION 3

COMMITTEE RECOMMENDATIONS



from A. Casebook in Managing Rivers for Multiple Uses

LAND-USE PLANNING

Provide for Comprehensive Watershed Management

NEW SECTION.

The department of ecology shall create a watershed management task force. The task force may consist of local governments, Indian tribes, the appropriate state and federal agencies, and interested parties. The purpose of the task force shall be to design a framework that will allow water resources to be managed on a watershed basis. Specifically, the task force shall:

- a) Identify watershed basin planning areas or establish a mechanism for local governments to establish such areas;
- b) Establish a methodology to assess the needs and priorities of watershed planning areas;
- c) Identify a planning framework that coordinates and consolidates current planning requirements for water resources into a single plan. The planning framework shall include, but not be limited to, water resource planning requirements of chapters 36.70A, 70.116, 86.12, 86.13, 90.44, 90.48, 90.58, and 90.70 RCW;
- d) Identify a permitting framework that coordinates, and to the extent possible, consolidates the permitting requirements under chapters 76.09, 75.20, and the chapters identified under (c) of this subsection; and
- e) Coordinate with planning efforts required under chapter 90.54 RCW.

On or before December 1, 1993, the task force shall submit a report of its findings to the appropriate standing committees of the legislature. The task force shall expire on June 30, 1994.

Establish a zero-rise flood plain in the unincorporated areas of all counties.

NEW SECTION. Sec. __. A new section is added to chapter 86.16 RCW to read as follows:

Every county shall adopt a flood plain management ordinance establishing a zero-rise floodway by July 1, 1994 for all areas designated as special flood hazard areas on the most recent maps provided by the federal emergency management agency for the national flood insurance program. Where the county has conducted a special study to determine projected flows under future developed conditions the county may use the projected flows as the basis for determining the zero-rise floodway. The ordinance adopted by a county shall meet the following minimum requirements which shall apply to the zero-rise floodway:

(1) Except as provided in subsection (2) of this section, a development proposal within a designated flood plain including but not limited to, new or reconstructed structures may not cause any increase in the base flood elevation unless the following requirements are met:

(i) Amendments to the flood insurance rate map have been adopted by the federal emergency management agency to incorporate the increase in base flood elevations; and

(ii) Appropriate legal documents are prepared in which all property owners affected by the increased flood elevations consent to the impacts on their property. These documents shall be filed with the title of record for the affected properties.

(2) The following are presumed to produce no increase in base flood elevation:

(a) Residential structures or substantial improvements to existing residential structures utilizing a foundation of posts and piers or similar construction.

(b) Residential structures or substantial improvements meeting the following conditions:

(i) The residence is on a lot in existence prior to the effective date this act;

(ii) The lot contains less than 5,000 square feet of buildable land outside the zero-rise floodway; and

(iii) the total building footprint of all proposed structures on the lot is equal to or less than two thousand square feet. On a one-time basis, a substantial improvement may increase the total building footprint beyond 2000 square feet if the improvement does not increase the total building footprint by more than twenty percent.

(c) Structures and installations which are dependent upon the floodway may be located in the floodway if the development proposal is approved by all agencies with jurisdiction. Such structures include, but are not limited to:

(i) dams or diversions for water supply, flood control, hydroelectric production, irrigation or fisheries management;

- (ii) Flood damage reduction facilities, such as levees and pumping stations;
- (iii) Stream bank stabilization structures where no feasible alternative exists for protecting public or private property; and
- (iv) Storm water conveyance facilities.
- (d) Farm and agricultural land as defined in RCW 84.34.020(2).

NEW SECTION. Sec. __. A new section is added to chapter 86.16 RCW to read as follows:

As used in this chapter, unless a different meaning is required by the context:

(2) "Zero-rise floodway" means the channel of the stream and that portion of the adjoining flood plain which is necessary to contain and discharge the base flood flow without any measurable increase in flood heights. A measurable increase in base flood height means a calculated upward rise in the base flood elevation, equal to or greater than 0.01 foot, resulting from a comparison of existing conditions and changed conditions directly attributable to development in the flood plain. This definition is broader than that of the federal emergency management agency floodway but will always include the FEMA floodway. The boundaries of the 100-year flood plain as shown on the flood insurance study are considered the boundaries of the zero-rise floodway unless a special study has been conducted, that study has determined a different boundary, and the county in which the study was conducted has adopted the results of the study.

(3) "Base flood" or "100-year flood" means a flood having a one percent chance of being equaled or exceeded in any given year.

(4) "Federal emergency management agency floodway" means the channel of the stream and that portion of the adjoining flood plain which is necessary to contain and discharge the base flood flow without increasing the base flood elevation more than one foot.

(5) "Flood insurance study" means the official report provided by the Federal Insurance Administration which includes flood profiles and the flood insurance rate map.

(6) "Flood insurance rate map" means the official map on which the Federal Insurance Administration has delineated areas of flood hazard.

(7) "Substantial improvement" means any maintenance, repair, structural modification, addition or other improvement of a structure, the cost of which equals or exceeds fifty percent of the market value of the structure either before the maintenance, repair, modification or addition is started or before the damage occurred, if the structure has been damaged and is being restored.

Amend Forest Practices rules on watershed analysis to: 1) specifically include an analysis of the effects of logging practices on floods, and 2) enhance local government involvement in watershed analyses.

RCW 76.09.010. Legislative finding and declaration. (1) The legislature hereby finds and declares that the forest land resources are among the most valuable of all resources in the state; that a viable forest products industry is of prime importance to the state's economy; that it is in the public interest for public and private commercial forest lands to be managed consistent with sound policies of natural resource protection; that coincident with maintenance of a viable forest products industry, it is important to afford protection to forest soils, fisheries, wildlife, water quantity and quality, air quality, recreation, and scenic beauty.

(2) The legislature further finds and declares it to be in the public interest of this state to create and maintain through the adoption of this chapter a comprehensive state-wide system of laws and forest practices regulations which will achieve the following purposes and policies:

(a) Afford protection to, promote, foster and encourage timber growth, and require such minimum reforestation of commercial tree species on forest lands as will reasonably utilize the timber growing capacity of the soil following current timber harvest;

(b) Afford protection to forest soils and public resources by utilizing all reasonable methods of technology in conducting forest practices;

(c) Recognize both the public and private interest in the profitable growing and harvesting of timber;

(d) Promote efficiency by permitting maximum operating freedom consistent with the other purposes and policies stated herein;

(e) Provide for regulation of forest practices so as to avoid unnecessary duplication in such regulation;

(f) Provide for interagency input and intergovernmental and tribal coordination and cooperation;

(g) Achieve compliance with all applicable requirements of federal and state law with respect to nonpoint sources of water pollution from forest practices;

(h) To consider reasonable land use planning goals and concepts contained in local comprehensive plans and zoning regulations; and

(i) Foster cooperation among managers of public resources, forest landowners, Indian tribes and the citizens of the state;

(j) Afford protection of public resources and private property by minimizing peak flows capable of causing flood damage.

(3) The legislature further finds and declares that it is also in the public interest of the state to encourage forest landowners to undertake corrective and remedial action to reduce the impact of mass earth movements and fluvial processes.[1987 c 95 § 1; 1974 ex.s. c 137 § 1.]

NEW SECTION. Sec. ___ A new section is added to RCW 76.09 to read as follows:

Any rules, promulgated by the board pertaining to evaluation of potential cumulative effects resulting from forest practices in a watershed, shall provide specific procedures for counties to submit, to the department, data and findings resulting from analysis of a watershed by the county. The department, or any other entity involved in conducting an evaluation of cumulative effects, shall consider the information submitted by the county during such an evaluation, and shall show how that information was considered in the final results of a cumulative effects assessment. Any county that submits the results of a county analysis to the department, and believes the results of an evaluation of cumulative effects in a watershed do not reflect adequate consideration of the county analysis, may bring action as provided in RCW 76.09.140(2).

Require county flood plans to: 1) be consistent with Growth Management Act requirements; 2) consider practices that will avoid long-term accretion of sediments; and 3) be adopted by 1997.

Amend RCW 86.12.200 Comprehensive flood control management plan--
Elements.

The county legislative authority of any county may adopt a comprehensive flood ~~((control))~~ hazard management plan for any drainage basin that is located wholly or partially within the county.

A comprehensive flood ~~((control))~~ hazard management plan shall include the following elements: (1) Designation of areas that are susceptible to periodic flooding, from inundation by bodies of water or surface water runoff, or both, including the river's meander belt or floodway; (2) Establishment of a comprehensive scheme of flood ~~((control))~~ hazard protection and improvements for the areas that are subject to such periodic flooding, that includes: (a) Determining the need for, and desirable location of, flood ~~((control))~~ hazard improvements to protect or preclude flood damage to structures, works, and improvements, based upon a cost/benefit ratio between the expense of providing and maintaining these improvements and the benefits arising from these improvements; (b) establishing the level of flood protection that each portion of the system of flood ~~((control))~~ hazard improvements will be permitted; (c) identifying potential impacts of in-stream flood hazard work on the state's in-stream resources, meander belt or floodway and considering alternatives to in-stream flood ~~((control))~~ hazard work; (d) identifying areas where flood waters could be directed during a flood to avoid damage to buildings and other structures; ~~((and))~~ (e) identifying practices that will avoid long-term accretion of sediments; and (f) identifying sources of revenue that will be sufficient to finance the comprehensive scheme of flood ~~((control))~~ hazard protection and improvements; (3) Establishing land use regulations that preclude the location of structures, works, or improvements in critical portions of such areas subject to periodic flooding, including a river's meander belt or floodway, and permitting only flood-compatible land uses in such areas; (4) Establishing restrictions on construction activities in areas subject to periodic floods that require the flood proofing of those structures that are permitted to be constructed or remodeled; and (5) Establishing restrictions on land clearing activities and development practices that exacerbate flood problems by increasing the flow or accumulation of flood waters, or the intensity of drainage, on low-lying areas. Land clearing activities do not include forest practices as defined in chapter 76.09 RCW. A comprehensive flood ~~((control))~~ hazard management plan shall be

subject to the minimum requirements for participation in the national flood insurance program, requirements exceeding the minimum national flood insurance program that have been adopted by the department of ecology for a specific flood plain pursuant to RCW 86.16.031, and rules adopted by the department of ecology pursuant to RCW 86.26.050 relating to flood plain management activities. When a county plans under chapter 36.70A RCW, it ~~((may))~~ shall incorporate the portion of its comprehensive flood ~~((control))~~ hazard management plan relating to land use restrictions in its comprehensive plan and development regulations adopted pursuant to chapter 36.70A RCW. [1991 c 322 § 3.]

86.26.105 Comprehensive flood control management plan--Requirements--Time for completion.~~((A comprehensive flood control management plan shall determine the need for flood control work, consider alternatives to in-stream flood control work, identify and consider potential impacts of in-stream flood control work on the state's in-stream resources, meander belt or floodway.))~~ A comprehensive flood ~~((control))~~ hazard management plan shall be completed and adopted by December 31, 1997 ~~((within at least three years of the certification that it is being prepared, as provided in RCW 86.26.050)).~~

If after this ~~((three-year period has elapsed such))~~ date a comprehensive flood ~~((control))~~ hazard management plan has not been completed and adopted, grants for flood ~~((control maintenance))~~ hazard projects shall not be made to the county or municipal corporations in the county until a comprehensive flood ~~((control))~~ hazard management plan is completed and adopted by the appropriate local authority. These limitations on grants shall not preclude allocations for emergency purposes made pursuant to RCW 86.26.060. [1986 c 46 § 5; 1984 c 212 § 9.]

Prohibit cities from annexing property and allowing construction in the flood plain except if consistent with county flood plan

NEW SECTION. sec. __. A new section is added to chapter 35.13 RCW to read as follows:

No city or town may annex territory located within the designated flood plain unless the city or town establishes zoning and use requirements for the territory to be annexed which are consistent with the comprehensive flood plain management plan of the county of jurisdiction.

NEW SECTION. sec. __. A new section is added to chapter 35A.14 RCW to read as follows:

No code city may annex territory located within the designated flood plain unless the city establishes zoning and use requirements for the territory to be annexed which are consistent with the comprehensive flood plain management plan of the county of jurisdiction.

Require new development to control run-off or contribute to protection of downstream property if peak rate of pre-developed run-off has increased.

BUDGET APPROPRIATION TO THE DEPARTMENT OF ECOLOGY (For inclusion into the omnibus appropriations bill)

\$100,000 of the water quality account appropriation is provided solely for developing and implementing a stormwater run-off model for use by local governments and developers.

Adopt a state flood plain definition.

NEW SECTION. Flood plain Definition (ADD to chapter 86.16 RCW)

"Department" means the department of ecology.

"Flood plain" means any land area susceptible to being inundated by water from any inland or tidal waters creating a general and temporary condition of partial or complete inundation of normally dry land areas.

Require DOT to identify areas impacted by state highways and take actions to alleviate identified impacts.

A new section is added to chapter 47.28 RCW to read as follows:

The department shall assess all areas in the state in which road or bridge construction has impacted the flood plain and the normal flow of flood waters. The department shall report its findings and a plan for corrective action to the legislature by December 31, 1993. The plan for corrective action shall, to the greatest extent practicable, emphasize planned renovation or reconstruction efforts for the roads and bridges outlined in the assessment.

Require state agencies to consider flood hazards when making decisions affecting land use.

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

The heads of state agencies shall provide leadership in encouraging a broad and unified effort to prevent uneconomic uses and development of Washington flood plains and in particular, to promote the public health, safety and welfare and to reduce the risk of flood losses in connection with Washington lands and installations and state financed or supported improvements.

All state agencies directly responsible for the construction of state buildings, structures, highways, roads, recreational facilities, or other facilities shall evaluate flood hazards when planning the location for new facilities and as far as practicable shall preclude the uneconomic, hazardous, or unnecessary use of flood plains in connection with such facilities.

Whenever practical and economically feasible, flood proofing measures shall be applied to existing facilities to reduce flood damage potential.

All state agencies responsible for the review and/or approval of sewage treatment plants, water treatment plants, interceptor sewers, subdivisions, trailer parks, and other facilities within the State of Washington shall evaluate flood hazards in writing in

connection with such review and approval of facilities and take measures to minimize the exposure of facilities, and development which they may induce, to potential flood damage and the need for future state expenditures for flood protection and flood disaster relief.

All state agencies responsible for programs which entail land use planning shall take flood hazards into account when evaluating applications for planning grants, when reviewing water and wastewater facility plans, area-wide wastewater management plans, and comprehensive land-use plans.

Any requests for appropriations for state construction of new buildings, structures, roads, or other facilities by state agencies shall be accompanied by a statement on the findings of the agency's evaluation and consideration of flood hazards in development of such requests.

PERMITTING

Amend the hydraulics code to: 1) consider flood damage reduction with fish and habitat protection when evaluating permit applications; 2) provide exemptions to certain dike and levee repairs; and 3) clarify the definition of "emergency".

RCW 75.20.100 and 1991 c 322 s 30 are each amended to read as follows:

(1) In the event that any person or government agency desires to construct any form of hydraulic project or perform other work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state, such person or government agency shall, before commencing construction or work thereon and to ensure the proper protection of fish life, secure the written approval of the department of fisheries or the department of wildlife as to the adequacy of the means proposed for the protection of fish life. This approval shall not be unreasonably withheld. Except as provided in RCW 75.20.1001 and 75.20.1002, the department of fisheries or the department of wildlife shall grant or deny approval within forty-five calendar days of the receipt of a complete application and notice of compliance with any applicable requirements of the state environmental policy act, made in the manner prescribed in this section.

The applicant may document receipt of application by filing in person or by registered mail. A complete application for approval shall contain general plans for the overall project, complete plans and specifications of the proposed construction or work within the mean higher high water line in salt water or within the ordinary high water line in fresh water, and complete plans and specifications for the proper protection of fish life. The forty-five day requirement shall be suspended if (1) after ten working days of receipt of the application, the applicant remains unavailable or unable to arrange for a timely field evaluation of the proposed project; (2) the site is physically inaccessible for inspection; or (3) the applicant requests delay. Immediately upon determination that the forty-five day period is suspended, the department of fisheries or the department of wildlife shall notify the applicant in writing of the reasons for the delay. Approval is valid for a period of up to five years from date of issuance. The permittee must demonstrate substantial progress on construction of that portion of the project relating to the approval within two years of the date of issuance. If either the department of fisheries or the department of wildlife denies approval, that department shall provide the applicant, in writing, a statement of the specific reasons why and how the proposed

project would adversely affect fish life. Protection of fish life shall be the only ground upon which approval may be denied or conditioned.

In making a decision as to whether or not fish life is protected, the department of fisheries or the department of wildlife shall determine if a project as proposed or modified:

(a) improves fish life or habitat over the long term in a manner that will compensate for any potential short term losses; or

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

A project shall be approved if the department with jurisdiction determines that the project meets either (a) or (b) of this subsection.

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

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

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

(3) For each application, the department of fisheries and the department of wildlife shall mutually agree on whether the department of fisheries or the department of wildlife shall administer the provisions of this section, in order to avoid duplication of effort. The department designated to act shall cooperate with the other department in order to protect all species of fish life found at the project site. If the department of fisheries or the department of wildlife receives an application concerning a site not in its jurisdiction, it shall transmit the application to the other department within three days and notify the applicant.

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

(5) This section shall not apply to a project involving the repair of an existing flood hazard facility if the project is determined by the county to be: 1) consistent with a previously approved comprehensive flood hazard management plan; and 2) necessary to avoid flood damage during the next flood season.

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

(6) For the purposes of this section and RCW 75.20.103, unless specifically defined otherwise:

"bed" shall mean the land below the ordinary high water lines of state waters. This definition shall not include irrigation ditches, canals, storm water run-off devices, or other artificial watercourses except where they exist in a natural watercourse that has been altered by man.

"commercial" means any facility or building used for commerce, including those used for agricultural or industrial purposes.

"emergency" means an immediate threat to life, public land and private property, or both, or an immediate threat of serious environmental degradation.

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

RCW 75.20.103 and 1991 c 322 s 31 are each amended to read as follows:

In the event that any person or government agency desires to construct any form of hydraulic project or other work that diverts water for agricultural irrigation or stock watering purposes, or when such hydraulic project or other work is associated with streambank stabilization or flood damage reduction and when such (~~diversion or streambank stabilization~~) hydraulic project or other work will use, divert, obstruct, or change the natural flow or bed of any river or stream or will utilize any waters of the state or materials from the stream beds, the person or government agency shall, before commencing construction or work thereon and to ensure the proper protection of fish life, secure a written approval from the department of fisheries or the department of wildlife as to the adequacy of the means proposed for the protection of fish life. This approval shall not be unreasonably withheld. Except as provided in RCW 75.20.1001 and 75.20.1002, the department of fisheries or the department of wildlife shall grant or deny the approval within forty-five calendar days of the receipt of a complete application (~~and notice of compliance with any applicable requirements of the state environmental policy act;~~) made in the manner prescribed in this section. The applicant may document receipt of application by filing in person or by registered mail. A complete application for an approval shall: (1) contain general plans for the overall project, complete plans and specifications of the proposed construction or work within ordinary high water line, and complete plans and specifications for the proper protection of fish life; and (2) not be required to include notice of compliance with any applicable requirements of the state environmental policy act. Final approval of a project may not be granted until any applicable requirements of the state environmental policy act have been satisfied. The forty-five day requirement shall be suspended if: (1) after ten working days of receipt of the application, the applicant remains unavailable or unable to arrange for a timely field evaluation of the proposed project; (2) the site is physically inaccessible for inspection; (~~or~~) (3) after 44 days of receipt of a complete application, a notice of compliance with the state environmental policy act has not been issued; or (4) the applicant requests delay.

Immediately upon determination that the forty-five day period is suspended, the department of fisheries or the department of wildlife shall notify the applicant in writing of the reasons for the delay.

In making a decision to as to whether or not fish life is protected, the department of fisheries or the department of wildlife shall determine if a project as proposed or modified: (a) improves fish life or habitat over the long term in a manner that will compensate for any potential short term losses; or (b)(i) protects a residential, commercial, or industrial facility or structure that the department determines is likely to incur significant flood damage during the next flood season if the project is not completed; and (ii) lessens the loss of fish life or habitat as compared to a project resulting from an emergency request under this section.

A project shall be approved if the department with jurisdiction determines that the project meets either (a) or (b) of this paragraph.

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

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

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

A permittee may request modification of an approval due to changed conditions. The request shall be processed within forty-five calendar days of receipt of the written request. A decision by the department that issued the approval may be appealed to the hydraulic appeals board within thirty days of the notice of the decision. The burden is

on the permittee to show that changed conditions warrant the requested modification and that such modification will not impair fish life.

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

For each application, the department of fisheries and the department of wildlife shall mutually agree on whether the department of fisheries or the department of wildlife shall administer the provisions of this section, in order to avoid duplication of effort. The department designated to act shall cooperate with the other department in order to protect all species of fish life found at the project site. If the department of fisheries or the department of wildlife receives an application concerning a site not in its jurisdiction, it shall transmit the application to the other department within three days and notify the applicant.

In case of an emergency arising from weather or stream flow conditions or other natural conditions, the department of fisheries or department of wildlife, through their authorized representatives, shall issue immediately upon request oral approval for removing any obstructions, repairing existing structures, restoring stream banks, or to protect property threatened by the stream or a change in the stream flow without the necessity of obtaining a written approval prior to commencing work. Conditions of an oral approval shall be reduced to writing within thirty days and complied with as provided for in this section.

This section shall not apply to a project involving the repair of an existing flood hazard facility if the project is determined by the county to be: 1) consistent with a previously approved comprehensive flood hazard management plan; and 2) necessary to avoid flood damage during the next flood season.

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

Coordinate state agency decision making authority.

Direct the Department of Community Development (DCD) to designate a lead agency in the State Flood Plan. (DCD has been contacted and will take this request into account in completing the State Flood Plan)

Provide an exemption in the Shorelines Management Act for certain actions to dikes and levees if identified in an approved county flood plan.

Amend RCW 90.58.030 Definitions and concepts.

As used in this chapter, unless the context otherwise requires, the following definitions and concepts apply: (e) "Substantial development" shall mean any development of which the total cost or fair market value exceeds two thousand five hundred dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state; except that the following shall not be considered substantial developments for the purpose of this chapter:

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

(ii) Reconstruction or improvements to dikes and levees if the reconstruction or improvement is determined by a county to be consistent with a flood hazard management plan developed under the provisions of 86.26 RCW.

(iii) Construction of the normal protective bulkhead common to single family residences;

(iv) Emergency construction necessary to protect property from damage by the elements;

(v) Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on wetlands, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels: PROVIDED, That a feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the wetlands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing

crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;

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

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

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

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

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

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

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

Amend SMA and HPA to allow citizens compensation of legal and engineering costs when they win an appeal of a permit decision.

Amend RCW 90.58.180 Appeals from granting, denying, or rescinding permits, procedure--Board to act, when--Local government appeals to board--Grounds for declaring rule, regulation, or guideline invalid--Appeals to court, procedure.

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

Concurrently with the filing of any request for review with the board as provided in this section pertaining to a final order of a local government, the requestor shall file a copy of his request with the department and the attorney general. If it appears to the department or the attorney general that the requestor has valid reasons to seek review, either the department or the attorney general may certify the request within thirty days after its receipt to the shorelines hearings board following which the board shall then, but not otherwise, review the matter covered by the requestor: PROVIDED, That the failure to obtain such certification shall not preclude the requestor from obtaining a review in the superior court under any right to review otherwise available to the requestor. The department and the attorney general may intervene to protect the public interest and insure that the provisions of this chapter are complied with at any time within fifteen days from the date of the receipt by the department or the attorney general of a copy of the request for review filed pursuant to this section. The shorelines hearings board shall initially schedule review proceedings on such requests for review without regard as to whether such requests have or have not been certified or as to whether the period for the department or the attorney general to intervene has or has not expired, unless such review is to begin within thirty days of such scheduling. If at the end of the thirty day period for certification neither the department nor the attorney general has certified a request for review, the hearings board shall remove the request from its review schedule.

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

(3) The review proceedings authorized in subsections (1) and (2) of this section are subject to the provisions of chapter 34.05 RCW pertaining to procedures in adjudicative proceedings. Judicial review of such proceedings of the shorelines hearings board may be had as provided in chapter 34.05 RCW.

(4) If the review proceedings authorized in subsection (1) of this section find for the requestor, the requestor may be awarded any and all legal and engineering costs involved in challenging the permit decision.

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

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

- (a) Is clearly erroneous in light of the policy of this chapter; or
- (b) Constitutes an implementation of this chapter in violation of constitutional or statutory provisions; or
- (c) Is arbitrary and capricious; or
- (d) Was developed without fully considering and evaluating all material submitted to the department by the local government; or
- (e) Was not adopted in accordance with required procedures;

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

((5)6) Rules, regulations, and guidelines shall be subject to review in superior court, if authorized pursuant to *RCW 34.05.538: PROVIDED, That no review shall be granted by a superior court on petition from a local government unless the local government shall first have obtained review under subsection (4) of this section is filed within three months after the date of final decision by the shorelines hearings board.

Amend RCW 75.20.130 Hydraulic appeals board--Members--Jurisdiction--Procedures.

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

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

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

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

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

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

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

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

Direct resource agencies to adopt policies to encourage gravel removal.

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

The Department shall actively seek to encourage through permit requirements the removal of accumulated materials from rivers and streams where there is a flood damage reduction benefit. The Department shall develop policies to accomplish this goal.

Amend RCW 79.90.300 and 1991 c 322 s 26 are each amended to read as follows:

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

The Department shall actively seek to encourage through permit requirements and adjusted fees the removal of accumulated materials from rivers and streams where there is a flood damage reduction benefit. The Department shall develop policies to accomplish this goal.

FUNDING

Broaden the use of FCAAP funds to include plan implementation; require dikes and levees receiving FCAAP funds to be approved by Ecology; require dredging projects using FCAAP funds to provide for sediment monitoring.

Amend RCW 86.26.050 by adding the following:

(1) State participation shall be in such preparation of comprehensive flood ~~((control))~~ hazard management plans under this chapter and chapter 86.12 RCW, cost sharing feasibility studies for new flood ~~((control))~~ hazard projects, permit coordination projects pursuant to section 33, chapter 322, Laws of 1991, and flood ~~((control maintenance))~~ hazard projects as are affected with a general public and state interest, as differentiated from a private interest, and as are likely to bring about public benefits commensurate with the amount of state funds allocated thereto.

(2) No participation for flood ~~((control-maintenance))~~ hazard projects may occur with a county or other municipal corporation unless the director of ecology has approved the flood plain management activities of the county, city, or town having planning jurisdiction over the area where the flood ~~((control-maintenance))~~ hazard project will be, on the one hundred year flood plain surrounding such area.

The department of ecology shall adopt rules concerning the flood plain management activities of a county, city, or town that are adequate to protect or preclude flood damage to structures, works, and improvements, including the restriction of land uses within a river's meander belt or floodway to only flood-compatible uses. Whenever the department has approved county, city, and town flood plain management activities, as a condition of receiving an allocation of funds under this chapter, each revision to the flood plain management activities must be approved by the department of ecology, in consultation with the department of fisheries and the department of wildlife.

No participation with a county or other municipal corporation for flood ~~((control maintenance))~~ hazard projects may occur unless the county engineer of the county within which the flood ~~((control-maintenance))~~ hazard project is located certifies that a comprehensive flood ~~((control))~~ hazard management plan has been completed and adopted by the appropriate local authority, or is being prepared for all portions of the river basin

or other area, within which the project is located in that county, that are subject to flooding with a frequency of one hundred years or less.

(3) Participation for flood ~~((control-maintenance))~~ hazard projects and preparation of comprehensive flood ~~((control))~~ hazard management plans shall be made from grants made by the department of ecology from the flood ~~((control))~~ hazard assistance account. Comprehensive flood ~~((control))~~ hazard management plans, and any revisions to the plans, must be approved by the department of ecology, in consultation with the department of fisheries and the department of wildlife. The department may only grant financial assistance to local governments that, in the opinion of the department, are making good faith efforts to take advantage of, or comply with, federal and state flood ~~((control))~~ hazard programs.

No participation with a county or other municipal corporation may occur for the construction or reparation of a dike or levee unless the design of the dike or levee is approved by the department of ecology. In approving dike and levee designs, the department shall give strong preference to dikes and levees that allow flood waters to safely overtop the crown of the dike or levee.

No participation with a county or other municipal corporation may occur for dredging projects unless the county or municipal corporation agrees to monitor sediment accumulation for a period of not less than five years after completion of the dredging project. For purposes of this section, dredging is the removal of accumulated sediments from a river or stream channel from below the water surface.

(4) For purposes of this section, "flood hazard project" means any structural or non-structural project consistent with a county comprehensive flood hazard plan.

Increase FCAAP funds and change its funding mechanism

RCW 86.26.007 and 1991 sp.s. c 13 s 24 are each amended to read as follows:

The flood ~~((control))~~ hazard assistance account is hereby established in the state treasury. At the beginning of each biennium the state treasurer shall transfer 10 million dollars from the general fund to the flood ~~((control))~~ hazard assistance account ~~((an amount of money which, when combined with money remaining in the account from the previous biennium, will equal ((four million dollars))~~). Moneys in the flood ~~((control))~~ hazard assistance account may be spent only after appropriation for purposes specified under this chapter.

Increase capital budget funds

- Amend the Public Works Trust Fund (43.155 RCW) to include flood hazard reduction projects. (See Dept. of Revenue projections)

43.155.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section shall apply throughout this chapter.

(1) "Board" means the public works board created in RCW 43.155.030.

(2) "Department" means the department of community development.

(3) "Financing guarantees" means the pledge of money in the public works assistance account, or money to be received by the public works assistance account, to the repayment of all or a portion of the principal of or interest on obligations issued by local governments to finance public works projects.

(4) "Local governments" means cities, towns, counties, special purpose districts, and any other municipal corporations or quasi-municipal corporations in the state excluding school districts and port districts.

(5) "Public works project" means a project of a local government for the planning, acquisition, construction, repair, reconstruction, replacement, rehabilitation, or improvement of streets and roads, bridges, water systems, flood systems, or storm and sanitary sewage systems.

(6) "Technical assistance" means training and other services provided to local governments to: (a) Help such local governments plan, apply, and qualify for loans and financing guarantees from the board, and (b) help local governments improve their ability to plan for, finance, acquire, construct, repair, replace, rehabilitate, and maintain public facilities. [1985 c 446 § 8.]

43.155.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section shall apply throughout this chapter.

(1) "Board" means the public works board created in RCW 43.155.030.

(2) "Department" means the department of community development.

(3) "Financing guarantees" means the pledge of money in the public works assistance account, or money to be received by the public works assistance account, to the repayment of all or a portion of the principal of or interest on obligations issued by local governments to finance public works projects.

(4) "Local governments" means cities, towns, counties, special purpose districts, and any other municipal corporations or quasi-municipal corporations in the state excluding school districts and port districts.

(5) "Public works project" means a project of a local government for the planning, acquisition, construction, repair, reconstruction, replacement, rehabilitation, or

improvement of streets and roads, bridges, water systems, flood systems, or storm and sanitary sewage systems.

(6) "Technical assistance" means training and other services provided to local governments to: (a) Help such local governments plan, apply, and qualify for loans and financing guarantees from the board, and (b) help local governments improve their ability to plan for, finance, acquire, construct, repair, replace, rehabilitate, and maintain public facilities. [1985 c 446 § 8.]

Adopt a Joint memorial to the state's congressional delegation seeking a change in federal policy to allow greater flexibility in the use of federal funds for flood control projects.

We, your Memorialists, the Senate and House of Representatives of the State of Washington, in legislative session assembled, respectfully represent and petition as follows:

WHEREAS, the damage sustained during flood events is considerable; and

WHEREAS, reconstruction following flood events is expensive and time consuming; and

WHEREAS, cooperation among federal, state, and local agencies during times of flood crises and during the reconstruction period following is essential; and

WHEREAS, the need for regulations which provide the greatest benefit in terms of flood protection for both life, property, and fish habitat is crucial; and

WHEREAS, reconstruction to pre-flood conditions results in a continuation of the potential for future similar flood damages; and

WHEREAS, certain provisions of federal laws relating to reconstruction or repairs to flood damaged facilities allow funding only to restore the facilities to pre-flood conditions;

NOW, THEREFORE, Your Memorialists respectfully pray that the provisions of Public Law 84-99 regulating the actions of the United States Army Corps of Engineers and Public Law 93-288 regulating the actions of the Federal Emergency Management Agency be modified to provide consistency and flexibility to the greatest extent possible for state and local government flood projects.

BE IT RESOLVED, that copies of this memorial be immediately transmitted to the President of the United States, the United States Army Corps of Engineers, the Federal Emergency Management Agency, the President of the United States Senate, the Speaker of the House of Representatives, and each member of Congress from the State of Washington.

Clarify the DOT's responsibility to participate financially in flood control projects.

Amend RCW 47.28.140 and 1991 c 322 s 29 are each amended to read as follows:

When in the opinion of the governing authorities representing the department and any agency, instrumentality, municipal corporation, or political subdivision of the state of Washington, any highway, road, or street will be benefited or improved by constructing, reconstructing, locating, relocating, laying out, repairing, surveying, altering, improving, or maintaining, or by the establishment adjacent to, under, upon, within, or above any portion of any such highway, road, or street of an urban public transportation system, by either the department or any agency, instrumentality, municipal corporation, or political subdivision of the state, and it is in the public interest to do so, the authorities may enter into cooperative agreements wherein either agrees to perform the work and furnish the materials necessary and pay the cost thereof, including necessary engineering assistance, which costs and expenses shall be reimbursed by the party whose responsibility it was to do or perform the work or improvement in the first instance. The work may be done by either day labor or contract, and the cooperative agreement between the parties shall provide for the method of reimbursement. In the case of some special benefit or improvement to a state highway derived from ~~((any project that assists in preventing or minimizing flood damages as defined in RCW 86.16.120 or from))~~ the construction of any public works project, including any urban public transportation system, the department may contribute to the cost thereof by making direct payment to the particular state department, agency, instrumentality, municipal corporation, or political subdivision on the basis of benefits received, but such payment shall be made only after a cooperative agreement has been entered into for a specified amount or on an actual cost basis prior to the commencement of the particular public works project.

In the case of a special benefit or improvement to a state highway derived from any project that assists in preventing or reducing flood damages as defined in RCW 86.16.120, the department shall contribute to the cost of the benefit or improvement by making direct payment to the particular state department, agency, instrumentality, municipal corporation, or political subdivision on the basis of contribution to the problem or benefits received. Payment shall be made only after an agreement has been entered into between the department and the appropriate state or local government entity. In no instance shall the contribution be less than ten percent of the total project cost.

Make technical changes to the formation of flood control zone districts

RCW 86.15.030 Districts incorporating watersheds authorized--Formation, hearing and notice. Upon receipt of a petition asking that a zone be created, or upon motion of the board, the board shall adopt a resolution which shall describe the boundaries of such proposed zone; describe in general terms the flood control needs or requirements within the zone; set a date for public hearing upon the creation of such zone, which shall be not more than thirty days after the adoption of such resolution. Notice of such hearing and publication shall be had in the manner provided in RCW 36.32.120(7).

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

Within ~~((ten))~~ thirty days after final hearing on a resolution, the board shall issue its ~~((order))~~ ordinance creating the flood control zone district. [1969 ex.s. c 195 § 2; 1961 c 153 § 3.]

RCW 86.15.050 Zones--Governing body. The board ~~((of county commissioners of each county))~~ shall be ex officio, by virtue of their office, supervisors of the zones created in each county. The supervisors of the district shall conduct the business of the flood control zone district according to the regular rules and procedures that it adopts.[1961 c 153 § 5.]

RCW 86.15.160 Excess levies, assessments, and charges--Local improvement districts. For the purposes of this chapter the supervisors may authorize:

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

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

(3) Within any zone or participating zones an annual ad valorem property tax levy of not to exceed fifty cents per thousand dollars of assessed value when the levy will not

take dollar rates that other taxing districts may lawfully claim and that will not cause the combined levies to exceed the constitutional and/or statutory limitations, and the additional levy, or any portion thereof, may also be made when dollar rates of other taxing units is released therefor by agreement with the other taxing units from their authorized levies under chapter 39.67 RCW;

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

(5) The creation of local improvement districts and utility local improvement districts, the issuance of improvement district bonds and warrants, and the imposition, collection, and enforcement of special assessments on all property, including any state-owned or other publicly-owned property, specially benefited from improvements in the same manner as provided for counties by chapter 36.94 RCW. [1986 c 278 § 60; 1983 c 315 § 19; 1973 1st ex.s. c 195 § 131; 1961 c 153 § 16.]

FLOOD HAZARD INFORMATION

Improve disclosure of flood hazards by requiring: 1) developers to disclose property within a flood plain as a physical hazard; 2) earnest money agreements to identify properties within the flood plain; 3) the seller to disclose property within a flood plain as a hidden defect; and 4) the Department of Ecology to file maps of the flood plain with the county auditor of each county.

Sec. __. RCW 58.19.055 and 1992 c 191 s 5 are each amended to read as follows:

(1) A public offering statement shall contain the following information:

(a) The name, and the address or approximate location, of the development;

(b) The name and address of the developer;

(c) The name and address of the management company, if any, for the development;

(d) The relationship of the management company to the developer, if any;

(e) The nature of the interest being offered for sale;

(f) A brief description of the permitted uses and use restrictions pertaining to the development and the purchaser's interest therein;

(g) The number of existing lots, parcels, units, or interests in the development and either the maximum number that may be added to the development or the fact that such maximum number has not yet been determined;

(h) A list of the principal common amenities in the development which materially affect the value of the development and those that will or may be added to the development;

(i) The identification of any real property not in the development, the owner of which has access to any of the development, and a description of the terms of such access;

(j) The identification of any real property not in the development to which owners in the development have access and a description of the terms of such access;

(k) The status of construction of improvements in the development, including either the estimated dates of completion if not completed or the fact that such estimated completion dates have not yet been determined; and the estimated costs, if any, to be paid by the purchaser;

(l) The estimated current owners' association expense, if any, for which a purchaser would be liable;

(m) An estimate of any payment with respect to any owners' association expense for which the purchaser would be liable at closing;

(n) The estimated current amount and purpose of any fees not included in any owners' association assessments and charged by the developer or any owners' association for the use of any of the development or improvements thereto;

(o) Any assessments which have been agreed to or are known to the developer and which, if not paid, may constitute a lien against any portion of the development in favor of any governmental agency;

(p) The identification of any parts of the development which any purchaser will have the responsibility for maintaining;

(q) A brief description of any blanket encumbrance which is subject to the provisions of RCW 58.19.180;

(r) A list of any physical hazards known to the developer which particularly affect the development or the immediate vicinity in which the development is located and which are not readily ascertainable by the purchaser;

(s) A brief description of any construction warranties to be provided to the purchaser;

(t) Any building code violation citations received by the developer in connection with the development which have not been corrected;

(u) A statement of any unsatisfied judgments or pending suits against any owners' association involved in the development and a statement of the status of any pending suits material to the development of which the developer has actual knowledge;

(v) A notice which describes a purchaser's right to cancel the purchase agreement or extend the closing under RCW 58.19.045(3), including applicable time frames and procedures;

(w) A list of the documents which the prospective purchaser is entitled to receive from the developer before the rescission period commences;

(x) A notice which states:

"A purchaser may not rely on any representation or express warranty unless it is contained in the public offering statement or made in writing signed by the developer or by any person identified in the public offering statement as the declarant's agent";

(y) A notice which states:

"This public offering statement is only a summary of some of the significant aspects of purchasing an interest in this development and any documents which may govern or affect the development may be complex, may contain other important information, and create binding legal obligations. You should consider seeking assistance of legal counsel"; and

(z) Any other information and cross-references which the developer believes will be helpful in describing the development to the recipients of the public offering statement, all of which may be included or not included at the option of the developer.

(2) The public offering statement shall include copies of each of the following documents: Any declaration of covenants, conditions, restrictions, and reservations affecting the development; any survey, plat, or subdivision map; the articles of incorporation of any owners' association; the bylaws of any owners' association; the rules and regulations, if any, of any owners' association; current or proposed budget for any owners' association; and the balance sheet of any owners' association current within ninety days if assessments have been collected for ninety days or more.

If any of the foregoing documents listed in this subsection are not available because they have not yet been executed, adopted, or recorded, drafts of such documents shall be provided with the public offering statement, and, before closing the sale of an interest in the development, the purchaser shall be given copies of any material changes between the draft of the proposed documents and the final documents.

(3) The disclosures required by subsection (1)(v), (x), and (y) of this section shall be located at the top of the first page of the public offering statement and be typed or printed in ten-point bold face type size.

(4) The disclosures required by subsection (1)(r) of this section shall be listed on a separate page from the other disclosures required by this section and shall be printed or typed in ten-point bold face type size. If the development or any portion of the development described in the public offering statement is located within the area mapped as the 100 year flood plain, as shown on flood insurance rate maps provided by the federal emergency management authority for the national flood insurance program, this shall be listed as a physical hazard under subsection (1)(r) of this section."

NEW SECTION. Sec. __. A new section is added to chapter 64.04 RCW to read as follows:

Each earnest money agreement offering real property for sale, and each document conveying real property or an ownership interest in real property, that is located in the area mapped as the one hundred year flood plain, as shown on flood insurance rate maps provided by the federal emergency management authority for the national flood insurance program, must include in substance the following statement:

"WARNING: This real property is located in a one hundred year flood plain. Restrictions may exist as to the uses allowed on the real property and the standards of construction applicable to any construction that may be permitted on the real property."

This statement shall be printed, engraved, written, or otherwise reproduced in a legible manner on the earnest money agreement or document of conveyance.

NEW SECTION. Sec. __. A new section is added to chapter 64.04 RCW to read as follows:

The location of real property within the area mapped as the one hundred year flood plain, as shown on flood insurance rate maps provided by the federal emergency management authority for the national flood insurance program, is declared to be a hidden defect in the real property that must be disclosed by the seller of the real property or an ownership interest in the real property.

Sec. __. RCW 86.16.031 and 1989 c 64 s 3 are each amended to read as follows:

The department of ecology shall:

- (1) Review and approve county, city, or town flood plain management ordinances pursuant to RCW 86.16.041;
- (2) When requested, provide guidance and assistance to local governments in development and amendment of their flood plain management ordinances;
- (3) Provide technical assistance to local governments in the administration of their flood plain management ordinances;
- (4) Provide local governments and the general public with information related to the national flood insurance program;
- (5) When requested, provide assistance to local governments in enforcement actions against any individual or individuals performing activities within the flood plain that are not in compliance with local, state, or federal flood plain management requirements;
- (6) Establish minimum state requirements that equal minimum federal requirements for the national flood insurance program;
- (7) Assist counties, cities, and towns in identifying the location of the one hundred year flood plain, and petitioning the federal government to alter its designations of where the one hundred year flood plain is located if the federally recognized location of the one hundred year flood plain is found to be inaccurate; and
- (8) Establish minimum state requirements for specific flood plains that exceed the minimum federal requirements for the national flood insurance program, but only if:
 - (a) The location of the one hundred year flood plain has been reexamined and is certified by the department as being accurate;
 - (b) negotiations have been held with the affected county, city, or town over these regulations;
 - (c) public input from the affected community has been obtained; and

(d) the department makes a finding that these increased requirements are necessary due to local circumstances and general public safety.

(9) File copies of the flood insurance rate maps, provided by the federal emergency management authority for the national flood insurance program, with the county auditor in each county in which property shown on the maps is located. The department shall, on an annual basis, file revised maps with each county auditor in counties for which the maps are revised.



House of Representatives

State of Washington

Olympia

MINORITY REPORT

JOINT SELECT COMMITTEE ON FLOOD DAMAGE REDUCTION

We wish to complement the members of the committee for their outstanding work in developing the legislative recommendations contained in this report. The report is the product of two years of intensive work. The committee faced a number of difficult public policy issues and addressed them in a fair and farsighted manner. The purpose of this letter is to submit our differences, not so much with the committee, as with the final report. We believe that, had the committee's tight time schedule allowed us time to raise our differences, our minority report would not have been necessary.

Zero-rise floodway policy

The committee adopted an aggressive policy to limit development within the floodplain. We wholeheartedly agree with this policy. However, as currently written, there is a loophole that was not identified until *after* the last committee meeting. As drafted, the policy provides 15 months or more for a developer to circumvent the intent of the policy. It is our belief that the committee does not support this loophole.

Intent section

The following language was presented to the committee during the final committee meeting:

NEW SECTION. Sec. __. The legislature finds that floods pose a threat to the public health and safety and the alleviation of flood damage to both public and private property and to the public health and safety is a matter of public concern. The legislature therefore finds that, among other flood damage control projects, proper streambank stabilization and river channel maintenance are critical to minimizing potential threats from flooding.

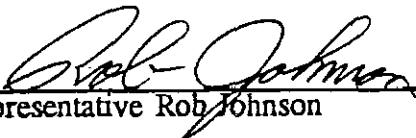
We object to this language for three reasons. First, the committee did not have adequate time to consider this language. It is not completely clear that the committee did, in fact, adopt this language for inclusion into the report. Second, the language is extremely narrow and does not come close to reflecting the comprehensive nature of the committee's major recommendations. Third, the language is overly vague. We can agree with the language if it relates to stabilizing streambanks or river channels through vegetative bioengineering or other techniques that do not concentrate the force of a flooding river onto a single point. We strongly disagree with the language if it refers to dredging or channelizing rivers and streams. The committee heard, and concurred with, a great deal of expert testimony that detailed the expensive and shortlived effects of dredging and the environmentally destructive results of channelizing rivers.

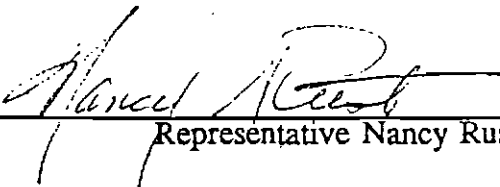
Problem Statements

Section Two of the report contains a number of problem statements which the committee used to generate its recommendations. We disagree with the wording used in two of these problem statements.

The last problem statement under "Watersheds" refers to the lack of consideration given to storing water for flood control and other purposes. The problem statement should be discarded from the final report as none of the committee recommendations addressed this "problem". Particularly objectionable is a reference to storing water for "electricity". We are confident that the committee in no way endorses the construction of dams.

The last problem statement under "River Channels" uses the term "equal consideration". Anyone familiar with recent flood legislation recognizes this term as one that represents favoring a few private interests over the broader public interest, often at great public expense. It was not until after the final committee meeting that we discovered the term was used in the final report. We believe the committee would have voted to excise this term, had it been brought to the attention of the committee.


Representative Rob Johnson


Representative Nancy Rust



Washington State Legislature

Legislative Building • Olympia, Washington 98504

MINORITY REPORT Joint Select Committee on Flood Damage Reduction December 18, 1992

We, the undersigned members of the Joint Select Committee on Flood Damage Reduction, would like to express a minority opinion different from the recommendations found in the final report which proposes to amend the State Forest Practices Act and the new FOREST PRACTICES REGULATIONS. The specific recommendations (Section 3) we oppose appear under the summary heading found on pages 18-19:

"Amend Forest Practices rules on watershed analysis to: 1) specifically include an analysis of the effects of logging practices on floods, and 2) enhance local government involvement in watershed analyses."

However well intentioned these recommendations are, the Joint Select Committee engaged in little deliberation and subsequently received written and oral testimony which must raise serious questions about the merits of proposing these amendments -- especially when the State Forest Practices Board has just completed an arduous process culminating in sweeping changes to the rules and regulations governing forest practices.

Those landmark rule changes, which include Watershed Analysis requirements to address cumulative effects of multiple forest practices within individual drainage basins, only became effective August 1, 1992. Hydrology will indeed be a major consideration in these reviews. Unquestionably, the new rules represent major advances in both the science and management of forest resources, but they have not yet been fully implemented and given an opportunity to work so that the results may be evaluated by policy makers.

The new rules, we were told by Supervisor Art Stearns of the State Department of Natural Resources, "stretched both the political and scientific envelopes." As a result, we must agree with Stearns when he concludes that "at this time, it seems premature to make additional changes to the Forest Practices Act." (letter dated December 2, 1992). The Joint Select Committee heard no testimony subsequent to the passage of the new forest practice rules regarding the content, stated goals, and anticipated outcomes of the rules.

Minority Report
Joint Select Committee on Flood Damage Reduction
Page Two

In response to the specific proposal amending RCW 76.09.010 to require the Forest Practices Board to enact regulations "minimizing peak flows" to protect "private property" we must highlight the following concerns:

- "Public resources" are defined in the Forest Practices Act to include "capital improvements of the state and its political subdivisions," i.e., state and county roads, bridges, campgrounds, parks, etc. The Board has authority to regulate to protect these resources (RCW 76.09.010 (2) (b)). DNR has direct enforcement authority beyond the regulations to directly protect these resources (RCW 76.09.080 and .090).
- The protection of private property, rather than public resources, is not the legislatively mandated nor we believe the proper role of the Forest Practices Board, a quasi-legislative state agency. If the Board were to attempt such regulations, and should those regulations be deemed to fail to provide protection to private property, the State could be open to legal claims for damages from private property owners. Under the current civil system, any owner (state or private) of upstream lands can be held liable for monetary damages where that upstream owner's actions result in damage to downstream or downslope lands. These are the proper sanctions for landowner creation of upstream or upslope hazards. The committee did not debate the underlying potential risk to the state resulting from involvement in these financial liabilities through its regulatory function.
- Current scientific knowledge is insufficient to inform the Forest Practices Board or any other legislative body of the actual role of forest practices in creation of, or ways to minimize, peak flows. Testimony received by the Senate Natural Resources Committee in January, 1991, indicated that flooding in forested watersheds of Western Washington is cyclic in nature and that such cycles appear unchanged since the inception of logging in these watersheds. Except for the transient snow zone, where rain-on-snow events may influence timing of peak flows, there is little difference between rates and timing of water delivery to streams between forested and clearcut areas. The Forest Practices Regulation amendments effective August 1, 1992, contain provisions to deal with this aspect of the flooding issue (WAC 222-22-100 (2)). To mandate more direct regulation by amending RCW 76.09.010 would be unwise and unworkable, especially in light of Joint Select Committee's lack of discussion of the rain-on-snow rule and the potential correlation to flood damage reduction.

The other amendment to the Forest Practices Act proposed in the Joint Select Committee report calls for the addition of a new section to RCW 76.09 to require DNR to consider county input into watershed analysis and create special appeal rights. While we respect county concerns, we believe the amendment is unnecessary and particularly ill-timed.

Minority Report
Joint Select Committee on Flood Damage
Page Three

As stated above, the watershed analysis regulations (ch. 222-22 WAC) were just enacted by the Forest Practices Board June 26, 1992 and only became effective August 1. The Board has been studying the cumulative effects issue for over ten years. The new language was very carefully crafted in early 1992, and embodies a compromise among heads of a number of state agencies with competing interests, environmentalists, Indian tribes and forest landowners. It should also be noted that county governments have a representative on the Forest Practices Board.


There are, under the new regulations, a number of specific opportunities for local governmental entities (counties and cities) to be directly involved in the preparation of watershed analysis and management prescriptions (see WAC 222-22-020 (1), -202 (3), -030 (2), -040 (1), -040 (3), -040 (4), -080 (1)). Counties will be given specific notice of potentially adverse activities under their jurisdiction not regulated under the Forest Practices Act (WAC 222-22-080 (2)) so that proper steps could be taken by those governments.

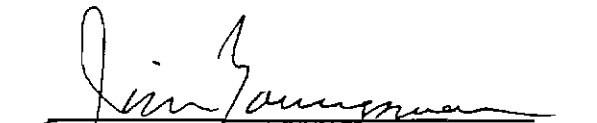
Approval of a watershed analysis by DNR (WAC 222-22-080) will be a final order of the department. The county has existing specific rights of appeal to the Forest Practices Appeals Board under the Forest Practices Act (RCW 76.09.140 (2)). The proposed new section would add nothing to these rights.

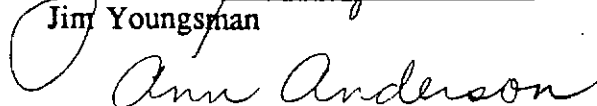
We suggest that county authority for flood related concerns would be best served through a vehicle separate from a last minute insertion into the delicately balanced watershed analysis process recently enacted.

In conclusion, the issues regarding Forest Practices are complex, and indeed issues which the Forest Practices Board and the various stakeholders have made a herculean effort to study and resolve through passage of a new rules package. The Joint Select Committee on Flood Damage Reduction spent a nominal amount of time in superficial debate on specific forest practice related concerns. It is unfortunate the new Forest Practices Regulation changes don't satisfy everyone, but they deserve an opportunity to be put in place as adopted and fairly evaluated for success or failure before significant changes are made. To do less, when it was legislative inaction which thrust these issue on members of the Forest Practices Board, seems unconscionable.


Representative Peggy Johnson


Representative John Wynne


Jim Youngsman


Senator Ann Anderson

MINORITY REPORT - ADDITIONAL COMMENTS
Joint Select Committee on Flood Damage Reduction
December 18, 1992

The Joint Select Committee on Flood Damage Reduction has completed a series of monthly planning meetings and has made recommendations to the legislature. The committee, chaired by Senator Ann Anderson and Representative Rob Johnson, was formed as a result of SB 5411 passed during the 1991 legislative session. The purpose was to develop a comprehensive and coordinated flood damage reduction plan in response to wide spread flooding damage in November of 1990.

Diverse interests of the dedicated committee members often made consensus difficult on complex issues. Turf battles were fought and ideologies defended between fisheries, environmentalists, business and agriculture. The resulting recommendations consequently were strong on the regulatory process and weak on remedial action. If the proposal to the legislature is enacted, we will see more restrictions on land use and growth but little enabling solutions to the actual causes of flooding and consequent damages.

The proposed amendment to the Forest Practices Act watershed analysis would negatively impact the scientific and carefully executed plans recently implemented.

Adoption of a "Zero-Rise Floodway" policy is redundant and will do little if anything to prevent flooding and flood damage. This policy would virtually eliminate any new development located within a flood plain, greatly impact expansion of existing activities and annexations to city limits. The legislature should know that rain falling on the flood plain does not cause major floods because the land lies below the level of the dikes and levees. Flooding is caused by excess rain water falling in the vast areas of upland watershed exceeding the capacity of stream beds to carry the water quickly to the sea. Without stream bed maintenance, the sedimentation accumulation will force the 100 year flood level higher each year. Citizens expect protection from the levees. They will view restrictions applying to areas outside the levees as regulations threatening the rights of property owners. The proposal limiting the foot print of a home and garage to 2000 sq. ft. in the flood plain is particularly onerous.

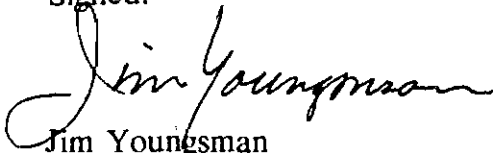
New flood planning proposals will effect work the Growth Management Act has required of counties to complete by July of 1993. It makes little sense to force expensive changes before existing legislation and planning has had a chance to be implemented and tested.

One of the elements of the plan was to explore the role of dredging in flood damage reduction. Unmaintained channel beds are probably the greatest cause of flooding. The natural process of a stream or river is to deposit sediment in bars as it meanders through a valley with the finest particles settling in the mouth where the grade is flatter and water moves slower. Dikes on either side of the stream prevent the natural meander of the river and confine it to an established bed. Without dredging the capacity of the river becomes like an artery blocked with plaque, leading to a heart attack. New development would require improved capacity of stream beds, yet this issue was nearly ignored by the committee. Tiptoeing around the demands of fisheries and environmentalists has left a gaping hole in the committee's plan for stream bed maintenance.

A philosophical change in attitude towards commitment of the state towards flood damage control is noted. Whenever the word "control" is used in existing law in relation to flooding, the word would be changed to "hazard". This indicated abdicating the exercise of restraint, power, authority and direction over an event to an acceptance of danger, peril, risk and lack of predictability in an event.

Our state policies on flooding should be one of taking positive remedial action with clear purpose and control. We do no one a service when we create regulations leaving events to chance. The absence of purpose in controlling the succession of events that allow flooding and resulting losses and damages to lives and property is irresponsible.

Signed:

A handwritten signature in cursive script that reads "Jim Youngsman". The signature is written in black ink and is positioned above the printed name.

Jim Youngsman
Committee Member

STATE REPRESENTATIVE
DISTRICT 39A
JOHN WYNNE

State of
Washington
House of
Representatives



REVENUE
ASST RANKING MINORITY MEMBER
LOCAL GOVERNMENT
NATURAL RESOURCES & PARKS
JOINT SELECT COMMITTEES:
PENSION POLICY
FLOOD REDUCTION
PUBLIC SAFETY AND
EDUCATION ACCOUNT

MINORITY REPORT

JOINT SELECT COMMITTEE ON FLOOD DAMAGE REDUCTION

December 18, 1992

As a member of the Joint Select Committee on Flood Damage Reduction, I am submitting a minority opinion, different from the recommendations found in the final report which proposes to amend land-use planning laws and flood hazard information laws. The specific recommendations (Section 3) which I oppose appear on the summary heading found under LAND-USE PLANNING page 17 and FLOOD HAZARD INFORMATION pages 43 and 44.

"Establish a zero-rise floodplain in the unincorporated areas of all counties."

"Improve disclosure of flood hazards by requiring:...with the Auditor of each county."

I believe the Joint Select Committee's recommendation to limit expansion of existing residential structures within the zero-rise floodway to an increase of only twenty percent of the existing foot print on a one time basis, is unreasonable. My recommendation at the December 9, 1992 meeting was to allow for a fifty percent expansion of the existing foot print, but be limited to no more than a 2,000 square foot expansion of the foot print. I believe that allowing for a fifty percent increase, not limited to one time only is a reasonable compromise. Currently in Snohomish County, a special use permit may be granted for a legal non-conforming use allowing for an expansion of up to 100 percent of the ground area covered by the non-conforming use. I feel that there are ample precedents allowing for this level of expansion and that anything less would be an infringement upon individual private property rights.

The Joint Select Committee's recommendation to revise the laws relating to flood hazard information is too restrictive and exclusionary. The recommendation to amend the land development act excludes many developments and short plats. This may not be the correct vehicle to use to disclose a physical flood hazard. To require the seller to disclose, as a hidden defect that a property is in a one hundred year flood plain is restrictive and shifts the responsibility from the government to the consumer. The responsibility should be on the government, as the consumer has no control over the development and distribution of the flood plain as

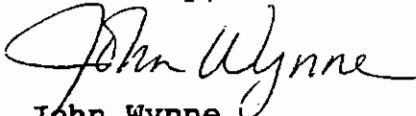
LEGISLATIVE OFFICE: 439 JOHN L. O'BRIEN BUILDING, PO BOX 40677, OLYMPIA, WA 98504-0677 • (206) 786-7804
HOTLINE DURING SESSION: 1-800-562-6000 • TDD: 1-800-635-9993
RESIDENCE: P.O. BOX 954, LAKE STEVENS, WA 98258 • (206) 334-2348

it maps. Properly the next recommendation would require that the Department of Ecology file maps of the one hundred year flood plains with the County Auditors.

Most of Washington State is now required through the Real Estate Multi-Listing Services to voluntarily disclose whether property is in a flood hazard area. All financial institutions also require that flood hazard information be disclosed. It would appear to me that a system of voluntary disclosure is now working. Why bring the government in to mandate disclosure if the system is working well now? The system appears to be working in spite of the state. It seems irresponsible to me for the state to get involved as this would add expense and time to an already burdened system.

The consideration of the 53rd Legislature in comparing my comments to those of my fellow committee members is sincerely appreciated. The diverse make up of the Joint Select Committee was most useful in debating the issues before us. I would like to congratulate my fellow committee members in their completion of this report. While we have not always agreed, we were all working toward the same purpose, flood damage reduction.

Sincerely,



John Wynne
State Representative

JCW:pdh