WASHINGTON STATE DEPARTMENT OF ECOLOGY

# Shoreline Public Access Handbook

**Preliminary Review Draft**
**for Comments**

**Reviewers:** Your assistance will be greatly appreciated. Please read, study and use the *Handbook* information. Mark it up, write your comments and help us make the *Handbook* the best possible resource for shoreline permit administrators. Please send your comments to: Jim Scott, Department of Ecology, Mail Stop PV-11, Olympia, WA 98504, by July 15, 1988. Thank you!

# INTRODUCTION TO THE HANDBOOK

As the Northwest becomes more and more crowded and developed, the demand for scarce resources begins to outweigh the supply. Society cannot afford to use inefficiently or waste those resources. Shorelines are a resource that is highly prized and much in demand for public access and recreation. They must be carefully allocated, developed and protected in order to satisfy the needs and desires of the people.

It is clear from legislation passed in Washington State and from actions in other states that society regards public use of and access to shorelines as a high priority, warranting shoreline preservation and enhancement. The degree to which general public access should supplant private use is sometimes argued; but, for the most part, the expression of public interest is clear in the Shoreline Management Act.

The information in this book should help site planners, local officials and others in carrying out society's wishes. The book is intended to be most helpful for those who must fit public access elements into otherwise private developments. This is usually done by conditioning development permits.

Washington has operated a shoreline substantial development permit system since 1971. The Shoreline Management Act requires that most shoreline developments, including upland uses within 200 feet of the water's edge, be regulated by locally issued permits. Development on the shoreline is generally prohibited except for single family residences, ports, public access facilities and water dependent uses or a use which allows an opportunity for a substantial number of people to enjoy the shoreline (SHB case nos. 16, 76, 158, 201, 78-20, 80-4).

Photo ___, General Shoreline View

Many permits are conditioned expressly to provide access to the shoreline for the general public. This process requires that the shoreline permit administrator deal with three issues. First, is a determination as to whether a permit condition for public access is appropriate (ref. *Nollan* v. *California Coastal Commission*). Second is the design and layout of the public access area, and third, is the wording and recording of permit conditions. Thus, this book is written in three parts.

Part I provides guidelines determining whether or not a public access condition should be attached to a permit. The information should help shoreline permit administrators make decisions that will stand up to tests in court. The second part provides design specific information for shoreline planners, permit administrators, park planners and others who deal with the design of sites and facilities for public access to shorelines. Design information is provided for both salt and fresh water sites. Part III of this book offers more specific administrative guidance, including recommended master program provisions, permit conditions and easement documents.

The Handbook also covers the broader spectrum of all shoreline recreation sites, because the objective is similar -- that of fostering public use of the shoreline. As far as design criteria are concerned, it does not matter whether a particular site is publicly or privately owned or whether the facilities are required by a permit condition.

Although this book is written with special regard to Washington State law, shoreline site planners from other states will find much of the information applicable to their projects.

# PREFACE

A principle goal of the Shoreline Management Act is to protect and enhance public access to the State's shorelines. Master programs of local jurisdictions are intended to give priority to public access and recreational uses of the shoreline, and many master program provisions do encourage or require public access. However, most local jurisdictions have no specifications on the size, design and location of access sites. In addition, there are rarely requirements or guidelines for recording permit conditions.

To achieve an effective public access permit process, local governments will want to adopt master program provisions which are clear and explicit. It is also beneficial to permanently record the public access as an easement against the deed, to assure that the condition will have longevity.

Experience has shown that master program provisions and the resulting permit conditions, by themselves, are not sufficient to meet the public access goals of the Shoreline Management Act. Often there are missing elements, and access sites are not part of any kind of unified or systematic public access or recreation program. A public access site can go unnoticed if it is not not adequately signed or intuitively obvious that the area is public. Use and awareness of public accessways is also enhanced when the sites are integrated in a broader system.

Jurisdictions that have had some success with shoreline public access have gone beyond the bare bones Shoreline Master Program Guidelines. In some instances enthusiastic dedicated personnel have made the difference between a successful public access program and a failed program. Some times an enlightened citizenry has taken a leadership role in promoting public access.

But, the common thread of successful programs is a comprehensive plan for public access. Most of the access plans are integrated with comprehensive park and recreation plans as well.

Such plans serve to guide public acquisition and development efforts in a systematic way to achieve a usable network of public access, parks and other public sites. They also can outline a shoreline permit access strategy which provides for the role of conditioned permits. A comprehensive access plan makes it possible to demonstrate to developers why the required public access on their project is reasonable and that they are being treated fairly and consistently.

Some of the problems with public access are site design oriented. It is design that allows the public to feel

confident that space is public, not private. Items such as the size of the space, relationship to adjacent private property, public use features (street furniture, landscaping, etc.) and signing are each important in identifying and promoting the public's right of access.

Another tool which can have long lasting impact is a public outreach-interpretive program based on the opportunities for public access to the shorelines. For example, utilizing the public access sites as a place to study shoreline ecology will firmly fix in the public's mind that the area is in fact for the public good. This kind of activity will also boost public support for the program in general.

PART I

## SETTING THE STAGE FOR PUBLIC ACCESS

### THE COMPREHENSIVE SHORELINE ACCESS PLAN

The single most important element in a successful public access program is the comprehensive access plan. Each local jurisdiction is encouraged to develop such a plan, which can then be incorporated, or referenced, in the master program. Key elements of the access plan can also be incorporated as master program provisions. Most desirably, the master program should contain explicit access requirements based on a comprehensive plan.

The comprehensive access plan then serves as the foundation for determining access requirements on specific projects. Projects are reviewed on the basis of whether or not the proposal is consistent with the plan.

At minimum a comprehensive access plan should contain the following elements:

1) Goals of public access for the jurisdiction;
2) Relation of access and recreational uses to land uses and development patterns;
3) Areas or zones of differing access requirements, or the type of access required;
4) Identification of special opportunities which result from unusual or especially desirable natural shoreline features, such as beaches;
5) Relation to recreational facilities, parks, etc. (in fact the access plan should be intergrated with a local recreation plan);
6) Design and signage standards;
7) Public/private implementation strategy, including a description of the roles of each;
8) Safety criteria, especially where industrial hazards are concerned;
9) Standards for private development, such as setbacks, dedications for public access, landscaping, etc. and,
10) Standards to assure privacy for adjacent residents.

A typical goal statement (1) might be: "It is the intent of Anycity to provide for a waterfront pedestrian pathway along the shoreline of XYZ waterbody from point A to point B."

Flowing from the goal statement(s) would be standards for implementation (examples given).

a) setback requirements: "All structures will be set back a minimum of 50 feet from the mean high water mark."

b) public easement dedications: "An easement of not less than 20 feet in width parallel to the shoreline will be dedicated for public access and use."

c) pathway requirements: "An asphaltic concrete surfaced pathway of not less than 6 feet in width will be constructed for public use within the public easement."

d) landscaping requirements: "The public access easement area shall be landscaped with native plant materials to achieve as near a natural appearing shoreline area as possible."

The public access plan also needs to be explicit about long term maintenance and repair. If the public access facilites are to be maintained in servicable condition by the developer, that fact needs to be clear in the plan and appropriate conditions attached to the permit. If the local jurisdiction is to assume maintenance responsibilities, that fact needs to be stated and the jurisdiction needs to have a plan for raising the necessary funds.

Permit review is greatly facilitated by a comprehensive access plan. Permit administrators are able to document whether or not a proposed project meets the adopted access plan and refer to the plan's provisions in discussions of proposals.

The access plan must be clear, direct and codified. The plan should be written in concise terms that define the criteria and standards. Maps and should be included. The plan could be developed in phases, with a conceptual plan and general goals coming first, supplemented by more detail as time is available.

CONSIDERATIONS OF WASHINGTON STATE LAW

There are a number of state laws that pertain to public use of and access to shorelines in Washington State. Of primary importance to shoreline site planners is the Shoreline Management Act, RCW 90.58. which sets the policy for public access. The Act also establishes a system for the issuance of substantial development permits for activities along most shorelines within the state.

Public use of shorelines is further affected by laws pertaining to navigation, public street end vacation, and the designation of harbor areas. The local shoreline permit administrator needs be familiar with these other laws as well as the Shoreline Management Act because a proposed development may be governed by them.

## Navigability

The earliest concept of public use of waters and shorelines was based on navigability. The original test of navigability was whether or not the waters were used for commerce. Many Washington streams and lakes are considered navigable due to historical use for commercial activities, such as floating logs. In contemporary times, consideration of recreational use of waters has expanded the scope of navigability to include recreational as well as commercial uses.

Whether or not a particular stream or lake is navigable by these tests may be moot in many circumstances. On a non-navigable water body, the riparian owners have a common right to use the water's surface. If the state, and therefore the public, is one of these riparian owners there exists a common public right to the use of the non-navigable waters. This is a typical situation on many small lakes, where the Department of Wildlife has acquired public fishing accesses and, in so doing, provided the public a right of common use with the other riparian owners of the lakes.

Navigability is independent of ownership of the shoreline, the bedlands or the tidelands of a water body. For example, navigability applies where the bedlands are privately owned but the public has a right of use of the waters flowing over those lands.

There are other legal concepts by which the public may have a right of use of the shoreline even though it may be privately owned. These are, 1) the public trust doctrine, 2) the doctrine of prescription and 2) the doctrine of custom. While the basis for each of these differs somewhat, each provides for public use of what are otherwise privately owned lands.

## The Public Trust Doctrine

The first of the pertinant doctrines, the public trust, is founded in principles of English Common Law which was adopted in the United States at the time of the formation of the Union. It gave the individual states the responsibility to hold certain natural resources in trust for the people. In 1892 the U.S. Supreme Court ruled, in Illinois Central Railroad v. Illinois, " the state cannot abandoned its trust..." Interpretation of English Common Law led to theunderstanding that state government cannot relinquish its responsibility through a transfer of property, and that land to which the doctrine applies will carry the burden of the public trust to the private landowners. Although the state may sell lands beneath the waters, the new property owners must abide by the dictates of the public trust.

A recent United States Supreme Court decision, Phillips Petroleum et al v. Mississippi, 1988, has ruled that the traditional basis of navigability as the determinate of public use is not the full intent of law. Citing breifs prepared by the original thirteen states and eleven other states, the justices opined public rights extend "to all lands under waters subject to the ebb and flow of the tides, regardless of navigabiltiy in fact." This decision in essence opens thousands and thousands of miles of shorelines to claim for the public trust.

There has been some case law in Washington State pertaining to the public trust doctrine. In Orion v. The State of Washington, 1987, the state Supreme Court determined "the public trust doctrine 'resembles a covenant running with the land (or lake or marsh or shore) for the benefit of the public and the land's dependent wildlife.'"

Orion dealt primarily with protecting an ecosystem and did not address aspects of public recreational use of the shoreline. But Caminiti v. Boyle, 1987, the Supreme Court of Washington did rule that the public trust extended to recreational use of the waters.

Although there is a relative dearth of case law about the applicability of the public trust doctrine to public access and recreational use of the shoreline, the concept certainly does exist. The Shoreline Management Act, in effect, codifies the public tust doctrine for the shoreline area. By logical extension to shoreline master programs, the preparation and adoption of a local comprehensive access plan further defines the public interest established by the public trust doctrine.

The Doctrine of Custom

The doctrine of custom may also applicability in many Washington cases. This doctrine provides that a public right exists for use of private lands if the following circumstances exist:

(1) the area has been used by the public for as long as people can remember;
(2) the use has continued without interruption;
(3) the has been peaceable and acquiesced to;
(4) the use has been reasonable;
(5) the use is certain and definable;
(6) though established by consent, the use is compulsory in its operation; and
(7) the use is consistent with other customs and laws.

The Washington State Attorney General opined that this doctrine applies to the outer coast, and that the public has

a right to use the wet and dry sand portions of the beach back to the line of permanent vegetation. This written opinion has stood for over 15 years without challenge. Although it has not been applied to inland waters, it is possible that there are a number of instances where the seven criteria could be met.

Photo ___, Outer Coast

Prescription

In addition to the doctrines of custom and public trust is the concept of prescription. It applies where there has been a public use over a period of 10 or more years, but it must be applied on a tract by tract basis. Prescription can probably be upheld on many waterfront sites in Washington State.

Land Ownerships

It is important for shoreline permit administrators to fully understand the combinations of ownership which can exist along shorelines of the state. Generally saltwater shoreline ownership is the most complicated.

The situation began with statehood in 1889. Under the United States Constitution new states are granted the same rights as the original 13. The right to assert ownership over tidelands and bedlands of waters which are either navigable or effected by the ebb and flow of the tides was one of these. This means that upon entry to the Union Washington State asserted ownership to all the tidelands and bedlands of such waters.

Since the state did not recognize any special rights for riparian owners on marine waters, it decided to sell tidelands to the riparian owners. This would enable them access to the water without crossing the public tidelands. The practice of selling tidelands to the upland owners was continued until the early 1970s. When it was stopped by the legislature, approximately 60% of the state's tidelands had already been sold.

Over the years real estate transactions additionally complicated the ownership pattern to where there currently exists the following combinations of ownership.

1) Privately owned uplands with privately owned tidelands where both are under one ownership. The lower (outer) limit of this ownership is generally the line of mean low tide.

2) Privately owned uplands with privately owned tidelands, but the tidelands and uplands are separate

ownerships. This is common where an upland owner has sold his tidelands to another, such as an oyster company, or when the upland owner chose not to purchase the tidelands from the state and they were sold to someone else.

3) Publicly owned uplands with privately owned tidelands. This may exist where the upland owner is the federal government and the uplands are part of the unsettled public domain, but the tidelands were conveyed to the state at statehood and the state sold the tidelands. This situation may also exist where a public agency has purchased the uplands from a private owner without acquiring the tidelands.

4) Privately owned uplands with publicly owned tidelands. This is the most common problem situation and exists because the tidelands were never purchased from the state. In some of these instances the upland owner may think he (she) owns the tidelands when in fact they do not.

Another complicating factor is that the ownership line may be either the mean high tide line or the Government Survey meander line. If the ownership is based on the latter, and about 60% of Puget Sound is, the location of the property line may be substantially different than the current mean high tide line. Generally the government meander line attempted to follow the shoreline at the time of survey (late 1800s). Erosion and accretion over the years may have changed the relationship significantly.

Diagram of typical shoreline ownership configurations

In each of these situations, the public may have a legal right of use of the tidelands even though the tidelands are privately owned as is described above under the doctrines of custom, public trust or prescription.

## WORKING WITH THE LAW FOR PUBLIC ACCESS

### Affects of A Major Supreme Court Ruling

In the past, conditioning permits for public access was dealt with rather loosely, but a 1987 United States Supreme Court ruling ( Nollan v. The State of California ) made it clear that the decision-making process in public access had to be tightened up to avoid possible legal challenges.

Photo ____, Public Access Site

The following discussion of Nollan should help clarify the basis for public access permit conditions. [author's note: adapted from an article in *Coastal Currents*, September 1987, Washington Department of Ecology]

On June 26, 1987 the United States Supreme Court overturned a decision by the Court of Appeal of California. The California Coastal Commission had granted a permit to a private party, the Nollans, to replace a small bungalow on their beach front lot. The permit was conditioned to the effect that they allow the public an easement to pass along their beach.

The U.S. Supreme Court ruled that the California Coastal Commission's public access conditioning of a permit in the Nollan situation was improper. But, it did not wipe out permit conditioning for public access altogether. Rather, the court clarified the procedures by which a government can attach conditions for public access to a permit.

Local shoreline permit administrators should take note: it **is still proper to condition shoreline substantial development permits for public access.** We will examine the Nollan decision and provide some guidelines to follow in conditioning permits.

To understand the Nollan decision, we must first look at the regulatory powers of government. Local government has very broad authority to regulate land use to address health, safety, environmental and aesthetic concerns, without violating 5th amendment private property rights. Enforcement of land use regulations, in certain instances, may result in a reduction of value on a parcel of land without corresponding compensation to the landowner.

However, government can not require a landowner to give all or part of his or her land to the government to serve a public benefit unless the donation is necessary to solve a problem the landowner is creating. For example, if a landowner proposes a development which will block already existing access to a water body then that landowner may be required to provide for public access as a permit condition.

In Nollan, California's position had several strikes against it. First, California failed to relate the access requirement to a direct impact on public access caused by the Nollan's proposed project. Second, while the state demonstrated the project's impact on view access, it did not condition the permit to provide compensating view access. Third, California did not attempt to make a case that the public did have a long standing right of use of the beach area even though the beach area was privately owned. (Apparently the public had, over the years, been allowed to walk across the Nollan's sandy beach below their bulkhead without any attempt by the landowner to block such use.)

The Supreme Court, in writing its majority opinion, made it clear that there must be a direct connection -- a nexus --

between the public interest sought to be protected by the government and the attached condition. In this case California demonstrated that the Nollan's development would reduce visual access to the water, but it conditioned the permit for physical access along the beach rather than for visual access.

The Supreme Court said that California could have attached a condition that would have protected the public's ability to see the beach or required the Nollans to provide a "viewing spot on their property for passersby with whose sighting of the ocean their new house would interfere." But requiring physical access along the beach was improper since no connection could be demonstrated between the permit condition and the development's impact on the public interest sought to be protected by the state.

It is possible that the Nollan case may never have reached the Supreme Court had a comprehensive public access plan existed at the time. Such a plan would have defined the parameters of the public interest.

In our state, conditioning shoreline permits for public access is a common occurrence. In fact, the Shoreline Management Act of 1971 makes it very clear that improving public access to the state-owned waters is a high priority of shoreline management. Shoreline permit administrators should be careful to establish a direct connection between the proposed public access requirement and the impact on the public interest caused by the development.

A discussion of two hypothetical situations may be helpful. First, if a landowner proposes a development that would restrict shoreline access to an area the public has used for years and years, then the direct connection is probably demonstrable even though the use has occurred over private lands. In this case, a permit condition providing for public access to the shoreline area would be appropriate.

Second, if a landowner proposes a development that, through bulk or physical presence, blocks existing shoreline views then the permit administrator can legitimately impose a condition for public view access. A permit condition, which would assure the view is retained or which would require the development of a view point, would probably be valid for this situation.

This discussion of the Nollan case, while brief, highlights the major points. The full range of impacts caused by this decision will probably continue to be felt over the next several years as land use planners, attorneys and courts continue to deal with conditions for public access on land use permits. Shoreline permit administrators in this state should not be discouraged by this case, but should continue

to condition permits for public access while making sure a nexus does exist between the proposed condition and the public interest sought to be protected.

There is an additional message arising from Nollan: permit administrators, in carrying out the intent of the Shoreline Management Act, need to be careful in writing and documenting permit conditions and must conduct thorough research to make sure a basis for requiring public access is not overlooked.

Permitting Considerations

The Shoreline Management Act requires that local governmental entities issue substantial development permits for developments on the shoreline. These permits must be consistent with the act and with the approved master program for the area. In many instances, a substantial development permit is conditioned to provide some degree of public access to the shoreline. The terms of the condition are negotiated between the local government and the developer, but a review of permits by the State Department of Ecology serves to check that public access is adequate and consistent with the act and the master program. Ecology will also ascertain if there has been compliance with federal regulations.

Through the issuance of the permit, and the recording of the public access against the deed or on the face of the plat, the local government legally accepts a dedication for access and assumes the responsibility for the public access.

State law (RCW 58.17.110) provides that a dedication (a granting of property to the public good) for a public purpose can be recorded by showing the same on the face of the plat. If a plat map is not to be prepared, an easement will need to be recorded against the deed. RCW 58.17.020 provides that approval of a plat for filing by the appropriate governmental agency constitutes acceptance by the public. Presumably recording an easement grants the same acceptance.

Conditioning Permits: Negotiating with Developers

One of the first questions the shoreline permit administrator must deal with is a determination about whether or not conditioning a permit for public access is appropriate. And, the developer must be shown the evidence and convinced that the requirement is reasonable and appropriate.

This question is dealt with at two levels. One, is the local jurisdiction's master program, which provides specific requirements relative to the shoreline environment concerned

and the proposed use. The master program, if not originally written to adequately cover public access, should be amended to provide for public access which is consistent with the theme of this handbook. Model master program provisions are found in Part III. The master program provisions should be based in the comprehensive public access plan. The second level is at the individual project/permit level. This should be guided by the master program, overriding conditions in the law and by considerations about the basis for conditioning permits as discussed in this section.

The permit administrator's negotiating position is greatly strengthened if the locality has a comprehensive access plan. The permit administrator can point to the plan and say "this is what the officially adopted plan requires." If there is no public access plan, there is still the ability to condition permits for access based on provisions in the Shoreline Management Act. Here the permit administrator can point to act provisions and say "the Shoreline Act requires that." Of course, these instances can still leave much room for negotiation.

Important issues, such as how much space, the kinds of facilities, street furniture, landscaping requirements may vary considerably from development to development, yet still meet the objectives of the access plan. These can be addressed if the local government adopts access standards, such as a requirement that a pathway be 6 feet in width and hard surfaced. These kinds of standards add more strength to the negotiating position, and make it abundantly clear what is expected.

Conditions for Public Access Without Compensation

The Nollan decision was heralded as a victory for developers when first publicized, and certainly some gains were made in situations where public access stipulations demanded compensation to the property owners. However, there are situations where public access requirements are justified without compensation.

1) There needs to be a legitimate public interest in the particular body of water and its shoreline areas.

For example, a public interest does exist if the water body is navigable. The Shoreline Management Act also finds a public interest in all "shorelines of the state." The public's right to use the shoreline area may also exist under any of the legal doctrines of prescription or custom, even if not directly established by the courts.

2) The project has an impact on the public's right of use of the water body.

The impact may not be just on physical access. Blockage of the view and aesthetic enjoyment of the water

may be sufficient justification for a permit condition. The Shoreline Management Act clearly states that permitted shoreline uses will be done so as to minimize **any** interference with the public's use of water.

3) The actual conditions attached to the permit are presumed to "sufficiently correct" the impacts created by the proposed development; if they do not, the only recourse is to deny the permit.

4) The amount of public access, ie. the burden placed on the developer to provide public access, must be commensurate with the degree of impact the project has on the public interest.

5) The public's right does not necessarily have to be currently exercised.

For example, a permit for re-development of a project which was done prior to the Shoreline Management Act and did not provide for public access may be legitimately conditioned for public access. This action restores the ability of the public to exercise its right, which was incorrectly blocked by the earlier development.

6) The Shoreline Management Act states that prefered shoreline uses shall be those dependent on a shoreline location and those that provide an opportunity for substantial numbers of the public to enjoy the shoreline.

In the case of water dependent industrial port areas, the practical means of meeting this objective may be to locate the public access facilities away from the active port area, but still in the vicinity. [The complicated qestion of water dependent uses versus non-water dependent uses is an important consideration under the Shoreline Management Act. For a detailed discussion of this topic see the section "Water dependent uses."]

7) The public interest may be somewhat different for navigable waters in front of and within one mile either side of incorporated cities. These areas, known as first-class tidelands, are also defined as harbor areas under the state Constitution. Harbor areas are "reserved for landings, wharves, streets and conveniences of navigation and commerce." (Article XV, Section 1, Washington State Consitution)

Special Considerations

Steet Ends

RCW 35.79 establishes the rules by which public street rights of way can be vacated and used for private purpose. Generally they cannot be so used because the rights of way are considered valuable points of public access. RCW 35.79

does not allow a city or town to vacate a street or alley if any portion abuts fresh or salt water unless:

a) The vacation is sought to enable the city or town to acquire the property for public uses, such as port purposes, beach or water access purposes, boat moorage or launching sites, park areas, public view, recreation, or educational purposes;

b) The city or town, by resolution of its legislative authority, declares that the street or alley is not presently being used as a street or alley, and that the street or alley is not sutitable for port, beach or water access, boat mooorage, launching sites, public view, recreation, or education; or,

c) The vacation is sought to enable a city or town to implement a plan, adopted by resolution or ordinance, that provides comparable or improved public access to the same shoreline area abutted by the streets or alleys sought to be vacated.

Also, RCW 35.79 specifies a specific legal procedure which must be followed to abandoned streets, which includes holding public hearings.

RCW. 36. regulates street vacations in a similar manner for the county jurisdictions.

Water Dependency

The Shoreline Management Act gives preference to water-dependent and water-related uses where non-public kinds of developments are involved (e.g. industrial uses). The only non-water-dependent uses allowed are those that provide an "opportunity for substantial numbers of people to enjoy the shoreline."

The Shorelines hearings board has explicitly defined what is meant by water dependency.

"A water-dependent commerce or industry, to which priority should be given, is one which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations. A water-related industry or commerce is one which is not intrinsically dependent on a waterfront location but whose operation cannot occur economically without a shoreline location." (Yount & Department of Ecology & Attorney General v. Snohomish County & Hayes, SHB No. 108, and Adams v. City of Seattle; Department of Ecology and Attorney General, SHB No. 156.)

In simple terms, there are three levels of allowable shoreline uses under the Shoreline Management Act: water-dependent, water-enhanced and water-enjoyment (the latter phrase coined by MAKERS et.al. in a report titled "Urban Waterfront Policy Analysis").

The following working definitions of each of these three use catagories is recommended.

**Water-Dependent:** Use that requires direct contact with the water. Example uses are, ship cargo terminal loading area, ferry terminals, barge loading facilites, ship building, repair, servicing and dry docking of ships, acquaculture, float plane sheds and facilites, all boating services and marinas, hydroelectric plants, log booming and sewer outfalls (but not the treatment plant).

**Water-Related:** Use that depends upon a waterfront location for economic viability, such as where a functional relationship to a waterfront location exists, or the use provides a necessary support service for a water-dependent use and physical separation is not feasiable. Example uses are, fabrication of ship parts and equipment, warehousing of goods to be shiped by water, seafood processing plants, paper and wood products mills where materials are water transported, oil refineries where shipping is by tanker, and energy generation plants requiring large volumes of cooling water.

**Water-Enjoyment:** Use that provides for public enjoyment of the shoreline by providing views, water access, and incorporates and maximizes the water amenity in its design and operation. While these uses have to be evaluated case-by-case the following criteria should be used:

1) The use is open to the general public;
2) The use provides water access as called for in the jurisdiction's water access plan; and,
3) The use has at least one of the three characteristics below:
   a) Offers a view of waterfront activities;
   b) Optimizes a unique characteristic of the site; or,
   c) Supports other proximate water-dependent, water-related or water-enjoyment activities.

Some example uses of water-enjoyment are recreation oriented, such as restaurants, parks, community clubs, museums (if a water theme), etc. These uses might be considered water-dependent or water-related if they intrinsically depend upon the water, such as a marina.

In all cases, public access to the shoreline is a requirement, and is normally obtained by permit condition.

Payment in Lieu of Dedicating Access

There is a law on the books in Washington State, RCW 82.02.020, which allows "in lieu" payments instead of dedicating the required public access facilities and other public facilities provided by RCW 58.17.110. However, some strict rules related to RCW 82.02.020 have made the program unpopular for public access.

Nonetheless, there are some situations where an actual dedication may not be feasiable and in lieu payments required. These situations would most likely surface in an industrial area, such as a port, where public access is not desirable nor warranted.

In lieu payments are allowed where a dedication cannot be made, or where mitigation of a direct impact resulting from the development is necessary. The in lieu payments are subject to the following:

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

2) The payment shall be expended in all cases within five years of collection;

3) Any payment not so expended shall be refunded with interest at the rate applied to judgments to the property owner of record at the time of refund; however, if the payment is not expended within five years due to delay attributable to the developer, the payment shall be refunded without interest.

The law also stipulates that no payment shall be required unless it can be established that it is reasonable necessary as a direct result of the proposed development or plat.

Acquisition Considerations

Fee acquisition versus Less-Than-Fee

Some kinds of public access are provided by easement. Under a typical easement, the public may have the right to walk along the shoreline, but all other ownership rights are retained by the owner. Easements often result when an owner is required to provide access as a condition on a shoreline substantial development permit. An easement can also result when a public agency purchases a "less-than-fee" interest in the property enabling the public a right of use. Experience has shown that less-than-fee acquisitions are nearly as expensive as fee acquisition, and the resulting interest is

often clouded by an incomplete understanding of what is owned and by whom.

The content of easement documents must be explicit and clear. The easement will run in perpetuity with the land and can not be easily changed once in place. It is, therefore, of the utmost importance to envision all possible future situations which may develop, and to structure the easement document to address them. The model easement contained within this section, has proved to be workable in the State of Washigton. It may not meet all needs in a local situation so the local shoreline permit administrator should secure legal counsel to ensure that the easement will be proper for the situation.

The rights and limitations of a less-than-fee acquisition must be clearly spelled out in the recorded documentation. Failure to adequately envision the "what ifs" may result in an easement of questionable value.

A less-than-fee interest results from attaching a condition to a shoreline substantial development permit. If the condition appears only on the permit and is not recorded against the deed as an easement, the legal existence of the condition may be lost in the future. A development permit is usually only active during the period of construction and once the project is competed and certified for occupancy the permit is filed as inactive, probably never to be looked at again. If a question arises in the future about a right of public access a search of the records may not uncover the permit and the public interest may be lost forever.

A better method is one that requires that the less-than-fee interest be recorded on the deed. Then at any time the property records are searched, the fact of the public interest will surface.

Solving the Liability Issue

The argument is often raised that if an owner is required to allow public use of his property, he will be trapped in a liability issue if someone becomes injured or otherwise harmed. This argument should be addressed with the following responses.

1) First of all, Washington State has a law (RCW 4.24.220-210) that limits the liability of landowners toward recreational users. The law was written to encourage landowners to make their lands available to the public for recreation. This law protects those landowners who allow public recreational use of their lands. This law does not apply if a fee is charged for the use. This law does not prevent leability wher a known artificial dangerous condition exists for which warning signs have not been

placed, nor does it limit or expand the concept of "attractive nuisance."

2) Second, if a landowner is required to provide public access by virtue of a permit condition, then the government body making the requirement, and accepting the dedication on behalf of the public, assumes all or a large portion of the associated liability. [It would be likely be argued in the courts that a dedicated public access area, especially if established by a recorded easement to the public, should no longer be considered properly under control of the landowner, and thus, s/he would not be responsible for the liability. This might be different if there is some artifical hazard over which the landowner does have control.]

3) Last, if the public access facility is constructed in accordance with adopted building codes and accepted design standards, the landowner's liability would be limited. It would be no greater for a sidewalk than is typically required along a public street. Likewise the local government assumes the liability at a level consistent with the liability burden it has with public sidewalks and streets. There is an obligation for the landowner to keep the facility maintained up to code standards, but it should be in the interest of the local jurisdiction to periodically inspect the facility and make sure it is adequately maintained.

In short, if the public access is either voluntarily provided or is required by permit condition the landowner should be protected from all or most liability. The governmental agency will have to deal with the assumed liability, but this assumption should be consistent with its liability associated with streets, sidewalks and public buildings.

However, if the landowner charges a user fee, then the liability burden is assumed by the landowner. In all cases, a landowner who allows public access would be well advised to purchase comprehensive liability insurance.

[An interesting reference on this subject has been put together by the California Bay Planning Coalition (San Francisco Bay) Titled "Landowner Liability and Public Access," the book is applicable under California law, but many of its concepts are also valid under Washington law.

## PART II
## SITE PLANNING

Site planning is the art of arranging natural and man-made elements in an outdoor environment to create a usable and aesthetic space. Shoreline public access and recreation sites are areas especially created to foster public use of and access to the land/water interface. They can range from simple walkways to elaborate city parks, from unimproved beaches to costly promenades.

Some may argue that shoreline development can and should occur without the regimentation of site planning. That argument presupposes that site planning is a highly formalized process when in fact it does not have to be. Any decision about where something should go, whether done in advance on paper or by "seat-of-the-pants" on the job, is site planning.

If those decisions are informed, as they can be by utilizing the information in this book, they will usually be better than if done blindly. This book benefits from the body of knowledge that has accrued from other's mistakes and successes. The site planner can pick and choose information which best fits the situation.

The site planning process is also a useful tool to accomplish the fundamentals of public access. These fundamentals were developed to provide goals to work towards in the development of public access sites. Their purpose is to ensure that a public access facility will be useful, and not become a "white elephant."

### FUNDAMENTALS OF PUBLIC ACCESS

The usual role of the shoreline public access site planner is to fit public access elements into plans for an otherwise private development. This role is somewhat more narrowly focused than that of the recreation site planner; in the latter case, dealing with an essentially incompatible development is usually not an issue. Nonetheless, both planners are designing facilities for public use, which should be built to similar design standards.

Generally, the public access site planner must attempt to add public facilities under conditions that are less than ideal and provide some assurance that the facilities will serve a useful purpose. The public access planner can be guided by a set of fundamentals to help accomplish this goal.

By looking at many different kinds of public access sites the author has observed that in some cases access facilities, although established as called for by a permit,

are not used by the public. This is unfortunate and perplexing because of the great demand for water based recreation. Certainly shoreline public access facilities ought to help satisfy this demand--otherwise why bother?

Photo ___, Pubic Access Site
[2 photos? One a full site, one with little use?]

This concern led the author to investigate and try to determine why some access areas are not used at all while other areas are heavily used. The conclusions of these investigations resulted in the following list of fundamentals (Scott, 1983) which should be considered in establishing public access areas.

1. The public access area must be a comfortable place to visit, that is the visitors must feel they "belong." This feeling can be reinforced by signing, but signs cannot overcome the negative effects of inadequate space and design deficiencies.

2. There must be a physical separation of the public and private space so the public clearly will know the extent of their domain and know they are not infringing on private rights. This separation can be achieved by adequate space and through screening such as by landscape planting or fences.

3. The public space must be of sufficient size to allow ample passage and allow the visitors to stop, linger, and contemplate the setting.

4. The public access area must be designed so the visitors will feel safe from such things as industrial activities, biting dogs and irate homeowners.

5. There should be an attraction, like a scenic view, which will draw people to the site, although the mere presence of water may be sufficient.
These fundamentals will help make public access sites more successful.

One must realize that lack of frequent use does not necessarily condemn a particular site as ill-planned or unsuccessful. In some cases, it may take two or three years before a new area is "discovered." And, a low level of use may be very desirable at some locations, to provide a high quality recreational experience which the presence of many other users would destroy.

However, a low use level may be indicative of poor design. Deficiencies which result in inappropriate low use should be corrected as soon as discovered, since vandalism and other

disruptive behavior can sometimes result. (Campbell et.al. 1968).

## THE SITE PLANNING PROCESS

The shoreline permit administrator, sometimes in collaboration with the developer, becomes a public access site planner when undertaking the task of determining the nature and kind of public access to provide. The existing site and the proposed development are the two factors that govern the planning function, although some modification of the latter is a possibility.

A third factor, the body of public laws, ordinances, and regulations which may apply, can place significant constraints on both the developer's proposal and the public access site planner's work.

The permit administrator must go through the same information gathering, site evaluation and alternate planning that any site planner goes through. Normally, the permit administrator goes through the process mentally and negotiates with the developer's site planner for evident changes that need attention. Despite the lack of putting it down on paper, the administrator still follows the site planning process and must have a thorough understanding of the constraints and possibilities in order to be an effective negotiator. Therefore, it is essential to give full consideration to the site planning process and to the details of developing a final design.

### Steps to Site Planning

Site planning begins at the information gathering stage (actually continuing through final design). During this phase information is gathered from maps, reports and other pertinent sources. Crucial to the process is a detailed examination of the proposed shoreline development which triggered the process and the laws and regulations which control the development.

The site planner first considers if the public use is appropriate for the development, as described in Part I. Is it compatible? Is minor separation of the use zones all that is needed? Or, because of obvious safety or other factors, is major separation or even no access preferable? The site planner also needs to think about questions such as "Can the development be modified to better accommodate public use?"

In many instances, at the time the public access site planner (shoreline permit administrator) receives the project there is sufficient information available to begin making some of these kinds of judgments without visiting the

site. However, one should be cautioned that no final decisions should be made without a visit to the location and an "on site" evaluation.

Site Evaluation

An on site visit provides an opportunity to confirm that the information compiled in the first phase is in fact accurate; but, more importantly, it gives the site planner an opportunity to "get the feel" of the site.

At this stage the site planner checks topographic details: drainage courses, slope, aspect, etc. Particular attention must be given to what the existing or potential attraction is that would make it a desirable area to the public. Is the shoreline/beach especially nice? Does the area lend itself to constructing a promenade (sometimes a particularly useful facility in an urbanized waterfront)? Is there an interesting plant community, a wetland, or other natural feature which should be saved, enhanced and incorporated in the public access planning? Are there any soils or topographic characteristics that would create development problems?

Of utmost importance at this stage is documenting existing public use of the site. This information is needed to show the nexus described in Part I. It also serves as a starting point for estimating what future use might be (See section on estimating use).

During the field visit the site planner will normally take maps, aerial photos and other similar documentation to reference what is found in the field.

There are two site factors that have bearing on the public access plan. These can be categorized as surface and sub-surface conditions. Generally, adequate knowledge about the latter will be available from the engineering work that the developer has done for the proposal. Soils type, stability, the water table and other such factors may influence the public access design. For example, an unstable slope might be avoided, or require extra cost for stabilization.

Surface conditions are the readily apparent factors which will effect the public access design. Consideration needs to be given to the view, nearby or on-site man-made features, surface drainage, existing vegetation, noise, prevailing winds and odors, and other factors which may impact a visitor's experience in one way or another.

The engineering consideration of physical factors that may impact the design and the interaction of space requirements with separation needs, slopes and soils may cause the site

planner considerable consternation in attempting to fit a desirable public access facility to the site.

The single factor which probably constrains the public access site planner's work most is space. Often, there is inadequate space to achieve satisfactory separation of public and private areas, to cross slopes with sufficient safety and engineering integrity and to still have room to achieve some degree of aesthetic attraction. Guideline dimensions are included in this book to help achieve the desired result; but, in some cases it may be necessary to use less than the recommended minimum because of the lack of space. This is alright, providing it is done intentionally with an understanding of the effect.

Location of Activity Nodes

In conjunction with the site visit, the site planner can begin to prepare a schematic plan. The first step is to locate activity nodes. An activity node can be defined as a space devoted to a particular separate activity. There will be an activity node for the development itself, another for the associated parking, and one for the public access area. Generally the latter will be along or on the shoreline of the site. These nodes are generally roughly drawn on a map as circles or ovals (see drawing).

Figure __, Schematic Plan

Next, the site planner needs to consider linkages between the nodes based on how they relate to each other. For example, the parking node has a direct relationship to the building. It also may have a relationship to the public access node if public spaces are to be provided. The public access node will definitely link to the nearest public street and sidewalk.

Anti-links are incompatible nodes where no linkages exist. They exist between nodes where physical separation is desirable or even mandatory. Sometimes the anti-link may be safety based, such as at an industrial location or it may be based on aesthetics or privacy.

Identification of the nodes, links and anti-links may cause the site planner to reconsider the direction of the plan. Adjustment of the design may be required to achieve the desired relationships. The most desirable plan could be one that emphasizes the links while minimizing or eliminating the anti-links.

The fundamentals of public access provide the intent of the site planner. The first fundamental of public access applies to the links. Indeed their very function is to make the link user feel comfortable in the activity -- the visitor

should be encouraged to use the link, perhaps even be "drawn" along its course.

In contrast, fundamental No. 4 applies to the anti-links. They should be designed so the visitor is discouraged, perhaps even prevented from using them. If absolute safety is the dominate consideration the site planner may elect to specify a barrier such as a chain-link fence. At a less obtrusive level a simple sign or some landscape plantings may suffice.

It is not enough to consider just the "on site" nodes and linkages. Adjacent features that may impact the site plan must also be brought into focus. Is there a nearby public park that the public access should link to? Is there a nearby industrial site that it should not link to? The site planner, rather than the developer's architect, is responsible for considering these external factors. The architect is primarily concerned with the functionality and efficiency of the development itself - a consideration that is essentially driven by benefit-cost alone.

## THE DETAILED SITE PLAN - DESIGN CONSIDERATIONS

Once the schematic plan is developed, the task is to fit the detail to the concept. At this stage consideration is given to dimensional information that will influence the final design, such as sidewalk widths and gradients, stair widths, elevation differences, room needed for landscaping, rip-rap or retaining walls. The physical character of shorelines will play a large role in determining the public access design, and the design information contained in this book will be useful in this regard .

Figure __, Detailed Site Plan

### Picnic Areas

A picnic area requires about one acre for every 10 - 12 tables. Waterfront sites tend to be small, and will probably have only 1 - 5 tables. Inadequate spacing between tables will cause families/groups to feel they are "on top of each other." There should be a minimum of 1 car parking space per table. A better standard would be 1 - 2 parking spaces per table to allow for non-table users. The parking may be either on-site or streetside. Consideration should be given to whether parking should be reserved for the public access users as opposed to people living and working in the area.

A small shoreline picnic area can probably exist without public rest room facilities if it is located in a public (i.e. commercial) area where users can find facilities near by. A larger area will require a rest room facility.

Figure __ is a suggested floor plan for a small inexpensive restroom. It has capacity for a day use area receiving a peak day attendance to approximately 350 visitors.

Figure __,

Boat Launches

Small boat launches are typically built with one or two launch lanes. Separate facilities are sometimes provided for hand launching of car top or inflatable boats. There should be parking for up to 40 or 50 car trailer combinations per launch lane. A two lane boat launch with adequate parking will require approximately 4 acres of space. A launching facility of this size will also need rest room facilities of some kind. In some areas vault toilets like those used by the Department of Wildlife are sufficient. The small restroom facility in Figure __ would be adequate for a two lane boat launch.

Larger boat launches are usually done as part of major harbor/marina developments but generally will need to follow the same standards as a per lane basis.

Planning for vehicular traffic at boat launches is a challenge sometimes underestimated by shoreline access planners. It is easy to have traffic flowing the wrong way and have the trailer backing maneuver difficult for all but the most skilled drivers. The diagram in figure____ provides an optimum design which will place the car and trailer in the best position for easy backing by most drivers.

Figure ___,

A hand launch facility needs to have a low bank situation with the ability to park near the water. People should not be expected to carry boats more than a 100 feet or so. The carrying pathway should be free of obstructions, and of adequate width (about 8 feet minimum). The pathway should have a smooth even gradient which should not exceed 15 - 20%.

Walkways and Trails

Typical of shoreline public access sites are public walk ways and trails. These linear facilities require a minimum width and fairly flat gradients, unless provisions for stairs are made. Short public access walkways in urban settings are generally no different in design and construction problems than sidewalks. Longer walkways in rural settings are more like trails found in the mountains and state and national parks, and should be built to similar standards.

Figure __,

The right-of-way space for a public walkway should be not less than 10 feet in width. This allows for a 5 or 6 foot path and some space for small plant landscaping on either side. If the trail traverses a slope, extra space will be needed to accommodate cut and fill slopes, retaining walls and the like. The right-of-way should follow a grade no steeper than 14%. If it does, steps must be designed into the facility and may require more than a 10 foot right-of-way.

Bicycle Paths

Standards for bicycle paths have been well researched and published. Most bicycle paths are built with a hard paved surface; gravel is not usually a suitable surface. A bicycle path should have a minimum width of 8 feet with 10 feet a more suitable standard. Often a bicycle path will be paved with asphaltic concrete to a width of 10 or 12 feet because that is the width of most paving machinery and it is more economical to construct the wider path than it is to fuss with a narrow configuration. A bicycle path should not have long grades which are greater than 10%. A very short steep gradient section of up to 15% is acceptable but only if interspersed by flat sections.
Figure ___ illustrates the key acceptable standards for bicycle paths.

Figure __,

Handicapped Pathways

The design considerations for a handicapped pathway are similar to bicycle paths. Fourteen percent should be considered the maximum gradient and then only for short sections. The path should have a minimum width of 8 feet and should have a hard paved surface.

Benches

In a typical public access area benches will often be provided, so people can sit, rest and contemplate the view. A bench must be set back from the walkway so people will still have room to walk by when other people are using the bench. Generally a bench will need a minimum of six feet front to back space. It would be better to have 8 or 10feet. Benches may be built with or without backs. The former are the most comfortable for users, while the latter are the least expensive and easiest to maintain .

A typical bench may be 4 to 5 feet in length and require a 2 to 3 foot space front and back depending on where people's

legs might extend. Long benches are not recommended as they will not be effectively utilized. One user or user couple will occupy the bench and will tend to discourage other users, even though there may be physical space.

Figure ___,

Viewpoints

View points allow views of the shoreline without actually providing access to the water, although access may be obtained through ancillary facilities. Long-term view protection is of utmost importance, and the planner should seek scenic easements to assure view preservation (see model easement in Part III).

Some viewpoints, in a roadside situation where automobiles are the primary means of arrival, will require parking provisions. Some viewpoints will be little more than extra widening of a sidewalk to allow people to stand to the side. Many will include benches for resting and sitting, if space allows. Viewpoints often provide commanding locations for interpretive exhibits which relate to the view.

Parking, Roads And Turnarounds

Ingress, egress and parking of vehicles is one of the more space consuming, yet essential, aspects of any public access/recreation facility. In almost every case, a portion of a site's space will be taken up with automobile facilities. From a planning standpoint, it is important to have adequate facilities for cars without taking any more space for them than is needed. For a small public access site, adjacent curb side parking may be sufficient, but if the area attracts a large number of visitors then suitable off-street parking will be required.

The lack of parking opportunity should never be used as an argument for not providing public access. Use estimates and parking standards should be carefully considered, and final decisions based on parking for the desired use level.

A single vehicle parking space should be 9 feet in width and 24 feet in length. Some parking spaces will be as little as 8 feet wide, but there is not enough room to comfortably open doors. The other extreme, 10 foot wide spaces, are an unnecessary luxury with today's smaller cars, and remove a disproportionate amount of space from site activities.

Figure __,

Parking lots need careful planning to accomplish logical traffic flow and to provide adequate maneuvering room. Typical parking diagrams are included to show how spaces can

be arranged. Standards are also diagramed for turnarounds and other vehicular facilities. However, site topography and size may result in specialized parking arrangements which may challenge the site planner's skills. Generally a parking area should be on ground sloping no more than 5% although slopes of 10% can be tolerated.

Roads and parking areas are the least flexible elements of a typical public access or recreation site and should be incorporated in the early stages of planning. Sometimes the accommodation of vehicles will largely govern how a site is developed.

Stairways

Stairs are generally a problem, and should be avoided if there are any other feasible routing methods. They are generally more hazardous than walkways, are not accessible to many of the handicapped, and are difficult and costly to build.

However, any time a slope of more than 15% must be negotiated, steps or complete stairs will be needed. The safety and utility of a stairway will be determined by several factors including 1) the ratio of rise to run of the steps, 2) the width and 3) the presence or absence of railing. The installed heights of railings is shown in Figure ___.

Figure __,

First to deal with is the ratio of rise to run of the steps. There are three formulas which can be used:

1)

2)

3)

In any case the product is about the same. One important rule must prevail: all the treads and risers for a given flight of stairs must be consistent. It is **never** safe to change the height or width of the tread or of the risers mid-way in a set of stairs.

Viewing Towers, Bridges And Elevated Structures

Elevated structures,such as viewing towers and bridges, may afford unique opportunities in areas which would otherwise not be seen or are unsafe to visit at ground level. An example would be a working port area, where ship loading and unloading activity creates hazards. A viewing tower may provide of the working port area and provide interpretive information for the visitors.

Photo __,

Sometimes view opportunities may be unplanned. A bridge built for a different purpose, may unexpectedly provide a high level view. In this case the shoreline permit administrator needs great flexibility and visionary foresight to take advantage of the opportunity.

The basic concept is the same -- provide a high level viewpoint which offers an opportunity to look over some of the foreground clutter to see something of interest. In most instances, these situations will be found in association with urban water fronts.

The following diagrams provide design guidelines for these kinds of facilities.

Figure ___ Viewing Towers

Restroom Facilities

Public restrooms are important components of any significant public area. Very small viewpoints or picnic spots may not need restroom facilities if the length of visit is short and if there are existing public restrooms in the vicinity.

Figure __,
***INSERT FLOOR PLAN***

The standards included here are useful for the planner to follow in designing public access sites. A jurisdiction's local health/sanitation department may have standards that must be followed in providing restroom areas. Normally, at least one men's water closet and one women's water closet are required. Combined facilities are generally not accepted in this country at this time.

Toilet facilities must be connected to a sewer system, or have their own septic tank drain field systems. In some remote rural areas pit or vault toilets may be allowed.

The number of facilities is determined by estimates of the number of persons in attendance at one time, and referring to the following table.

****INSERT MATRIX TABLE******

Swimming Beaches and Related Facilities

Swimming/sunning beaches and wading pools are popular public access facilities. Generally, swimming beaches are relatively simple: a gently sloping sandy beach down to about 6 to 8 feet of water at a distance of 50 to 100 feet from shore. A swimming beach can be developed with a

floating boom to delineate the area, a diving platform, and a lifeguard station. If no life guard is provided, the area must be signed, cautioning users to swim at their own risk. In fact, the best strategy is to sign them as un-patrolled beaches rather than as swim areas. This lessens the liability and greatly reduces operating cost.
The following diagrams provide some guidelines for swimming beaches.

Figure __,

Interpretation

Interpretation facilities are our best means of public education about an area. They may be mainly pleasant at one site, but crucial at another, due to factors which much be understood if the site is to maintain its integrity.

Interpretation:

1) Provides an opportunity for the public to more fully enjoy the shoreline.

2) Provides an opportunity for the landowner/manager to present themselves in a medium which can be translated into support for future programs, favorable legislation and funding.

Shoreline public access sites are often outstanding opportunities for interpretation. According to Grant W. Sharpe, in his book "Interpreting the Environment" interpretation has three objectives:

"The first and primary objective of interpretation is to assist the visitor in developing a keener awareness, appreciation, and understanding of the area he or she is visiting. Interpretation should help make the visit a rich and enjoyable experience.

"The second objective of interpretation is to accomplish management goals. It can be done two ways. First, interpretation can encourage thoughtful use of the recreation resource on the part of the visitor, helping reinforce the idea that parks are special places requiring special behavior. Second, interpretation can be use to minimize human impact on the resource in a variety of ways.

"The third objective of interpretation is to promote public understanding of an agency's goals and objectives. Every agency or corporation has a message to convey. Well done interpretation favorably promotes the image of the agency that supplies it. If it is overdone, the message is labeled propaganda, rather than interpretation or public information." (Sharpe, 1982)

Shoreline access sites are places where people are naturally drawn, and they usually have interesting and varied

features. The goal of an interpretive program is to assist people toward a more comprehensive discovery and appreciation of the shoreland ecosystems.

The land-water interface provides one of the most interesting natural systems to study. The unique assemblages of aquatic and terrestrial life can be highlighted through the proper interpretive signage.

Photo __, Interpretive Exhibit

Interpretive programs can be basic or inclusive. Simple signs, guided nature walks, and/or self-guiding literature may all be included. Some information as to the effort necessary to maintain the site for public use can help visitors to develop a greater sense of personal responsibility for public welfare. The shoreline public access planner needs to explore interpretive opportunities with individuals who are interpretive experts.

Landscaping

Public access areas will normally be landscaped to some degree. Landscape design helps make to them more attractive, provides screening and separation of use areas and facilitates maintenance. Sometimes, however, the preservation of natural vegetation and the shoreline configuration is preferable to yielding to the landscape architect's fantasy. It is important for the planner and the governing body issuing the shoreline permit to determine if natural values are to be preserved or if artificial landscaping is allowed.

Landscape plantings may serve a dual role. In addition to creating a visually attractive setting, vegetation can be used as a means to reduce extraneous noise (Cook et.al. 1977), or to provide screening and space separation.

Following are some measurements and guidelines which will help the planner determine landscaping needs.

**Ground Covers:** Ground covers generally grow to a height of not more than 12". Individual plants will spread a distance of 2 to 10 feet.

**Shrubs:** An allowance of 1-1/2' to 10' in spread and mature heights of 6' to 20' should be allowed for individual plants.

**Trees:** Adequate growing space will depend on the species. Generally conifers will take up less horizontal space (about half the height), while deciduous varieties will spread to equal or 1-1/2 times the height. Native conifers, such as Douglas-fir, hemlock, and cedars, grow to a height of 150 to

250 feet at maturity, although the life of a project could well be extinct by the time this growth could be achieved. On a good site a height of 80 feet or so for a Douglas-fir within 30 years or so should be planned. Native deciduous trees such as alders, and maples will grow to mature height more quickly, but their life span is much shorter. For example, do not expect a healthy life of more than 25 to 30 years for an alder.

The introduction of exotic species into shoreline areas must be carefully weighed. Certain grasses, flowers and shrubs can quickly take hold and become dominant over native species. The proliferation of Scot's broom (*Cytisus scoparius*) is an example of good intentions run amok. Although ivies can quickly beautify a particular area, they can lead to the decimation of the native flora, and subsequently the fauna.

Figure __,

Signs

Public access signs should be placed so the visitor will be headed in the direction of the access point when facing the signs. They will be needed on major highways and roads to provide advance warning and direction to public access sites. These signs should be installed in conformance with the Uniform Traffic Code and will usually be the responsibility of the state, county or city highway departments. The local parks and recreation departments or shoreline administrator should provide the appropriate specifications and recommendations for the installation of these signs.

Normally such signs are installed in advance of the turn and at the point of the turn. Additional signs may be needed as reassurance at junctions and other locations where confusion as to route may exist.

In determining the requirements for these signs, the significance of the access site should be kept in mind. It is not logical to have a series of signs leading to a minor street end, but it would be appropriate to direct people to a major facility such as a public park.

A companion publication, "Shoreline Public Access Sign Manual," has been prepared by the Department of Ecology to provide more specific guidance to those who wish to sign public access sites.

Photo ___,

Floats, Docks, and Other Water Access Facilities

Floats, docks, decks, piers, pedestrian ramps and the like are common shoreline public access facilities. There are several items to consider, when designing these kinds of facilities:

1) Floats need to be anchored in place by piling. In most installations, a metal ring is used to fasten the float to the piling, although the piling may be placed through a hole in the middle of the float. Either arrangement allows the float to rise and fall with the water level.

2) In some instances, a fixed pier may be installed instead of a float. Piers are common as platforms for fishing and are not normally suitable for boating facilities unless the water level is stable as on a lake.

Normally a water level float requires no hand rail, but a fixed pier may if it is more than 2 feet above the water surface. The rail should be built to building code standards.

Floats may be constructed of hollow concrete vaults, or may be build with foam flotation cells under a wooden deck.

*********photos*******

Promenades

******Provide info******
Photo __,

ESTIMATING POTENTIAL USE

Much has been written about factors that cause an ever increasing demand for recreational opportunities. As long as population continues to increase, the bottom line of these studies is that demand will outstrip supply. The ability to fund and build facilities always seem to lag population growth.

Demand factors are, therefore, only of limited value to the public access site planner. What is important is determining the inherent attractiveness and capacity of the site itself to accommodate people and to develop the best design to optimize public use of the site.

The use guidelines in this section will help the site planner determine the site's capacity and make the capacities of the plan elements consistent. Determining the attractiveness of the site and its subsequent ability to draw visitors is more difficult. Attractiveness is partially due to the natural conditions and partially due to the man made features.

The number of visitors a site can handle is estimated by the instant load capacity, which is determined by the number and kind of facilitites provided. If annual use estimates are needed then the instant load capacity must be adjusted by a daily turn over factor and by a peak day attendance factor.

Estimates are made for each facility. The number of facilities in a given site is determined by the space requirements.

Space Requirements

The space requirements are intended to be use as guidelines and should be adjusted up or down in accordance to the site's features.

Picnic Tables : An average picnic table will require .10 acre of space. This provides for the picnic table itself and buffer/separation from the next table or facility. If the picnic table is to have a barbecue grill or fire pit the space requirement is .15 acre.

Trail : A trail or pathway will require a "right-of-way" of not less than 10 feet on flat ground. This figure must be adjusted upward on sloping ground. This requires .23 acres per 1,000 feet of trail.

View Point : A view point will normally consist of a rest bench or its equivalent space which is about 25 feet by 25 feet. This may vary significantly depending on the site's topography and other features.

Boat Launch: a single lane boat launch with support parking and buffer space will require 2 - 3 acres as long as the parcel is shaped for an efficient design. Figure __ is a typical one lane boat launch plan and requires _____ square feet of the indicated shape.

Figure __, One Lane Boat Launch

Interpretive Signs and Exhibits -- an interpretive sign and the space needed around it will take about .05 acre.

Swimming Beach : A typical swimming beach should be no more than 200 feet in length, and will require about 1 acre of upland support area. In addition, space will be needed for a bathhouse/changing room.

Other facilities : Space requirements can be estimated by measuring the actual dimensions of the facility, adding space for walkways to and from the facility and adding some space for buffer and separation.

All facilities : Space requirements are site specific and do not include support parking or access roads. Each facility has support parking requirements which can be estimated by the instant load capacity; parking should provide for 80 to 90 percent of this. A useful rule of thumb for determining the number of parking stalls is to figure an average of 3.5 users per car.

Converting Instant Load Capacity To Daily And Annual Use

Peak Day Attendance is defined as the number of visitors that will use the facility on an average peak day. For summer activities, peak days will be weekends and holidays during the Memorial day to Labor Day period. There are 36 of these days. Generally about 50% of the total summer use will occur on these days.

For typical seasonal shoreline activities, 75% of the annual use will occur in the summer. For some activities such as shoreline nature study, there may not be a great difference between summer and winter use, and as much as 50% of the use may occur in the winter season. (for these purposes winter is considered anything other than the above defined summer season) For very specialized activities the actual use season may be very specific and defined, such as fishing (defined by legal seasons) or migratory bird viewing (defined by nature).

Instant Load Capacity And Daily Turnover

Picnic table : 3.5 visitors per table. A single picnic table will be used by more than one group in any day, for an average daily turnover of 1.3.

Swimming beach : 400 people per average beach unit (200 feet of beach) The daily turn over factor at a swimming beach is about 3. This is based on a peak period of 4 hours and an average stay of about 1.5 hours.

Boat Launch : Figure 4 to 8 boats per hour per launch lane at peak capacity. The peak period for active boating, such as water-skiing, will be about 3 to 5 hours mid-day. For activities such as fishing, the peak periods may be morning and evening. Generally count on two hours in the morning and two hours in the evening. At full capacity a single lane boat launch will handle 30 to 40 boats in a day.

Pathways/Trails : Use will vary from as little as 4 people per mile in groups of 2 to 4 to as much as 20 people per mile, also in groups of 2 to 4 with occasional larger groups. A single peak day of use will range from 16 to 160 people per trail segment.

View Point Interpretive Display : a typical view point interpretive display can accommodate one or two groups of 2 to 4 people at one time. However, the turn over factor will be high because the visit will be relatively short (maybe 2 - 5 minutes). A view point interpretive exhibit may have a peak daily attendance of 150 to 300 people if it is an active and popular area. If the area is passive, with just an outdoor sign, it may see a peak day attendance of no more than 10 to 20 people.

ECONOMIC ANALYSIS

The economic feasibility of providing public access is a factor that the shoreline permit administrator has to consider. For example, a developer may argue that the expense for a public access is not warranted in light of the anticipated use. The responding argument can be that, even though a strict benefit-cost analysis is not positive, public access is warranted due to mitigation requirements. The public access requirement should be considered as a measure to mitigate shoreline impacts caused by the development.

Benefit/Cost Analysis

Sometimes, a recreation site planner is called upon to show that a project has a positive benefit/cost ratio. Usually a public access facility provided as a condition on a shoreline permit will not need to "stand alone", and even with a low B/C ratio, the facility would be justified to offset the loss in public access that would otherwise occur. However, it may be useful to determine which one has the most benefits per unit of cost, even though the ratio may be less than one.

A benefit-cost analysis requires that an estimate of attendance be made, a value be placed on the attendance and a calculation as to present day amatorized cost be made.

There have been a number of research papers written on economic evaluation of recreation sites and the general conclusion is that the process is imperfect at best. However the following procedure can be used if benefit-cost analysis is indicated:

1) Determine benefit factors

The value placed on recreation activities depends upon the specific activity, but it is necessary to assign values in order to determine the total value of the estimated annual visitation.

a) General activities, which require the development of relatively simple facilities and do not require much individual user cost to enjoy, are valued at the lowest rates. These activities are walking, hiking, beachcombing,

nature study, picnicing, sightseeing and the like. These activities should be valued at $2.00 to $6.00 per user day.

b) Moderate activities are those that require some facilities and require a moderate expenditure by the individual users in order to participate. These are activities, such as non-power boating (except large boat sailing), small power boating, fishing and camping. These kinds of activities should be valued at $8.00 to $12.00 per user day.

c) Specialized activities are those where opportunities for participation are limited, may require elaborate facilities and usually involve large personal expenditures on the part of the users. This list of activities includes, power boating (cruising), specialized nature photography, motor home camping, white water boating, and the like. The values placed on these kinds of activities should range on the order of $15 to $30 per user day.

NOTE: In applying these factors, the mid-point range can be used or the value can be adjusted to reflect the individual situation.

2) Determine Annualized Cost

Annual costs are aggregated by totaling the following items:

1) An across-the-board 3% of development cost for annual maintenance.

2) $0.50 per annual visitor for operation.

3) A 25 year amortization-depreciation schedule (.05743 times the total development cost.

3) Determine the benefit-to-cost ratio, The ratio is determined by dividing the benefits by the annualized cost.

<u>Evaluation of the Benefit-to-Cost Ratio</u>

In analyzing the benefit-cost ratio of any project, the total annual cost should be less that the total annual benefit. Considerable allowance should be made for professional judgement regarding the value of the recreational activities and the quality of the experience. Care must be taken in compiling these figures. Situations which approach a ratio of 1 to 1 must be closely studied as minor errors in judgement can result in unfounded decisions.

A benefit cost ratio that is well over 1 to 1 indicates the project by itself is economically feasible in terms of the monetary value it can return. A ratio of less than one to 1 indicates an economically infeasible project. 1 to 1 is the break even point.

On shoreline access sites, there is usually no need for the public access elements to stand alone economically. In certain cases negative benefit-cost ratios may very well be justified. The most useful application of this procedure

will be to evaluate alternative expenditures for public access and perhaps choose the one that will give the greatest return, although it is below the break even point.

The main deficiency of this entire process is the inability to assign value to the intangible benefits of having a public access/open space. In most instances these kinds of facilities add considerable value to a development and to the neighborhood -- value that can be measured in terms of recreation visits.

## PART III
## PERMIT ADMINISTRATOR'S GUIDELINES

This part of the Handbook provides models for policies, ordinances, regulations and other documents, which are useful in administering the Shoreline Management Act. The principle document that expresses policy is the Shoreline Master Program.

The master program is prepared by a local jurisdiction and adopted by the Department of Ecology. It provides the frame work for issuing shoreline substantial development permits and conditioning them for public access. The master program is usually supplemented by implementing ordinances, and zoning and building codes may provide additional enforcement measures.

### SHORELINE PUBLIC ACCESS MODEL PROVISIONS

The model master program provisions for shoreline public access are an aid to local decision makers in their administration of shoreline substantial development permits.

A local government should incorporate these or similar model provisions in its master program; some or all of the provisions should be then adopted as implementing ordinances. Ordinances provide the strongest base for enforcement.

The set of provisions presented here result in comprehensive treatment of public access. In some instances alternative language is offered, which may apply to a particular local situation. Provisions which are substantially altered from those set forth here should be approached very cautiously, as Ecology's approval may be more difficult to obtain.

#### General Public Access

**Public access:** An unobstructed access available to the general public. On shorelines, this will be from the land to the ordinary high water mark (OHWM) or to the wetland

directly abutting the ordinary high water mark. This includes access to tidelands (marine waters) and to the navigable waters of any water body.

**Limited public access** : Restrictions on access that are deemed necessary to the health, safety or welfare of the public OR for the protection and maintenance of the particular site.

Restrictions may delineate times or allow access to only certain groups of people. This situation may be foundon tidelands used for shellfish production or in a private community. [The limitation to restrict access to residents of a certain community may not be based on race, sex, color or creed.]

Certain restrictions result in the development of sites which provide visual access only.

Regulations

Most master programs, drawn by local jurisdictions, provide general regulations which apply to all developments. The following provisions are exemplary of general access requirements.

1) No development shall block or interfere with the normal public use of or public access to publicly-owned shorelines and water bodies.

2) All developments shall be designed to protect and enhance views and visual access to the water and shorelines.

3) All developments, located along public or unique shoreline areas, whether recreational, residential or commercial, may be required to provide public accessways, view corridors, trail easements or other amenities.

4) Any required public access easement shall be of a size and design appropriate to the site, the size and the general nature of the proposed development. Easements shall be recorded on the property deed or on the face of the plat as a condition running in perpetuity with the land.

5) Required amounts of access

Alternative A

When required, easements for public access shall be of a size and design appropriate to the site, size and general nature of the proposed development.

Alternative B

When required, public access easements along a shoreline shall be a minimum width of thirty (30) feet measured from OHWM.

Alternative C

When required, public access easements along shorelines shall be a minimum width necessary to accommodate a trail which will not damage stream banks or other shoreline features.

6) Signs which indicate the public's right of access shall be installed in conspicuous locations at required public access sites and maintained in good order.

7) Public use may be limited to daylight hours.

8) As far as possible, public access sites shall have direct and easy access from the street or the nearest public thoroughfare.

9) Public access may be considered infeasible and not be required where:

a. Unavoidable hazards to the public result from gaining access;

b. Inherent security requirements of the use cannot be satisfied;

c. Unavoidable interference with the developed use would occur;

d. The cost of providing the access is unreasonably disproportionate to the total cost of the proposed development; or

Where public access is not conditioned because of one or more of the above factors, a payment in lieu of conditioning may be required before the permit is granted. [Such payments would best be directed towards a general public access fund to support established areas or to acquire extensions.]

10) Public access to the shoreline shall be required on all public property, except as follows:

a. In harbor areas completely occupied by water-dependent uses; or

b. In street ends or waterways occupied by water-dependent uses under permit or lease.

11) Public access shall be required on private property for all non-water-dependent uses on waterfront lots which are:

a. Non-residential; or

b. Developed as a planned unit development; or

c. Exclusively residential developments containing four (4) or more units having one hundred (100) or more feet of shoreline. [The values in this provision will vary according to the jurisdiction's needs.]

12) Required public access sites shall be fully developed and available for public use at the time of occupancy of the development.

13) A public access area must contain:
a) A pedestrian pathway of suitable surfacing and standards to meet the intended purpose;
b) Adequate signage to inform the public of the access;
c) Design features and landscaping to bring the facility into harmony with the shoreline setting;
d) Facilities designed to meet the anticipated use, including use by disabled persons.

Use Specific Regulations

If a local master program provides use designations, or resource based categorization, the following regulations should be incorporated.

**I. Agriculture:** All methods of livestock, crop, vegetation and soil management. The SMA exempts normal agricultural practices from substantial development permit requirements.

Although conditioning of a permit to allow public access is not, therefore, an alternative, cooperative arrangements should be encouraged between farmers and public recreation agencies. There are often many opportunities for the public to enjoy scenic and/or historic values without creating a conflict with the normal operation of the agricultural pursuit.

**II. Aquaculture** : The farming or culturing of finfish, shellfish, or other aquatic plants and animals in lakes, streams, inlets, estuaries and other natural or artificial bodies of water.

Due to recent technological advances, the potential of aquaculture has increased enormously. However, there are many perceived conflicts in the use of water resources, and the issue is extremely sensitive. Most aquaculture facilities permitted at this time are the traditional intertidal sort, are relatively small, and are not conducive to public access. Larger facilities and those that may be subtidal must be reviewed on a case by case basis.

Policies

1) Areas with high aquaculture use potential should be identified and protected from degradation by other types of land and water uses.

2) Aquaculture practices should not unreasonably interfere with established public use of the water and shorelines.

3) Proposals for aquaculture activities should minimize adverse impacts on the area's aesthetic values and views from upland properties.

Regulations

1) In areas where aquaculture interests are established and constitute a preferred water dependent resource, site boundaries shall be marked so public use of the surrounding waters and upland can occur without interfering with the operation.

2) The location of aquaculture developments or activities shall minimize view blockage from adjacent uplands.

3) The location of intertidal aquaculture structures used for hanging culture on publicly owned beaches, such as pilings and intertidal foundations, shall not unduly restrict pedestrian circulation between such structures. To facilitate public access to the upland areas, either physical or visual, they shall be located between the mean tide level and extreme low tide whenever feasible.

4) Floating and submerged aquaculture structures:
a) Shall not unduly restrict navigational access to waterfront properties or interfere with general navigation lanes and traffic.
b) Shall be located waterward of the minus three (3) feet beyond extreme low tide, whichever is further offshore.
c. Shall remain shoreward of principal navigation channels.

5) To allow public use of the navigable waters, all floating aquaculture systems shall be marked for day and night visibility in accordance with U.S. Coast Guard requirements.
[Other restrictions on the scale of aquaculture activities to protect navigation may be necessary based on the size and shape of the affected water body.]

6) All aquaculture proposals shall include mention of public access potential, and shall endeavor to provide some form of access to the public, if at all feasible.

**III. Forest Practices** : Activities related to the growing, harvesting or processing of timber. They do include road building and maintenance, but do not include log storage. [Log storage is considered as an industrial use.]

Policies

1) Shorelines having outstanding scenic qualities should be left in a substantially natural condition. Timber harvest in such areas should be limited to selective cutting which protects scenic views, and logging roads which destroy scenic values should not be permitted.

2) All roads which have been permitted near streams and road crossings of streams should be designed to provide maximum opportunity for public access to the streams.

Regulations

1) Outstanding scenic areas shall be provided with at least visual access through the provision of roadside pullovers or broadening of road shoulders.

2) Roads at stream crossings shall provide wide shoulder parking and appropriate pedestrian access to the stream.

3) Roads which are located within close proximity to streams shall be constructed, if feasible, with wide shoulder or off road parking and associated pedestrian access opportunity to the stream edge.

**IV. Mining** : The removal and primary processing of naturally occurring minerals from the earth for economic use.

Policies

1) Mining should not be allowed in unique and fragile areas, in prime agricultural areas or on marine beaches.

2)Mining operations should minimize adverse visual and noise impacts on surrounding shoreline areas. They should provide safe visual access to shoreline areas when it is not possible to provide physical access.

Regulations

1) Mining operations adjacent to developed residential property, public parks, public shorelines and accesses and along streams, lakes and marine shorelines shall be obscured by a screen of compatible, native, self-sustaining vegetation. Screening and buffer vegetation shall be planted at the time of excavation or as soon thereafter as possible so as to be established within one year of

commencing operation. Such screening shall be maintained in good, effective condition at all times.

If vegetative screening is not possible, the planning department may require artificial screening or fencing to suit the site, operations and shoreline area.

**V. Boating Facilities**

**Marina** : A water-dependent facility that provides wet and/or dry moorage for over ten to fifteen (10-15) boats, boat launching facilities and supplies and services for small commercial and/or pleasure craft. There are two types of marinas, backshore and foreshore.

**Backshore marina** : Located landward of the OHWM.
Wet moorage - requires a basin and entry to water dredged out of the land
Dry moorage - has upland storage with a hoist, marine railway or ramp for water access.

**Foreshore marina** : Located in the intertidal or offshore zone. May require breakwaters of open-pile, floating or solid constructions, depending on location.

**Boat ramp** : Construction of concrete or other material which extends onto the tidelands for boat launching.

**Marine railway** : Pair of sloping railroad type tracks, extending from the shore into the water and used to launch watercraft.

**Mooring buoy** : An anchored floating device for the purpose of securing a water craft.

Policies

1) Boating facilities should be located and designed so their structures, other features and operations will be aesthetically compatible with or will enhance the area visually affected. They will not unreasonably impair shoreline views.

2) Marina facilities should be designed to accommodate public access and enjoyment of the shoreline locations, including provisions for walkways, view points, restroom facilities and other recreation, according to the scale of the facility.

3) Alternative A
Marinas and public launch ramps should be located, designed and operated so that neighboring water dependent uses are not adversely affected.

Alternative B
Marinas and public launch ramps shall be designed so that existing or potential public access along beaches is neither unnecessarily blocked nor made dangerous. Public use of the surface waters below the ordinary high water mark will not be unduly impaired.

4) Accessory uses at marinas or public launch ramps shall be limited to those which are water-dependent, necessary for marina operation or which provide physical or visual shoreline access to substantial numbers of the general public. Accessory uses shall be consistent in scale and intensity with the marina and surrounding uses.

Regulations

1) Provisions for public access, both visual and pedestrian, shall be an integral part of all marina development and designed to be aesthetically compatible with adjacent areas and commensurate with the particular proposal. Examples include artificial pocket beaches created by foreshore defense structures, pedestrian bridges to offshore structures, fishing or viewing platforms, and underwater diving and viewing platforms.

2) Boat launches and marina entrances shall not be located near valuable commercial fishing areas or beaches commonly used for swimming.

3) Marine railways and boat ramps for launching shall be located on an existing grade where feasible and shall not obstruct access to or along the shoreline.

4) Alternative A
Views from upland lots shall be preserved. Viewpoints or viewing areas shall be provided by the developer so the public can observe marina activity.

Alternative B
View corridors of not less than thirty-five (35) percent of the width of the lot shall be provided. One-half of the requirement may be satisfied by an abutting street or waterway.

5) Parking requirements shall be necessary. Each public or quasi-public launch ramp will provide, for each ramp lane, at least ten (10) car and trailer spaces that measure at least ten (10) feet by forty (40) feet.

6) All marinas shall provide restrooms for boaters' use. They shall:

a. Be located within two hundred (200) feet from the dock or pier;

b. Have one (1) toilet and hand washing facility for each sex per fifty (50) moorage sites;

c. Have signs posted so that the restrooms are easily identifiable.

d. Be kept in clean working order at all times.

7) Swimming shall be prohibited within marina facilities unless the swimming area is adequately separated and protected.

8) Space for transient moorage shall be provided.

9) Where ramps are permitted, parking and shuttle areas shall not be located on accreted shore forms which are scarce and have high value for general recreation.

**VI. Commercial Development** : Those facilities involved in wholesale or retail service and/or business trade. They range from small businesses within residences to high-rise office buildings. Hotels, motels, grocery markets, shopping centers, restaurants, shops and private or public indoor recreation facilities are included. Excluded from this category are residential or recreation subdivisions, boating facilities and port and industry.

Policy

Alternative A
Proposed development must be compatible with, and not preclude, permitted water-dependent or water-related uses of the shoreline or public access to the water.

Alternative B
All resorts and commercial recreational developments shall provide adequate public access to the shoreline and water areas. Other commercial developments shall provide public access to the shoreline unless it is demonstrated to be infeasible or unsafe.

Regulations

1) All commercial use developments on shorelines of the state shall provide general public access to the water's edge.

2) Only those commercial developments that are water related or water dependent shall be permitted upon a shoreline location, EXCEPT when:

(a) The proposed site's topography, surrounding land uses, physical features or separation from the water make it unsuitable for water-dependent or water-related uses;

(b) The proposed use will not interfere with adjacent water-dependent uses and does not usurp land currently occupied by a water-dependent use; and/or

(c) the proposed use will be of appreciable public use, enjoyment or access to the shoreline.

**VII Piers, Wharves and Floats** : Structures which abut the shoreline, extend over the water and are used as a landing or moorage place for watercraft or as access over the water for public use, such as fishing. [ Those which provide moorage for more than 10-15 watercraft are considered marinas, and are regulated under marina stipulations.]

Piers and docks are fixed platforms above the water, perpendicular to the shoreline. A wharf is a fixed platform which runs parallel to the shoreline. Floats may or may not be attached to the shoreline proper, but are free to rise and fall with water levels.

Policies

1) Piers, wharves, and floats should be designed to cause minimal interference with public use of the water and the shoreline. Whenever possible the design should enhance public access.

2) Multiple use and expansion of existing facilities should be encouraged over the proliferation of new facilities. New projects should clearly evidence public benefit.

3) Use of pier, wharf, and float projects to provide for public and recreational access is encouraged, unless such use is incompatible with commercial water-dependent use.

Regulations

1) Alternative A

Piers, wharves and floats shall be consistent with the following criteria:

a) Important navigation routes or marine-oriented recreation areas will not be obstructed or impaired;

b) Views from surrounding properties will not be unduly impaired;

c) Ingress-egress as well as the use and enjoyment of the water or beach on adjoining property will not be unduly restricted or impaired;

d) Public use of the surface waters will not be unduly impaired.

Alternative B
Piers, wharves or floats shall be located, designed and constructed so as to cause minimum interference with navigation and public use of the water surfaced and shoreline, and so as to cause no undue harm to adjacent properties.

Specific Reference to Non-commercial/Industrial Piers, Wharves and Floats

1) Alternative A
Subdivisions shall be required to provide community docks. The development of piers or docks on individual lots shall not be permitted unless the site does not allow a community facility of sufficient size to serve all the residents of the subdivision.

Alternative B
Community docks and piers shall include no more than one (1) moorage space per dwelling unit or lot. [or: One moorage space for each twenty (20) feet of waterfront up to two hundred (200) feet plus one moorage for each additional ten (10) front feet.]

Alternative C
Piers and docks for use by the general public shall include no more than one moorage for each ten (10) feet of waterfront up to two hundred (200) front feet plus one (1) moorage for each additional five (5) front feet.

2) Proposals for community piers and docks shall demonstrate that adequate maintenance of the structure and the associated upland area will be provided.

3) All recreational piers and docks which are intended for use by the general public shall comply with the following regulations:

a) An adequate number of approved solid waste containers shall be located conveniently for boater utilization.

b) The dock facilities shall be equipped with adequate lifesaving equipment such as life rings, hook and ropes.

c) Every facility shall be maintained in good repair and free from safety hazards.

d) Marine toilets are not to be used at moorage unless these toilets are self-contained or have an approved treatment device. Signs stating this shall be posted where they are readily visible to all boaters.

4) Community and public recreational piers and docks may be required to provide facilities for dumping holding tanks. [This issue will probably be more prominent in the future, and long-range vision should be applied to this matter.]

**VIII Ports and Industrial developments** : Public or private enterprises providing services and facilities for waterborne commerce, airborne commerce and industrial development dependent upon waterfront locations. facilities for processing, manufacturing and storage of finished or semi-finished goods.

Policy

New development, particularly public ports, should be encouraged to provide physical or visual access to shorelines and visual access to facilities, whenever possible and when such access does not cause interference with operations or hazards to life and property.

Regulation

Ports and water-dependent industry shall provide public access to the shoreline and/or provide opportunities for public viewing of the industrial activity whenever practical and safe.

**IX Recreational development** : Opportunities for the refreshment of body and mind through forms of play, sports, relaxation, amusement or contemplation. It includes facilities for passive recreational activities, such as skin diving, hiking, canoeing, kayaking, sailing, photography, viewing and fishing. It also includes facilities for active or more intensive uses such as parks, campgrounds, golf courses and other outdoor recreation areas. This section applies to both publicly and privately owned shoreline facilities intended for use by the public or private club, group or association.

Activities such as boating facilities, second home subdivisions, motels and resorts are excluded from this category.

Policies

1) Recreational developments should be located, designed and operated to be compatible with and minimize adverse impacts on environmental quality and valuable natural features as well as on adjacent and surrounding land and water uses.

2) Recreational developments should be designed to preserve, enhance or create scenic views and vistas. Favorable consideration should be given to those projects that complement their environment.

3) The coordination of local, state and federal recreation planning should be encouraged.

2) Shoreline areas with a potential for providing recreation or public access opportunities should be identified as such and obtained by lease or public purchase.

3) A variety of recreational experiences and activities should be encouraged to satisfy diverse recreational needs and demands.

4) The location and design of shoreline recreational developments should relate to local population densities, characteristics and special activity demands. These factors, as well as the possible need for public transit access, must be considered early in acquisition planning.

5) In approving shoreline recreational developments, the city/county shall ensure that the development will maintain, enhance or restore desirable shoreline features. Such features include unique and fragile areas, scenic views and aesthetic values.

To this end, the local jurisdiction may make specific stipulations as to the method and means of development (adjust and/or prescribe project dimensions, location of project components on the site, intensity of use, screening, parking requirements and setbacks, etc.)

6) The development of smaller, dispersed recreation areas should be encouraged to avoid undue pressure on popular points along the shoreline, particularly at fishing streams and in hunting areas.

7) The linkage of shoreline parks, recreation areas and public access points by linear systems, such as hiking paths, bicycle paths, easements and/or scenic drives, should be encouraged.

8) Non-intensive recreational uses should be encouraged on floodplains that are subject to recurring flooding.

9) Artificial reefs should be encouraged in order to provide increased marine life for recreational enjoyment.

10) Artificial reefs shall not contain materials toxic or otherwise hazardous to humans or fish and wildlife.

11) Underwater parks and artificial reef established in cooperation with state agencies shall include safety provisions to warn boating traffic of their location.

12) Accessory use facilities, such as restrooms, recreation halls and gymnasiums, commercial services, access roads and parking areas shall be located inland from shoreline areas, and shall be linked to the shoreline by walkways. Facilities which are shown to be water-dependent or water-related may be excepted.

13) No recreational buildings or structures shall be built over water.

14) The use of off-road vehicles is discouraged in all shoreline areas EXCEPT where special areas have been set aside for this purpose.

15) Recreational developments shall provide facilities for non-motorized access to the shoreline, such as pedestrian, bicycle and equestrian paths.

16) Proposals for recreational developments shall include a landscape plan. Native self-sustaining vegetation is preferred.

17) The removal of on-site native vegetation shall be limited to the minimum necessary for the development of campsites, selected views or other permitted structures or facilities.

18) Proposals for recreational development shall include lands for sewage disposal. Where treatment facilities are not available, the appropriate reviewing authority shall limit the intensity of the development to meet city, county and state on-site sewage disposal requirements.

19) Restroom and shower facilities associated with swimming beaches shall not be located within the shoreline 200-foot zone except when these facilities are of vault type construction or connected to a properly constructed and maintained sewer system. In these cases such facilities may be located in the 200-foot zone, but shall be no closer than one hundred (100) feet from the ordinary high water mark.

20) In low intensity recreation use areas, roads allowed within two hundred (200) feet of the line of ordinary high water shall be single lane and located no closer than one hundred (100) feet to ordinary high water.

**X Residential Development :** One or more buildings, structures or portions thereof which are designed and used as an abode for human beings. Included are single or multifamily residences, row houses, mobile home parks, and

other group arrangements of homes. Also included are accessory structures, such as garages, tennis or swimming facilities, sheds, parking areas, etc.

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Exemptions

The Shoreline Management Act exempts single family residences from the need for Substantial Development Permits, providing the residence is built by the owner, lessee or contract purchaser for this own use or the use of his family, and the residence does not exceed a height of 35 feet about average grade level. Although single family residence ore exempt, compliance with the prohibitions, regulations and development standards is still required.

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Policies

1) Residential developments should be designed so as to protect water quality, shoreline aesthetic characteristics, view and normal public use of the water.

2) Residential developments should be encouraged to provide public access to the water in a manner which is appropriate to the site and the nature and size of the development.

3) Residential development on shorelines of statewide significance shall provide general public access to the shoreline.

4) Multi-family residential development on shorelines of the state shall provide access to the shoreline for residents of the community. In some instances general public access may be desirable and preferable.

Regulations

Existing master programs have taken a variety of approaches to the requirement for public access in residential areas. Variations are commonly based of the type of development covered (single family versus multifamily), the type of shoreline (regular versus Shorelines of Statewide Significance) and the amount of open space required. The following examples are intended to illustrate the range of variation.

1) All residential structures, accessory uses and facilities shall be arranged and designed so as to preserve views and vistas to and from shorelines and water bodies and be compatible with the aesthetic values of the area.

2) New residential subdivisions on Shorelines of Statewide Significance shall provide a pedestrian easement along the shoreline for public use.

3) New multifamily developments will be permitted only if public access to and along the water's edge is provided.

4) Alternative A
New residential subdivisions (option: containing five or more lots) shall provide public access to publicly owned shorelines and water bodies;

Alternative B
New residential subdivisions (option: containing five or more lots) shall provide a community recreation and open space area along the shoreline. Easements for public access may be granted by the developer;

Alternative C
New residential subdivisions (option: containing five or more lots) shall include pedestrian easements for public access to the water if adequate public access does not presently exist in the area. and,

5) New residential subdivisions (option: containing five or more lots) shall Usable open space, located so as to also provide substantial visual access to the water.

**XI Transportation Facilities** : Those structures and developments that aid in the movement of people, goods and services across land and water surfaces. They include roads and highways, bridges and causeways, bikeways, trails, railroad facilities, ferry terminals, airports and other related facilities.

Policies

1) Public trail and bicycle systems should be encouraged along shorelines to the maximum feasible extent.

2) Abandoned or unused road or railroad rights-of-way which offer opportunities for public access to the water should be acquired and/or retained for such use.

3) City and county road and street ends abutting bodies of water shall be reviewed for potential use and development for public access to the shoreline.

Regulations

The following regulations apply to shoreline road ends:

a) RCW 36.87.130 prohibits counties from vacating any road which abuts a body of salt or fresh water except for port purposes, boat moorage or launching sites, or for park, viewpoint, recreational, educational or other public purposes, unless the area is zoned Industrial.

b) RCW 35.79.035 prohibits a city or town from vacating any road which abuts a body of salt or fresh water unless the street or road is not currently used or suitable for use as a port facility, beach or water access purposes, boat moorage or launching sites, or for park, viewpoint, recreational, educational or other public purposes.

**XII Utilities :** Services and facilities that produce, transmit, store, process or dispose of electric power, gas, water, sewage, oil, communications, etc. Solid waste disposal facilities are not included.

Policies

1) Public access consistent with public safety should be encouraged in utility corridors.

2) Utilities structures and corridors should be designed in such a way as to offer maximum protection to scenic views.

Regulations

1) Utility development shall, through coordination with local government agencies, provide for compatible, multiple use of sites and rights-of-way. Such uses include shoreline access points, trail systems, and other forms of recreation and transportation, providing such uses will not unduly interfere with utility operations, endanger public health and safety or create a significant liability for the owner.

2) Where major facilities must be placed in a shoreline area, the location and design shall be chosen so as not to destroy or obstruct scenic views. Facilities shall be placed underground whenever possible.

**XIII Shoreline Modifications**

**Breakwaters:** Protective structures, generally built offshore to protect harbor areas, moorages, navigation, beaches and bluffs from wave action. They may be fixed, open-pile or floating.

**Jetties:** Structures generally built singly or in pairs perpendicular to the shoreline at a harbor entrance or river mouth to prevent shoaling and accretion of littoral sand drift. They also protect channels and inlets from cross-currents and storm waves.

**Groins :** Wall-like structures built seaward of the shore to trap littoral sand drift and cause accretion of beach areas.

Policies

1) Breakwaters, jetties and groins should not interfere with public access to publicly owned shorelines, and navigational use of the water surface.

2) Breakwater, jetties and groins should provide public access or multiple use opportunities to increase public use and enjoyment of the shoreline as long as it is safely compatible with the primary purpose.

3) Protection of the area's biological, geological and aesthetic resources should be given serious consideration in the review of proposals for breakwaters, jetties and groins.

Regulations

1) Breakwaters, jetties and groins shall be designed to minimize impediments to navigation and to visual access from the shoreline.

2) The design of new breakwaters and jetties shall incorporate provisions for public access such as sightseeing and public fishing if the city/county determines such access to be feasible and desirable.

**Bulkheads :** Retaining walls which are usually constructed parallel to the shoreline as a means to prevent loss of soils through erosion or wave action.

Policies

1) Protection of the area's scenic and aesthetic resource values should be given careful consideration when reviewing the location and design of bulkheads.

2) Bulkheads should not interfere with public access to publicly owned shoreline, to the water's surface or to other appropriate shoreline and water uses such as navigation, seafood harvesting or recreation.

Regulations

When a bulkhead is required at a public access site, provision for safe access to the water shall be incorporated in the design.

**Landfill :** The emplacement of sediment or other material (excluding solid waste) in an aquatic area to create new shorelands or to raise the level of existing shorelands.

Policies

1) Proposals for landfills should demonstrate that the operation will not be detrimental to the public interest and uses of the shoreline and water body, including public navigation and recreation.

2) In reviewing landfill proposals, the city/county should assess the overall value of the landfill site in its present state versus the proposed shoreline use to be created and other future potential public or private shoreline uses, including but not limited to agriculture, aquaculture, fish, shellfish and wildlife research and resource preservation, commercial fishing and recreation opportunities.

3) Landfills and associated uses should enhance public access to the shoreline and water body.

**XIV Shoreline Modifications - Stabilization and Flood Protection**

Policies

1) Shoreline stabilization and flood protection works should be located, designed, constructed and maintained to preserve valuable recreation resources and aesthetic values such as point and channel bars, island, braided streamway banks, other shoreline features and scenery.

2) Alternative A
The design of stabilization or protection works should provide for public access to public shorelines and the long term multiple use of a streamway resources.
Alternative B
In the design of publicly financed or subsidized works, consideration should be given to providing public pedestrian access to shoreline for low-intensity outdoor recreation.

3) The city/county shall require linear public access along new dikes when it determines such access to be in the public interest.

SAMPLE EASEMENTS

The prefered method of recording public access permit conditions is by recorded easement. An easement provides the opportunity to spell out all provisions of how the public access area is to operate. A face of the plat recording although allowed for in RCW 58.17, may result in future misunderstandings and does not allow the opportunity to record operating provisions.

[Author's note: The following public access easement was written to fit a particular situation. Some of the language will not fill the needs of other projects although the general format and provisions will. It therefore can be used as a model, from which an easement can be written for a project.]

FIGURE 1, PUBLIC ACCESS EASEMENT

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DEDICATION OF PUBLIC ACCESS AREA
ON PRIVATELY OWNED SHORELINE

[name of applicant], a Washington _____, hereinafter referred to as Dedicator, does hereby make in perpetuity for the use of the general public in a manner consistent herewith the following dedication:

1. AREA TO BE DEDICATED

The area to be dedicated is described in Exhibit A [legal description] attached hereto and made a part hereof as though fully set forth herein.

2. PURPOSE OF DEDICATION

To allow pedestrian access and entry onto the dedicated area by the general public and all members thereof for their peaceful enjoyment of the dedication area and the waters of [name of water body] adjoining.

3. LIMITATION OF DEDICATION

(a) Access to the dedicated area by land vehicle is specifically excluded from this dedication and access by land vehicle shall be upon specific invitation of the Dedicator, its heirs, successors or assigns only.

(b) The entire dedicated area may be closed to public access by the Dedicator, its heirs, successors or assigns between dusk and 10 a.m. each day.

(c) All areas may be temporarily closed to the public from time to time for the purpose of repairs and maintenance.

(d) Neither the Dedicator, its heirs, successors or assigns nor the City of [name of local jurisdiction] nor the State of Washington, nor the officers, agents, employees of said City and State, shall be responsible or held liable for injury or damage occurring to members of the general public availing themselves of the dedicated area, unless the injury or damage results from an immediate, direct and negligent act of the party sought to be held, and in no event shall the Dedicator, its heirs, successors or assigns be responsible for any act or omission of a third party or be responsible for the failure to provide security, supervision, guards for members of the general public, or to provide protection for the general public for acts or omissions of other members of the general public.

(e) The Dedicator, its heirs, successors or assigns shall have the sole and separate responsibility for maintaining any portion of the dedicated area to which the general public shall have access and shall defend and save harmless the City of [name of city] from any claims, real or imaginary, asserted by any person for injury or damages resulting from improper maintenance of said dedicated area. The standards of maintenance practiced by the City of [name of city] in regard to its adjacent waterfront parks. This covenant of maintenance and to defend and save harmless the City of [name of city] shall run with the land. Copies of all conveyances by the Dedicator or its subsequent grantees conveying individual apartment units to apartment owners and/or interests therein to the association of condominium owners shall be filed with the City of [name of city].

(f) Nothing in this dedication shall operate or be held to relieve the Dedicator, its heirs, successors or assigns from the continuing requirements and conditions imposed by the permits issued to the Dedicator under City of [name of city] File Nos. **********.

(g) The word "apartment" as used herein includes the word "condominium."

4. RECORDING

This dedication document shall be recorded in the Department of Records and Elections for [name of county] County and shall further be included by inclusion or reference in any condominium documents that may hereafter be required to be recorded.

DEDICATOR:

[signature block]

Source: Tovar, 1983

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Conservation Easement

Under Washington State Law and the federal Internal Revenue Code conservation easements are allowed, and can result in a tax deduction for the donor. A sample conservation easement follows:

[Author's note: The following conservation easement was written to fit a particular situation. Some of the language will not fill the needs of other projects although the general format and provisions will. It therefore can be used as a model, from which an easement can be written for a project.]

CONSERVATION EASEMENT

THIS DEED AND AGREEMENT is made this_____day of_____, 198__, BY AND BETWEEN

[Developer's name and address]

hereinafter referred to as the "GRANTOR," and with the _____, as represented by the _____, hereinafter referred to as the "GRANTEE."

WHEREAS:

1) The GRANTOR is the owner of a fee simple interest in the Lands described in Exhibit A which is attached hereto and incorporated herein by reference (the Land).

2) The parties recognize that the Land is currently in a substantially undisturbed natural and open state. The Land has important natural resource, fisheries, and wildlife habitat values. The Land has significant natural scenic beauty which is enjoyed by substantial numbers of the public.

3) The GRANTOR is willing to grant and convey to the GRANTEE a Conservation Easement as defined by Chapter

64.04.070 RCW and that it desires to cooperate with the GRANTEE in preserving the natural values of the Land along the corridor of _____ Creek.

4) The GRANTEE are agencies of State Government having responsibilities to protect and manage the anadromous fisheries and wildlife resources of the state. The GRANTEE has determined that acquisition of a conservation easement will benefit the public through the preservation of the anadromous fisheries values of _____ Creek through the management and protection of the riparian and instream habitat of _____ Creek and through the protection and control of the public's right of access to the _____ Creek corridor.

5) The GRANTOR desires to transfer the right to protect and preserve the scenic, open space, natural fisheries and wildlife habitat, aesthetic and ecological values and characteristics of the Land and the right to allow and control public access and use to the GRANTEE, and the GRANTEE desires to accept such responsibility on the terms and conditions hereinafter set forth.

NOW, THEREFORE WITNESSETH, that the GRANTOR hereby voluntarily grants and conveys to the GRANTEE, its successors and assigns, in perpetuity, a conservation easement, pursuant to RCW 64.04.130, on, over, and across the Land. Said conservation easement consists of the rights, covenants, restrictions, conditions and limitations enumerated hereinafter, subject to the reservations of rights hereinafter set forth, all of which rights, covenants, restrictions, conditions, limitations and reservations shall operate as covenants running with the Land in perpetuity and shall bind the GRANTOR and all successors in ownership to the Land in perpetuity.

It is the intention and objective of the GRANTOR that this conservation easement shall impose restrictions on the use of the property to such activities which will not cause or threaten impairment of the scenic, open space, natural fisheries and wildlife habitat, aesthetic or ecological characteristics of the Land, and that the GRANTEE shall have the right to prevent the use or development of the Land for any purpose or in any manner that would conflict with the preservation and maintenance of the Land as open space and in a natural state, subject to the rights reserved by the GRANTOR herein.

## RESTRICTIONS ON THE USE OF THE LAND

The GRANTOR covenants and agrees for himself, successors and assigns, that the GRANTOR, his successors and assigns shall not:

1) Erect, place or maintain, or permit erection, placement or maintenance of any improvement, building, or structure on the Land other than those specifically described or permitted, if any, under the rights reserved herein.

2) Cut, uproot or remove, or permit the cutting, uprooting or removal of live trees or any other native vegetation on the Land, except as required for fire protection, elimination of diseased growth or similar measures as required to exercise the rights reserved herein.

3) Excavate or grade, or permit excavation or grading, on the property except as necessary to exercise the rights reserved herein.

4) Explore for or extract minerals, hydrocarbons, soils, gavels, or other materials except water.
5) Remove such quantities of water as would impair the maintenance of existing vegetation and plant habitat of the Land and the value of the property for fish and wildlife habitat.

6) Use or allow any use of the Land that will materially alter the landscape or topography thereof.

7) Store, deposit, bury or otherwise dispose of any solid or liquid waste or of trash, rubbish, or noxious materials or deposit fill of any kind.

8) Build fires, burn debris, waste or other such activities which potentially threaten the natural habitat this easement seeks to protect.

9) Use or permit the use of the Land for any purpose except as open space natural habitat consistent with the stated purpose and covenants, restrictions, conditions, limitations and reservations of this grant.

## RESERVATION OF RIGHTS

The GRANTOR shall reserve for himself, his successors and assigns the following rights:

1) The right to maintain and reconstruct storm drainage facilities which are located on the Land, upon reasonable written notification of the GRANTEE of the intent to do so. Said notification shall consist of a plan and description of the proposed action and shall be subject to approval by the GRANTEE prior to beginning any such work, except that emergency repair work shall not require prior approval.

2) The right to enter upon and use the Land for passive recreational purposes (such as hiking, picnicking and nature observation) in a manner consistent with the conservation and preservation of the natural habitat of the Land. This right shall not include the right to build warming fires or campfires on the Land.

3) The right to maintain, construct and reconstruct the initial site upon which the [Developer's building] shall be placed, which initial project construction shall consist of clearing, grading and construction of fill slopes on that 50 foot portion of this conservation easement farthest away from the creek. Once construction has been completed, GRANTOR shall continue to have the ability to maintain the landscaping, the setback barrier and any and all improvements placed upon that portion of the property for the purpose of construction.

RIGHTS AND RESPONSIBILITIES OF THE GRANTEE

As a material part of this grant, the GRANTOR grants to the GRANTEE, and the GRANTEE accepts from the GRANTOR, the right and responsibility to preserve and protect in perpetuity the scenic, open space, natural fisheries and wildlife habitat, passive recreational, aesthetic and ecological values and qualities of the Land. In connection with such grant to and acceptance of such rights and responsibilities the following provisions shall apply:

1) The GRANTOR grants to the GRANTEE, its successors and assigns, in perpetuity, the right to enter on the Land to observe and enforce compliance with the terms of this grant.

2) The GRANTOR grants to the GRANTEE, its successors and assigns, in perpetuity, the right to make improvements to the natural habitat of the Land, which shall include but not be limited to planting of native species of flora, stocking, taking, and otherwise managing fish, instream improvements and modifications and other such related actions which are necessary to maintain a proper habitat for fish and wildlife.

3) The GRANTOR and GRANTEE agree that the general public shall retain a right to enter upon and utilize the Land for passive recreation, but that such authorization shall be limited to daylight hours only and may be periodically restricted by the GRANTEE if necessary for fisheries protection.

4) The GRANTOR and the GRANTEE agree that the GRANTEE may build a pedestrian pathway, fences, viewing platform, interpretive signs and other such public use and control facilities as the GRANTEE may determine to be appropriate to

protect the fisheries resources and inform the public of the Land's natural values.

5) The GRANTEE shall indemnify and hold harmless the GRANTOR against and from any and all claims arising from the GRANTEE's use of this property or the conduct of its fisheries activities or from any activity, work, or things done, permitted or suffered by the GRANTEE in or about the land, and shall further indemnify and hold harmless the GRANTOR against and from any and all claims arising form any breach or default in the performance of any obligation on the GRANTEE's part to be performed under the terms of this easement, or arising from any act, neglect, fault or omission of the GRANTEE, or of its agents or employees, and from and against all costs, attorneys fees, expenses and liabilities incurred in or about such claim or action or proceeding brought on account thereof and in case any action or proceeding be brought against the GRANTOR by reason of such claim, the GRANTEE upon notice from the GRANTOR shall defend the same at GRANTEE's expense by counsel reasonably satisfactory to the GRANTORS. The GRANTEE, as a material part of the consideration to the GRANTORS, hereby assumes all risk of damage to the land or injuries to person in or about the land described in Exhibit A from any cause whatsoever except that which is caused by the failure of the GRANTOR to observe any of the terms and conditions of this easement and such failure has persisted for an unreasonable period of time after written notice of such failure, the GRANTEE hereby waives all claims in respect to or against the GRANTOR.

## GRANTOR'S RESPONSIBILITIES

The GRANTOR agrees to pay any and all real property taxes and assessment levied by competent authority on the Land, reserving to the GRANTOR the right to challenge the propriety of any property tax or assessment levied on the Land.

The GRANTOR agrees to revegetate and maintain in a natural state, vegetation on any disturbed area within the easement area and shall maintain the storm drainage facilities in good working order.

## ADDITIONAL COVENANTS AND AGREEMENTS

The GRANTOR and GRANTEE further agree as follows:

1) The GRANTOR covenants that they have not done or executed, or allowed to be done or executed, any act, deed, or thing whatsoever whereby the Conservation Easement hereby

conveyed, or any part thereof, now or at any time hereafter, will or may be charged or encumbered in any manner or way whatsoever.

2) If the GRANTOR, his heirs, successors, assigns, agents, or employees violate or allow the violation of any of the terms, conditions, restrictions, and covenants set forth herein, then the GRANTEE will be entitled to all remedies available at law or in equity, including, but not limited to, injunctive relief, rescission of contract, or damages, including attorneys' fees and court cost reasonably incurred by the GRANTEE in prosecuting such action(s). No waiver or waivers by the GRANTEE, or by its successors or assigns, of any breach of a term, condition, restriction, or covenant contained herein shall be deemed a waiver of any subsequent breach of such term, condition, restriction, or covenant or of any other term, condition, restriction or covenant contained herein.

3) The terms, conditions, restrictions, and covenants contained herein shall not be altered or amended unless such alteration or amendment shall be made with the written consent of the GRANTEE, or its successors, or assigns, and any such alteration or amendment shall be consistent with the purposes of this conservation easement and RCW 64.04.130.

4) The GRANTOR and GRANTEE agree that the terms, conditions, restrictions, and covenants contained herein shall be binding upon the GRANTOR, their agents, personal representatives, heirs, assigns and all other successors in interest to the Land and possessors of the Land and shall be permanent terms, conditions, restrictions, covenants, servitudes, and easements running with and perpetually binding the Land.

5) The GRANTEE agrees that the rights transferred by this conservation easement shall not be sold, given, divested, transferred, or otherwise reconveyed in whole or in part in any manner except as may be provided in RCW 64.04.130, as heretofore or hereinafter amended. The GRANTORS, their personal representatives, heirs, successors, or assigns, shall be given the right of first refusal to purchase the conservation easement provided such disposition and reconveyance be lawfully approved.

6) If the Land is subject to any condemnation, and if a mutually acceptable agreement as to the compensation to be provided to the GRANTEE is not reached between the GRANTEE and the GRANTOR within a reasonable period of time, the GRANTOR will request that the GRANTEE be made a party to such action in order that it be fully compensated for the loss of, or devaluation in, the conservation easement herein granted.

7) If any section or provision of this instrument shall be held by any court of competent jurisdiction to be unenforceable, this instrument shall be construed as though such section or provision had not been included in it, and the remainder of this instrument shall be enforced as the expression of the parties' intentions. If any section or provision of this instrument is found to be subject to two constructions, one of which would render such section or provision invalid, and one of which would render such section or provision valid, then the latter construction shall prevail. If any section or provision of this instrument is determined to be ambiguous or unclear, it shall be interpreted in accordance with the policies and provisions expressed in RCW 64.04.130, as heretofore or hereinafter amended.

IN WITNESS WHEREOF, the parties have hereunto set their hand and seals on the day and year first above written.

GRANTEE

[signature block]

_____

GRANTOR

[signature block]

_____

STATE OF WASHINGTON)

)ss.

COUNTY OF KITSAP )

On this _____day of_____, 1987, before me, a Notary Public, Personally appeared _____, to me known to be the persons above representing the _____, and acknowledged that they signed this Conservation Easement as their free and voluntary act and deed for the purpose therein stated.

_____

NOTARY PUBLIC in and for the State of Washington. My Commission Expires:

STATE OF WASHINGTON)
)ss.
COUNTY OF KITSAP )

On this _____day of_____, 1987, before me, a Notary Public, Personally appeared _____, to me known to be the individual representing _____ and acknowledged that he signed this Conservation Easement as his free and voluntary act and deed for the purpose therein stated.

_____
NOTARY PUBLIC in and for the State of Washington. My Commission Expires:

SCENIC EASEMENT

The following scenic easement was written to fit a particular situation. Some of the language will not fill the needs of other projects although the general format and provisions will. It therefore can be used as a model, from which an easement can be written for a project.

THIS DEED AND AGREEMENT is made this_____day of_____, 198__, BY AND BETWEEN

[Grantor's name and address]

hereinafter feferred to as the "GRANTOR" hereby convey(s) and warrant(s) to the _____, hereinafter referred to as the "GRANTEEE," an easement and right in perpetuity to control and restrict, in accordance with the terms and conditions hereinafter prescribed, the use and development of the parcel of real estate in the County of_____, in the State of Washington, described as follows:

[Insert legal description]

The above described property is now being used for _____ and is hereinafter designated as the "SCENIC AREA." A detaied documentation of the existing use,

called the "record of existing conditions," has been prepared, copies of which have been filed with both parties.

The GRANTEE and its agents shall have the right to enter upon the scenic area for the perpose of inspection and enforcement of the terms and covenants contained herein, and together with such right, shall have the right to cause to be removed from the scenic area any unauthorized structures, devices or materials and shall have the right to cut and remove brush, undergrowth, and dead and diseased trees from the scenic area, and shall have the right to perform selective tree cutting and trimming in the scenic area, provided that no rights are granted to the general public to enter upon the scenic area for any purpose.

The GRANTOR, his heirs, successors, agents and assigns do hereby covenant that:

1) No use or occupation other than the hereinafter permitted use shall hereafter be made, established or maintained within or upon the scenic area.

2) No dumping of ashes, trash, junk, rubbish, sawdust, garbage, or offal, or any other unsightly or offensive materials shall hereafter be allowed upon the scenic area. Existing use for any such purpose shall be terminated, and the above described materials shall be removed within ninety (90) days of the date of this instrument or in the event the area is leased, within (60) days after the expiration of the lease.

3) No trees or shrubs shall be destroyed, cut or removed from the scenic area except as may be required for reasons of sanitation and disease control and except for selective cutting of timber by methods prescribed by written permit from the GRANTEE's agent, provided that the GRANTEE may cut and remove brush, undergrowth and dead and diseased trees from the scenic area and may perform selective cutting and trimming in the scenic area.

4) No new installation of utility poles or pole lines shall be made upon or within the scenic area except as required for a permitted use and then only pursuant to a written permit from the GRANTEE's agent.

5) No new or additional structures shall be constructed upon the scenic area without a written permit from the GRANTEE's agent.

The GRANTOR(S) reserve(s) to himself, his heirs, successors, agents or assigns, the right to continue the present use of the scenic area as described above and as documented in the "record of existing conditions" filed as of this date with both parties, in a manner not inconsistent with the above described terms and conditions.

The GRANTOR(S) further reserves to himself, his heirs, sucessors, agents or assigns, the right to develop the lands described herein as hereinafter set forth:

[list allowable development]

The GRANTOR and GRANTEE further agree as follows:

1) The GRANTOR covenants that they have not done or executed, or allowed to be done or executed, any act, deed, or thing whatsoever whereby the Conservation Easement hereby conveyed, or any part thereof, now or at any time hereafter, will or may be charged or encumbered in any manner or way whatsoever.

2) If the GRANTOR, his heirs, successors, assigns, agents, or employees violate or allow the violation of any of the terms, conditions, restrictions, and covenants set forth herein, then the GRANTEE will be entitled to all remedies available at law or in equity, including, but not limited to, injunctive relief, rescission of contract, or damages, including attorneys' fees and court cost reasonably incurred by the GRANTEE in prosecuting such action(s). No waiver or waivers by the GRANTEE, or by its successors or assigns, of any breach of a term, condition, restriction, or covenant contained herein shall be deemed a waiver of any subsequent breach of such term, condition, restriction, or covenant or of any other term, condition, restriction or covenant contained herein.

3) The terms, conditions, restrictions, and covenants contained herein shall not be altered or amended unless such alteration or amendment shall be made with the written consent of the GRANTEE, or its successors, or assigns, and any such alteration or amendment shall be consistent with the purposes of this conservation easement and RCW 64.04.130.

4) The GRANTOR and GRANTEE agree that the terms, conditions, restrictions, and covenants contained herein shall be binding upon the GRANTOR, their agents, personal representatives, heirs, assigns and all other successors in interest to the Land and possessors of the Land and shall be permanent terms, conditions, restrictions, covenants, servitudes, and easements running with and perpetually binding the Land.

5) The GRANTEE agrees that the rights transferred by this conservation easement shall not be sold, given, divested,

transferred, or otherwise reconveyed in whole or in part in any manner except as may be provided in RCW 64.04.130, as heretofore or hereinafter amended. The GRANTORS, their personal representatives, heirs, successors, or assigns, shall be given the right of first refusal to purchase the conservation easement provided such disposition and reconveyance be lawfully approved.

6) If the Land is subject to any condemnation, and if a mutually acceptable agreement as to the compensation to be provided to the GRANTEE is not reached between the GRANTEE and the GRANTOR within a reasonable period of time, the GRANTOR will request that the GRANTEE be made a party to such action in order that it be fully compensated for the loss of, or devaluation in, the conservation easement herein granted.

7) If any section or provision of this instrument shall be held by any court of competent jurisdiction to be unenforceable, this instrument shall be construed as though such section or provision had not been included in it, and the remainder of this instrument shall be enforced as the expression of the parties' intentions. If any section or provision of this instrument is found to be subject to two constructions, one of which would render such section or provision invalid, and one of which would render such section or provision valid, then the latter construction shall prevail. If any section or provision of this instrument is determined to be ambiguous or unclear, it shall be interpreted in accordance with the policies and provisions expressed in RCW 64.04.130, as heretofore or hereinafter amended.

IN WITNESS WHEREOF, the parties have hereunto set their hand and seals on the day and year first above written.

GRANTEE

[signature block]

_____

GRANTOR

[signature block]

_____

STATE OF WASHINGTON)
)ss.
COUNTY OF KITSAP )

On this _____day of_____, 1987, before me, a Notary Public, Personally appeared _____, to me known to be the persons above representing the _____, and acknowledged that they signed this Conservation Easement as their free and voluntary act and deed for the purpose therein stated.

_____ NOTARY PUBLIC in and for the State of Washington. My Commission Expires:

STATE OF WASHINGTON)
)ss.
COUNTY OF KITSAP )

On this _____day of_____, 1987, before me, a Notary Public, Personally appeared _____, to me known to be the individual representing _____ and acknowledged that he signed this Conservation Easement as his free and voluntary act and deed for the purpose therein stated.

_____ NOTARY PUBLIC in and for the State of Washington. My Commission Expires: