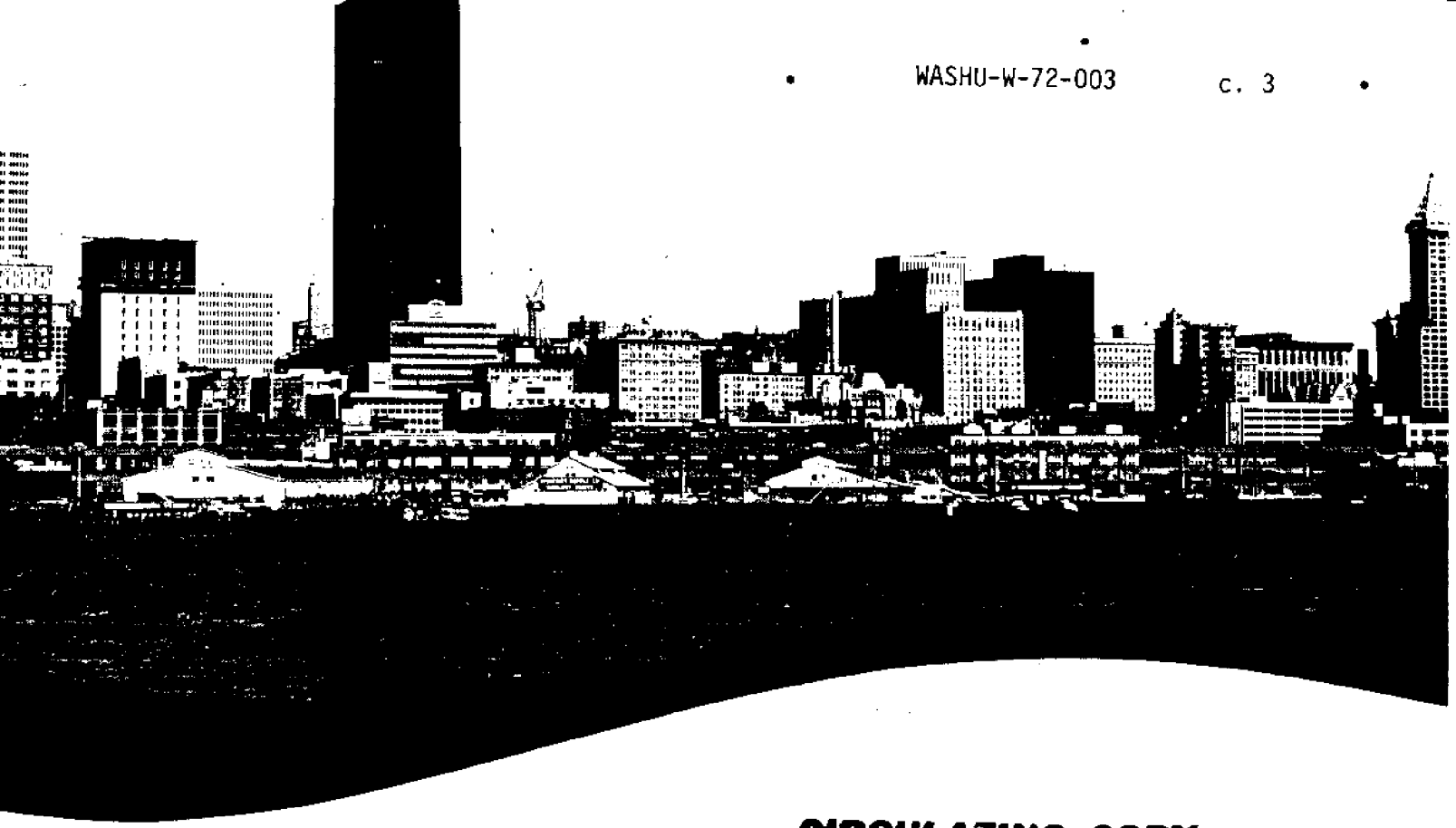

SHORELINES MANAGEMENT:

THE WASHINGTON EXPERIENCE

Proceedings of a Symposium in Seattle Center, June 24, 1972

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SHORELINES MANAGEMENT:

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Environmental Quality Committee,
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NOTE

On November 7, 1972, the voters of Washington approved ballot proposition 43B, the Shoreline Management Act, thus continuing the Act in force as permanent legislation. The Act was originally enacted by the Washington State Legislature as Chapter 286, Laws of 1971, 1st Ex. Sess. Section 42 of the law provided:

> "This 1971 act constitutes an alternative to Initiative 43. The secretary of state is directed to place this 1971 act on the ballot in conjunction with Initiative 43 at the next ensuing regular election. This 1971 act shall continue in force and effect until the secretary of state certifies the election results on this 1971 act. If affirmatively approved at the ensuing regular general election, the act shall continue in force thereafter."

The Magnuson Coastal Zone Management Act (S.3507) was passed in the closing hours of the 92nd Congress and signed into law by President Nixon on October 27, 1972 (PL 92-583).

Welcoming Remarks

By

Slade Gorton*

It's a pleasure to be able to welcome you all to this symposium. "Shorelines Management -- The Washington Experience" is a joint effort of the State of Washington through Governor Evans' office, the Department of Ecology and my office, the City of Seattle, and the Environmental Quality Committee of the American Bar Association's Young Lawyers Section. Many of you, no doubt, know from past experience that assembling the speakers, materials, and facilities for conducting an effort of this nature is a tough and often thankless task. I'm sure that Roger Leed enjoyed the assistance of all of us associated with the sponsoring entities, but, nevertheless, I would be remiss if I did not thank him at the outset as the Chairman of the Environmental Quality Committee of the ABA Young Lawyers Section for making this symposium possible.

I am confident that today's discussions will be not only thought-provoking but productive in terms of focusing our thinking in the shorelines management area, and particularly, on the two separate measures which will be on this fall's ballot.

Various members of the Washington State Bar Association Young Lawyers Committee and the Seattle-King County Bar Association Young Lawyers Section played important roles in the passage of the Shorelines Management Act of 1971. Today's seminar will feature dialogue, and no doubt argument, on the merits and demerits of the alternative initiative, the Shoreline Protection Act, and I daresay the discussions will be informative and helpful. The upshot will hardly be revolutionary change in terms of a dramatic revolt against one or the other alternative, but rather a rational discussion of the proposal in the finest democratic traditions. Today's seminar on details and value judgments involved in the initiative and alternative, together with their proper implementation, must recognize human tendencies to develop; opponents must

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concede that the future will not duplicate the unrestricted past. Remember, too, there is a third alternative -- strong resistance toward land use planning.

Over the past five years, the single most publicized and debated area of environmental concern in our state has been the regulation, use, and protection of the shoreline areas of the state. In 1967, it centered around a "scenic rivers" bill; in 1969, it was "wetlands" legislation and high rises on Hood Canal. By 1970, the discussion concerned the Lake Chelan case -- Wilbour v. Gallagher -- and "seacoast management" legislation. During the past two years, it has been Initiative 43, the Shoreline Protection Act, and its alternative, the Legislature's Shoreline Management Act.

No subject is more pertinent for discussion in our state today than the Shoreline Management Act of 1971. During the course of the day, we will hear all about the Act. Among the issues to be discussed will be:

1. Why do we need such legislation?

2. The background leading to its enactment.

3. What are its contents?

4. How has it been implemented?

5. How does it compare with the initiative and with the alternative of no legislation at all?

Not only are private waterfront property owners' interests being detrimentally affected, but the rights of the public in the state's waters are being nibbled away in small chunks which have cumulatively significant effects.

The Washington Supreme Court, in 1969, gave us several important guidelines in Wilbour v. Gallagher.

From my viewpoint, the statement in the opinion that the "public has a right to go where the navigable waters go" and that right cannot be infringed without the state's permission, is a sound policy which has its roots not only in the common law developed early in our state's history, but in English common law that may indeed reach back to King John and the Magna Carta.

But Judge Hill, in writing for the Court, was not only stating public rights; the Supreme Court had another message. It was

concerned that the state's shorelines are heading to a potential disaster if a comprehensive planning and use regulation program is not developed.

Further, I am convinced that Wilbour v. Gallagher contained another direct message. It was this: The Supreme Court recognized that it should not be the forum for determining use practices such as were found in the Lake Chelan case, but that the executive and legislative branches should set up a workable shoreline management program.

Another point should be made about Wilbour v. Gallagher. Its implications are not completely clear. One practical effect is clear, however: Until Wilbour is clarified, either by further court decisions or by legislative action, it will continue to have a chilling effect on any development on the tidelands and shorelines of the state. While some may argue that this is entirely desirable, there undoubtedly are specific projects which should, but will not be carried out on the shorelines. In other words, in my view, the uncertainties of Wilbour v. Gallagher are not healthy for anyone; either those who desire to develop posthaste without regulation, or those who wish to apply sound planning considerations to all significant shoreline development, or even those who, like most of us, want to strike a proper balance between the very real environmental concerns and the desire to build on or near shorelines.

Both shoreline proposals thus rise out of the legal framework created by the Supreme Court in Wilbour v. Gallagher. In November, all voters will have an opportunity:

1. To vote, first, on the question of whether either of these two alternative measures (Initiative 43 and Initiative 43B) shall be adopted; and then

2. To vote their preference as between the two versions of the proposed law.

If both versions of the proposal are rejected, Initiative 43B, now in effect, will cease to be effective, and there will be no comprehensive shorelines planning and use regulation in effect in this state.

In my view, both Initiative 43 and 43B are acceptable in that their basic objectives are very similar. However, I have a preference for the latter for three reasons:

1. Initiative 43B provides a significant role for

local government. I am convinced that, if the environmental battle is to be won ultimately, local government must play an important role in that contest because of increased citizen involvement in and acceptance of the planning process.

2. Initiative 43B, by its "grandfather" clause, provides a better resolution of the cloud hovering over existing structures placed in the tidal and shoreland areas prior to Wilbour v. Gallagher.

3. To get it passed -- the Initiative scares many -- we must persuade people to vote "yes" on the first proposition by knowing what they will get.

Finally, we would be unnecessarily limiting the scope of our discussions, and our shared concern for the future of our state's shorelines, if during the course of the day, we did not stop to consider and assess the threat to our shorelines posed by oil spills. Commander Haugen of the United States Coast Guard informs me that there were approximately 150 oil spills of significant magnitude in Puget Sound waters last year. The Guemes and Cherry Point incidents, which fortunately at this juncture do not appear to have precipitated the serious ecological consequences of spills such as the "Torrey Canyon" or San Francisco Bay disasters, nevertheless indicate the seriousness of the threat. It does not require uncommon courage to suggest that debate between Initiatives 43 and 43B may be almost irrelevant if, concomitantly, federal and state authorities do not enlist and require the cooperation and compliance of the private sector in making transportation of oil over navigable waters a 100% safe proposition.

On Monday, John Biggs and I went to Victoria to meet with British Columbia officials to lay the groundwork for marshalling all of the resources at our mutual command in planning and coordinating our attack on this general problem area. It perhaps answers the question of whether transportation of oil by vessel can be made 100% safe when I confess that we spent a significant portion of our time discussing the technology of effective clean-up after a spill has occurred.

There is a new development in the area of prevention of spills: On Thursday, June 22, a House-Senate Conference Committee approved the Port and Waterway Safety and Environmental Quality Act of 1972. The bill now goes back to both houses for ratification of the conference report, and most observers agree that it will be sent to the President for signature before Congress adjourns for the national political conventions. This Act provides for the establishment of rigid new standards for the construction

of oil tankers and the development of docking and loading facility procedures and equipment to insure against human error. Even more importantly, in my view, it authorizes and directs the Coast Guard to construct and operate communication and navigation systems for vessel traffic control on inland waters and in port areas. Commander Haugen calls the system, which they have already begun to install under a pilot program, the Vessel Traffic Separation System.

In part, this system will involve the use of buoys to separate into sea lanes all vessel traffic. It will also include a much more sophisticated communications system than presently exists, and the Coast Guard is presently installing three or four land-based radio facilities as a part of the program.

Although I have not yet seen a copy of the conference report, I understand that it would also grant the Coast Guard the power totally to regulate vessel traffic. This might well include a prohibition against oil vessel transportation of particular types in particular areas of the Sound, as well as cessation of vessel movement during extreme inclement weather.

Obviously, it is too early to tell whether the new legislation, as implemented by the Department of Transportation and the Coast Guard, can fulfill the promise of 100% safe water transportation of oil.

But it certainly is a step in the right direction, and I would be remiss if I did not give full credit to Senator Magnuson, your luncheon speaker, for being its prime architect and for being the principal reason for its passage in the face of determined opposition. Perhaps the Senator, who I don't believe is here yet, will direct some of his remarks to this important accomplishment.

Turning back to our principal subject, I have one final message for the supporters of either initiative. Hopefully, you will not run negative campaigns which place the emphasis on what is wrong with the bill you do not support. If you do, the electorate will become confused and very likely vote against both bills. My earnest request is to work for your initiative in an affirmative manner.

After today's seminar is complete, I hope we will unite to share the view that a shoreline management program is needed in our state and work for the passage of one or the other of the initiatives. Thank you.

# # #

The Need for Shorelines Management

By

Bruce Florea*

Few states are as well endowed as Washington in the amount, the quality, and the variety of shorelands to be found within their borders. Salt water resources range from the strong, treacherous tidal currents of Deception Pass, through the rugged windswept coastal beaches of the Olympic Peninsula, to the brackish, back bay oyster beds of Grays Harbor.

The variety of fresh water resources truly approaches the infinite. Where else within a day's drive of each other can one view the wonders of a Quinault Rain Forest, a glacial-fed stream, a high mountain lake in the Cascades, or the arid Sun Lakes in the bottom of that prehistoric river bed we now know as Grand Coulee?

The variety of these resources -- both fresh water and salt, together with their abundance have combined to produce in many people of our state an attitude of indifference almost bordering on total unconcern. For many years, there appeared to be more than enough to go around. Such has been the case in the past.

But, in recent years, increasing numbers of thoughtful people have become concerned with many things they see happening to the shorelines of the state. And they wonder what kind of a legacy they may be leaving their children if many of the things they now see happening are allowed to continue unchecked.

The natural shorelines of the state form a unique resource -- unique because they can never be duplicated. This immediately leads to the sobering conclusion that their quantity will likely diminish in the future (for example, in the period 1922 to 1954, over a fourth of the salt marshes in the United States were destroyed by filling, diking, drainage, or by constructing sea walls

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at the marsh edge; in the following decade, a further 10% of the remaining salt marsh between Maine and Delaware was destroyed).

The total area of all wetlands in the United States is probably about 75 million acres. It is not certain whether the total is increasing or decreasing, for the reversion of drained land due to sedimentation and clogging of drainage tile, and the creation of new wetlands from reservoir and farm construction offset some of the acreage reclaimed through drainage and dredging of wetlands. The two kinds of non-coastal wetlands -- natural and man-made -- are ecologically different, and it is thought that drainage and dredging activities result in a net loss in ecological values by upsetting the natural balance.

In the Dakotas and Minnesota, for example, where potholes are important nesting grounds for migrating water fowl, nearly 138,000 acres of wetlands were drained each year between 1959 and 1966 for agricultural purposes.

Coastal wetlands are another kind of wetland with high ecological value. Concern has been expressed about the rapid disappearance of these lands. This concern is difficult to evaluate since we have no good estimate of the total area and quality of such lands, or of the rate and purposes for which they are being developed. According to the Conservation Needs Inventory data for 304 coastal counties, there are 13 million acres of wetlands influenced by tides; six million acres of inland creek and river bottom wetlands; and 36 million acres of non-tidal lands with a drainage problem.

About the best we can hope for would be to preserve what we now have. There simply will be no more natural shorelines.

Thus far, we've touched on only one aspect of the problem -- quantity. It has a second dimension -- quality.

What is happening to the quality of our shorelines resources as we increase our use of them? Here, too, the record is far from comforting. While there have been instances of sound, considerate uses of shorelines, unfortunately such cases have been the exception rather than the rule. For the most part, increased use has resulted in quality deterioration. Many citizens are now saying that these problems are reaching critical proportions.

On the one hand, then, we are concerned with a resource whose total amount is constant at best and more likely is declining, and whose quality is deteriorating.

The other side of the coin is that pressures for the use of these unique resources are increasing. They not only are increasing, but they are increasing at an increasing rate.

This increase in demand stems primarily from three sources: (1) an expanding population; (2) a general state of affluence; and (3) technology.

An increasing population has been a part of the American scene since the country was first established. Rates have varied, but the trend has been consistent. There is, however, considerable geographic variation, and Washington state happens to hold a position where population pressures exceed the norm, in contrast to some regions whose increase is below average, and to three states whose loss in population is not only relative, but absolute.

About 70% of the Earth's population lies within an easy day's travel of the coast, and many of the rest live on the lower reaches of rivers which empty into estuaries. Furthermore, coastal populations are increasing more rapidly than those of the continental interiors.

The problems of the coastal zone are characterized by burgeoning populations congregating in ever larger urban systems, creating growing demands for commercial, residential, recreational, and other development, often at the expense of natural values that include some of the most productive areas found anywhere on earth. Already over half of the population of the United States lives in those cities and counties within 50 miles of the coasts of the Atlantic and Pacific Oceans, the Gulf of Mexico, and the Great Lakes. Some estimates project that, by the year 2000, 80% of our population -- perhaps 225 million people -- may live in that same area.

The land area most directly impacted by urban growth is the Standard Metropolitan Statistical Area (S.M.S.A. by Bureau of Census definition means any city or urban area of 50,000 or more, plus adjacent counties). The 1960 census listed three such areas in Washington: Seattle-Tacoma, Spokane, and Vancouver as a part of the Portland S.M.S.A. The 1970 census identifies two more: Yakima, and the Pasco-Richland-Kennewick areas of Eastern Washington. These are the regions of the state now most highly urbanized, and the areas where additional urbanization will most likely occur in the near future.

Nearly half a million acres each year are converted to urban use in the United States, but the additional area impacted by this conversion may be many times larger.

Seventy-four per cent of all Americans now live on 3% of the land. Competition for lands in and near population centers is intense, and becoming more so. Anyone who has watched land values rise in such areas over the past three decades is familiar with the phenonenon. Housing, community development, recreation, agriculture, commerce, industry, mining, and open space comprise only a partial list of the many competing uses that are actively bidding for more lands.

Not only is our population increasing, but it is at the same time achieving a much higher degree of mobility. High-speed, large-capacity transportation and communications media have heightened the interaction and interdependence of communities. Greater mobility of the population has created a demand for nationwide access to resources by a larger proportion of the people.

Perhaps one of the more dramatic increases in the demand for shorelines of all types is associated with the phenomenal rise in all types of outdoor recreational activities. A general state of affluence, with its attendant longer vacations, shorter work weeks, and rising wages, has provided large numbers of working people with both the time and the means to enjoy many types of outdoor recreational activities that were simply beyond their reach as recently as only a few years ago.

Similarly, earlier retirement, coupled with a longer, more vigorous life span achieved through advances in medical technology, have combined to transform many oldsters into ardent outdoorspeople who are as interested in hunting or fishing or clamming or beachcombing as anyone else.

Here, too, we have witnessed a virtual explosion in technology -- that associated with outdoor recreation. A wide range of camping vehicles and equipment is available to satisfy the tastes of the person who prefers to take all the comforts of home with him when he goes camping, as well as the individual whose tastes run toward the primitive. And all of these choices fall well within the budgets of a broad range of outdoor-oriented people.

So much for the problem: To recap, we are dealing with a resource whose total amount is limited and whose overall quality is likely eroding. Against this fixed supply, we are experiencing increased demands from a variety of sources for the use of these resources. Most of the demands stem from an increasing population, a rising level of living, and an expanding technology.

The question is a problem of allocation -- what is the best

method of allocating a fixed-quantity resource among a variety of increasingly intense uses?

In a market-oriented economy such as ours in the United States, one of the principal functions performed by that market is to allocate various resources among alternative uses. Consumers, by bidding with their dollars, signal to producers of goods and services through markets what their preferences are. Thus, if they prefer, say, beef to pork, they will bid up the price of beef relative to pork which, in turn, will allow beef producers to pay more for feed and labor than pork raisers, and by so doing will direct resources (feed and labor in our ridiculously oversimplified example) from producing pork to producing beef instead.

This system has much to recommend it: It insures that resources will end up in their highest use. It is a highly impersonal process -- no favoritism is shown. It provides a very efficient communications system where signals are transmitted in both directions instantaneously and simultaneously between producer and consumer.

The only trouble is, it doesn't work very well in certain sectors of the economy, and we're becoming more conscious of these every day. For instance, a substantial portion of our pollution problem is the result of the economic system's inability to properly allocate certain costs. A paper mill, for example, that can utilize an adjoining river to solve its waste disposal problems has "externalized" a portion of its costs. And the cost of producing paper it reports to its stockholders at the end of the year will underestimate its true paper manufacturing cost because it happened to be able to -- not eliminate its waste disposal costs --but rather to transfer them to someone else. "Someone else" may be a downstream community that has to treat the river water before it can be used; it may be a commercial fishing fleet no longer capable of operating in such waters because they will not support fish life; or it may be society in general.

To a degree, a similar problem exists in the case of land -- or shorelines, in particular -- a fixed-quantity resource. Many of the sources of increased demand for shorelines uses stem from intangibles, and these are most difficult to put a price tag on. How much value would you place on a gorgeous sunset, for example? Or what price would you be willing to pay that your children might also enjoy that same view? And their children? What's that look on your young son's face worth when he lands his first fish? How much would you pay for that expression of sheer joy and amazement that flashes across the features of your toddler

daughter the first time an unruly ocean wave picks her up and sets her back in the sand? These are baffling questions.

In the absence of an adequate pricing mechanism to perform the function of resource allocation, we turn to other methods -- planning, for example.

Turning to a more positive vein, the case for planning the use of shorelines areas rests basically on the fact that it provides the means for broadening the base of the decision-making matrix. By that I mean it allows for inputs to be provided from all segments of the community so that widely divergent interests can be heard from and, hopefully, accomodated.

And I would suggest that the success of any planning effort might well be measured by the degree to which it does involve the people of the community.

Finally, it's well to remember that some types of decisions are reversible, while others are irreversible. The decision to preserve an area in open space, for example, leads to quite different consequences than to lay down a superhighway. If it turns out that the open spaces decision was a bad one, it can be easily rectified. If the freeway, however, turns out to be in the wrong location, the consequences are far more serious.

Planning, by providing a systematic, albeit time-consuming, decision process, allows for a more thorough examination of alternatives and a careful consideration of their likely consequences. What consideration could be more important in handling an irreproducible resource?

# # #

The Legal Background for Coastal Zone Management

By

Ralph W. Johnson*
and
Richard L. Schubert**

I. The Problem

A. Intense interest in coastal zone has developed in the past few years.

1. Types of interest

a. Ecological-environmental
b. Economic

2. Interest developed as a response to rapid population growth and increasingly sophisticated technological development.

B. Coastal zone management responsibility falls among many different jurisdictions from local governments and special purpose districts to the federal government.

1. The result: no rational management structure to control, coordinate, etc., activities affecting the coastal zone.

2. Examples:

a. Department of the Interior -- outer continental shelf.
b. Corps of Engineers -- navigation and others.
c. Coast Guard -- shipping, etc.

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d. State Department of Natural Resources -- land management, including beds and wetlands.
e. State Department of Ecology -- Shorelines Management Act.
f. Counties -- zoning.
g. Cities -- zoning.
h. Port Districts -- development.

II. Judicial Management of the Shorelines

A. Dry sand areas.

1. State ex rel. Thornton v. Hay, 89 Ore. 887, 462 P.2d 671 (1969), enjoined defendant from constructing fences or other improvements in the dry sand area. HELD: Because the public has customarily and habitually used the beaches as a public recreational area at least since the advent of recorded history in the Pacific Northwest, such use along the entire coast of Oregon has ripened into the status of law.

2. The Hay case has been applied in Washington by the Attorney General. AGO 1970 No. 27 (Dec. 14, 1970).

B. Filling and building on beds underlying navigable waters.

1. Zabel v. Tabb, 430 F.2d 199 (CCA 5th 1970), cert. denied, 401 U.S. 910 (1971). Zabel, owner of beds underlying navigable waters in Florida, desired to dredge and fill his property to build a trailer park. Local permission was obtained, but the Corps of Engineers refused to issue a permit on the grounds that the fill would result in a distinctly harmful effect on fish and wildlife resources, would be inconsistent with the purposes of the Fish and Wildlife Coordination Act of 1958, as amended (16 U.S.C. 662), was opposed by state and county agencies, and would be contrary to the public interest.
HELD: The Secretary of the Army, in issuing or denying permit under 33 USC §403, is required to consider environmental conservation. Navigational factors are not the sole elements to be considered in issuing or denying such permits.

2. Corps' guidelines

   a. Permits for work in navigable waters, 33 C.F.R. §209, 120 (1972)

      1) Decisions on issuance of a permit must rest on an evaluation of all relevant factors, including the effect of the proposed work on navigation, fish and wildlife, conservation, pollution, aesthetics, ecology, and the general public interest.

      2) Where states or local authorities decline to give their consent to the work, the Corps usually will not issue a permit.

   b. Permits for discharges or deposits into navigable waters, 33 C.F.R. §209, 131 (1972).

3. Wilbour v. Gallagher, 77 Wn.2d 307, 462 P.2d 232 (1969) -- "The Lake Chelan Case."
   HELD: The owner of the beds underlying navigable waters cannot fill his portion of the beds so as to obstruct the use of the overlying waters by the public for such activities as swimming, boating, and navigation without governmental permission. There is disagreement over the consequences of this case. Some maintain its rationale applies to all navigable waters. See: Corker, "Thou Shalt Not Fill Public Waters Without Public Permission -- Washington's Lake Chelan Decision," 45 Wash.L.Rev. 65 (1970). Others argue that the decision only applies to navigable bodies of water with artificially maintained water levels, such as Lake Chelan. See: Rauscher, "The Lake Chelan Case -- Another View," 45 Wash.L.Rev. 523 (1970).

C. Filling and building in non-navigable waters and lands associated therewith.

1. Snively v. Jaber, 48 Wn.2d 815, 296 P.2d 1015 (1956). Plaintiffs, owners of land situated on Angle Lake, a non-navigable lake in King County, complained of repeated trespasses on the part of the licensees of defendant resort owner.
   HELD: Riparian proprietors on a non-navigable lake own rights or privileges to boat, swim, fish, etc., in common, and any proprietor or his licensee may use the entire surface of the lake, so long as he does

not unreasonably interfere with the exercise of similar rights by other owners.

2. Bach v. Sarich, 74 Wn.2d 575, 445 P.2d 648 (1968). Defendant sought to construct an apartment house over the surface of non-navigable Bitter Lake on a portion of the bed he owned. Plaintiffs were riparian owners on the lake.
HELD: Defendant cannot fill or build on the beds of the lake, even though owned by him, and this is so even though he complied with the local zoning ordinance which allowed apartment use.
RULE: There can be no filling or building on non-navigable lakes in this state unless done in conjunction with a "water-related" use.

3. See: Johnson and Morry, "Filling And Building On Small Lakes -- Time For Judicial And Legislative Controls," 45 Wash.L.Rev. 27 (1970).

III. Legislative Action

A. National Environmental Policy Act (NEPA), 42 U.S.C. §§4321-4347.

1. Environmental Defense Funds v. Corps of Engineers, 325 F.Supp. 749, 2 E.R.C. 1261 (1971). The Court said that NEPA changes the requirements for federal projects and they must be assessed in view of NEPA and the Fish and Wildlife Coordination Act, among others. The Court granted a preliminary injunction.

2. Courts have held that environmental impact statements required by NEPA must accompany the issuance of all major construction permits by the Corps. Kalur v. Resor, 325 F.Supp. 1, E.R.C. 1458 (1971).

3. Cross-Florida Barge Canal stopped by Executive Order in response to requirements of NEPA and the Council on Environmental Quality. January, 1971.

B. Federal proposed legislation.

1. Report of the Commission on Marine Science, Engineering, and Resources, Our Nation and the Sea, recommended: federal grants-in-aid for state coastal zone management; states should be the management unit for the coastal zone; federal mission agencies should be

required to comply with management plans; state agencies be given the power to plan, regulate, and develop the coastal zone, together with the power of eminent domain to facilitate the implementation of these powers; and federal review be provided under NOAA to insure the success of state actions.
See: Chapter 3 -- Management of the Coastal Zone.

2. The Magnuson Coastal Zone Management Act, S.3507, 92d Congress, 2d Sess. (1972). The main purpose of this legislation is to encourage and assist the states in preparing and implementing management programs to manage the coastal zone. It authorizes federal grants-in-aid to the coastal states, both to develop programs and then to implement the same. It also provides financial aid to the states in the acquisition and operation of estuarine sanctuaries. The legislation is not intended to diminish state authority, but to enhance it by encouraging and assisting the states to assume planning and regulatory powers over the coastal zone.
See also: H.R.14146, 92d Cong., 2d Sess. (1972).

C. Existing state shoreline management programs. Examples:

1. Georgia has a Coastal Marshlands Protection Act, which regulates the use of marshlands, but it is deficient in local zoning and planning.

2. Massachusetts regulates estuaries (1) by prohibiting the removal, filling, or dredging of any bank, flat, marsh, meadow, or swamp bordering coastal waters without local and state permission, and (2) by authorizing the Commissioner of Natural Resources to adopt regulations concerning the allocation or pollution of coastal wetlands.

3. New Jersey, North Carolina, California, Maine, Connecticut, and Delaware have undertaken large-scale estuarine acquisition programs.

4. Florida has adopted a statewide plan of aquatic reserves valuing the maintenance of the natural condition of these areas.

5. California -- the San Francisco Bay Conservation and Development Commission has undertaken one of the most comprehensive coastal zone management projects.

Presently, ownership of San Francisco Bay is divided so that 50% is owned by the state, 20% by cities or counties, 5% by the federal government, and 25% by private individuals or entities. About 30% of the original water area of the Bay is filled and further filling may lead to the destruction of the Bay's biosystems and its fish and wildlife habitat, an increase in pollution, and a reduction of the air conditioning effect of the Bay. A 1969 statute (Government Code §§66601-66661) established a licensing and regulatory system for the Bay 100 feet inwards from its shoreline and provided control over filling and building favoring water-related use only, a comprehensive plan adopting regional planning, and zoning and licensing.

6. Washington --

   a. 1970 -- bill introduced in the Legislature in response to Wilbour v. Gallagher, and it got nowhere.

   b. Summer, 1970 -- Initiative 43 sponsored by the Washington Environmental Council drafted with several goals: planning at the state level, zoning at the state level, licensing at the state level, prohibiting oil drilling in Puget Sound, prohibiting high rises on the shorelines, and statutory enforcement provisions. It was sent to the Legislature in 1971 for adoption, rejection, or an alternative.

   c. Shorelines Management Act (Chapter 90.58 RCW). This Act was adopted as an alternative to Initiative 43. Generally, it divides the shorelines into shorelines of statewide significance which are controlled primarily by the state and shorelines of less than statewide significance which are controlled primarily by local government. The Act provides a management scheme employing planning, zoning, licensing, and acquisition authority to implement its goals and policies. This framework generally is the type of scheme envisioned by the proposed federal legislation now in Congress. The Act is now in effect, but is subject to the vote of the people in November when they may choose between the Act and Initiative 43, or, in the alternative, for no shorelines management law at all.

On coastal zone management generally, see:

Commission on Marine Science, Engineering and Resources, Report of the Panel on Management and Development of the Coastal Zone, Part III (1969).

Commission on Marine Science, Engineering and Resources, Report -- Our Nation and the Sea (1969).

Hite and Stepp, Coastal Zone Management (1971).

Senate Report 92-753, 92d Cong., 2d Sess. (1972). (Committee Report on S.3507).

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# # #

A Summary of the Washington Act -- Legislative History

By

James M. Dolliver*

While I am not totally convinced of the validity of the dictum of Henry Ford that history is bunk, I am somewhat persuaded that most of it is self-serving, and I suspect that what I say this morning will partially fall into that arena. I am, by nature, going to have to be political. I will try not to be partisan, but I will probably be highly subjective. Dorothy Morrell, in her comments, may have some variance with her recollection of history to mine, but let me give you one individual viewpoint of what happened: How we got to where we are; maybe tell a few stories and sidelights of how I think we got there; some of the underlying currents that were occurring, both in the Legislature and in the Executive Department, among private groups and individuals, that brought us to the stance we are, where, on November 7, Initiative 43A and 43B on shoreline management will be considered by the people.

It is always difficult in this business to know how far back to go to start and where to say, this is the point when we began to go where we are now. I suppose there are a variety of starting points. If I had to pick one, I would pick a date, and I can't give you a precise date, but it was about 1966 or 1967 when the so-called Hughes[1] case came down, which was a case relating to land accretions on Pacific Ocean beaches. The State of Washington had held that the accretions belonged to the seaward owner, that is, the State of Washington owned the tidelands and the accretions belonged to the state. We were upheld by the Washington State Supreme Court. The upland owners, as might be expected, had a somewhat contrary view, and they were upheld by the United States Supreme Court. I would suggest that it was at

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[1]Stella Hughes v. State of Washington, 389 U.S. 290, 19 L.Ed.2d 530, 88 S.Ct. 438 (1967).

that point that people began to think seriously about what was going to happen to the various shorelands and tidelands in the State of Washington.

This was followed up in the 1967 Session, if my memory serves me correctly, by legislation which did transfer on the ocean beaches, between Cape Disappointment and Cape Flattery, all of the title which the state had into the Parks Department. The State of Washington said, through its Legislature, that, as far as these lands were concerned, they ought to be held in a recreational trust by the Parks Department and not used for commercial or other purposes by either private individuals or other agencies of state government.

The first murmurs in the Legislature, beyond what was going on as far as the Hughes case was concerned, I think took place in 1967 when the Legislature considered something which was called the Scenic Rivers Act. We called it the "Wild Rivers Act" then. This was the brainchild, and I say this with a great deal of admiration, of Lew Bell from Everett, who is in the audience today. He had an idea that we ought to do something to protect the various rivers, particularly those which are relatively undeveloped, flowing down to the sea in the State of Washington. The reason I call it "Wild Rivers" is because you have a very good understanding of what the term "wild" means when you have half of the farmers in the State of Washington, who own the riparian land on these rivers that come down and they weren't primarily interested in environment; they were interested in capital gains. In any event, in 1967 and every session subsequent to that, we have had absolutely no success either in wild rivers or scenic rivers or anything else until we finally got Initiatives 43 and 43B.

In 1969, there was a bit of a push when Representative Allen Thompson from Castle Rock introduced a wetlands bill. Nobody paid too much attention to it, but it was the first legislative interest that was shown in doing something about the shorelands generally and not simply confining it to scenic rivers or wild rivers or the ocean beaches.

In the summer of 1969, I think, all parties concerned -- the Environmental Council, the Governor's office, and a number of private citizens -- suddenly came up with the conviction that something had to be done as far as the general shorelines of the state were concerned. Even then, I suspect, the visions that most of us had were not very broad and we were thinking in rather small terms. Nobody really went much beyond Puget Sound and most of us, I suspect, were rather cautious even moving into Puget Sound or Hood Canal, much less some of the rivers and lakes inland in the

state.

That summer, in our office, we had an intern by the name of Dale Reed, from Vancouver, who was assigned the duty of putting together a piece of legislation relative to some kind of shorelands or seacoast management. Dorothy will get into this in some more detail, but the upshot of it was that, working with the Environmental Council and other interested groups, by the end of the summer of 1969, we had been able to put together the first draft -- and it was the final draft of many drafts during the summertime, but it was the first draft, the first comprehensive draft -- of some kind of seacoast management legislation. As Ralph Johnson indicated, it was based very much on the San Francisco BCDC, the Bay Conservation and Development Commission. This was not necessarily a model, but it had been passed by 1969 and that act, plus some proposed legislation in Wisconsin, plus some at least semi-scholarly work which had been done in the area, plus our own thinking in the office and the Environmental Council, formed the basis for the bill.

Well, things rocked along fairly well and a couple of events occurred in the fall of 1969 which bore directly upon what was going to happen in seacoast management. The first was, and this has been mentioned before, the question of what was going to happen at Alderbrook. The proprietor of Alderbrook had a scheme to take about 100 square yards and fill it in with, first of all, dirt, and then a rather high rise apartment of some kind in which people were going to live. The Governor, in October of 1969, although he personally was quite opposed to this idea, wrote a letter which kind of moved around the subject and didn't come right out and say what he wanted to say, mainly because he didn't think the law was on his side -- that the State of Washington was not at all willing to grant any kind of a permit or to give its approval to the Army Engineers for the construction of this particular installation. The second thing that happened occurred at Crystal Mountain, and that was in the fall of 1969, where the Governor and the Republican leadership and a number of representatives from the Washington Environmental Council sat down simply to talk about the 1970 Session, the Special Session, which the Governor had previously announced he was going to call to see what kind of an agreement there was between these three groups, the administration, that portion of the Legislature, and the Environmental Council, as to what kind of legislation ought to be considered in the 1970 Session. Seacoast management was among those considered, although I think it is fair to say, if my memory serves me correctly, that in our ranking of priorities, this did not come at the top of the priority list. I am inclined to think that nobody really thought at that particular meeting, that seacoast management was an idea

whose time had really come in the 1970 Session.

Then, on the 4th of December, the bombshell exploded which has been alluded to many times previously, Wilbour v. Gallagher,[2] the Lake Chelan case, which put everything into a complete reversal of form so far as the intensity of public interest and the intensity of legislative, and certainly of executive, interest on seacoast management was concerned. We came into the 1970 Session. The Governor had made a decision which, in retrospect, I believe was proper, that he would not put in the seacoast management bill as an executive request bill, but it would be put in by the Environmental Council and he would endorse it. There are some politics in there that totally elude me now, although at the time it seemed to be highly important that we did things the way we did. In any event, in it went. Well, the Governor and the Attorney General appeared before the Legislature. The Governor previously, incidentally, had sent a second letter to the Army Engineers and then a second letter to the people at Alderbrook advising in unequivocal terms that, "you are hereby notified that the Alderbrook project is contrary to the laws of the State of Washington and the state does and must oppose it."

The Governor and the Attorney General then appeared for one of those famous joint hearings of House and Senate which was packed with lots of people. There is sort of an inverse ratio, in my legislative experience, that the higher the number of people, the less chance of anything happening, and our political analysis was not in vain during the 1970 Session. The Governor made a statement in which he said: "I have refused and will continue to refuse to grant the concurrence of the State of Washington to any permits which are before the United States Army Engineers for any tidal fill or bulkheading,"[3] a fairly direct and, I think, comprehensive statement. I am inclined to think that in 1969 the various commercial interests who are interested, and properly so, in developments in the State of Washington on the tidelands had not really understood the impact of Wilbour v. Gallagher. Maybe I am doing them wrong when I say this, but at least, looking back in retrospect, my recollection is that at that time the fact was that Wilbour v. Gallagher, as it stood, and as it was interpreted, at least by the administration, the Attorney General and the Governor, simply meant the end of any kind of shoreline development in Washington. Therefore, if anything was going to happen, other than having the Supreme Court, over a long and laborious length

[2]Wilbour v. Gallagher, 77 Wn.2d 306, 462 P.2d 232 (1969).

[3]Letter to Hon. Sid Flanagan, Chairman, House Committee on Natural Resources, January 19, 1970.

of time, distinguish and run a sort of a pinpoint line of decisions out, something had to be done by the Legislature. The House of Representatives, and Dorothy will go into this, I am sure, in somewhat more detail, did pass a bill. There were some harsh words spoken about this bill. I can recall very clearly, when the whole thing was over, standing in the rotunda of the Capitol, about this far away from the nose of my good friend John Miller, who is now a Councilman for the City of Seattle, and Dorothy was there sort of hovering around, trying to separate the two of us, I shouting at the top of my lungs and he shouting at the top of his lungs. I was claiming that the legislative compromise which had come through the House was the best we were ever going to get and he was -- well, he didn't really refer to my parentage, but he had some harsh things to say.

What happened was that we got caught in the rules. As you recall, the 1970 Session was a brief session, 33 days, and it was done deliberately so and the heat of intensity on environmental matters was very, very high. The national magazines, the local press, the local metropolitan press, the Governor, the Washington Environmental Council, all seemed to focus during this particular legislative session, and the legislators, I think it's fair to say, had their feet put to the fire. And particularly in the House of Representatives, where there was a Republican majority, they felt, well, all right, maybe we at least better do something here, but they got caught in the rules and so, instead of coming up with the bills originally introduced, Senate Bill 6 and House Bill 58, which were the seacoast management bills for 1970, they came up with Senate Bill 58.

Now, let me just digress for a moment to talk about Senate Bill 58, because this is kind of an interesting thing. Senate Bill 58 was put in by the redoubtable majority leader of the Senate, the squire of the 34th District, the Honorable R. R. "Bob" Grieve, and the thrust of Senate Bill 58 was this, that there should be no high rise apartments built along the tidelands, and, most specifically, in West Seattle. Now, there were some who claimed, with a great deal of feeling, the idealists among us, that Senator Grieve was one of the outstanding environmentalists in the state and that he wanted to preserve the seacoasts of West Seattle. There were a few cynics who said, no, what it really is all about is that Senator Grieve has some sort of feeling that, generally, Republicans live in high rise apartments on the seacoasts and he was not too interested in having too many more of them in the 34th District. Well, whatever the reason was, there was a happy combination and whether it was ethics and economics or politics and idealism, I'm not quite sure what had happened but everything came together in Senate Bill 58. So, it became

the vehicle which the House of Representatives used to tack on, and with Dorothy I will use the term "tack on" advisedly, tack on this compromise.

The essence of the compromise was that it said: Control will follow geography, control will follow ownership. If you own the land, you essentially are going to make the rules so far as the management of the tidelands are concerned. That puts it in very simplified terms. I don't think it is necessary to get into the detail of it. It is sufficient to say that the Bill did pass the House. It passed the House twice. It got into the Senate and on the key vote it failed, as I recall, 26 to 20, by six votes. I would have to say in all candor, it failed because of the lobbying of the Environmental Council. At the time, we were in rather stern disagreement. Looking back now, I am inclined to think that they were probably right and we were probably wrong, but that's the way it happened and we went on to greater things.

Our arguments were not done with the Environmental Council because, later in 1970, we were preparing for the 1971 Session, "we" meaning the Executive Department, the Governor's office, and, all of a sudden, it came to our attention that the Environmental Council was preparing for 1971 also, in a somewhat different way than we had in mind. They had totally lost faith in the legislative process. Governor Evans had then and still maintains what some consider to be a rather touching faith in the legislative process, and he felt that the 1971 Session should be given another chance. We argued that -- look, the Legislature has really only had one chance to consider shoreline management, seacoast management, and that chance was in 1970. It was not under the optimum conditions; it was not at the top of anybody's list of priorities. The reason we really got to it was because everything else got passed and there it was. There again, there may be some disagreement with my friend on the right on that, but that generally was our feeling -- give the Legislature another chance; they must do something. The pressures are going to be too intense from all sides to allow Wilbour v. Gallagher to stand without any further clarification. They must do something, and we think they will do something, and we ought to give them a chance.

Well, the Environmental Council was not interested in that kind of an argument and I recall that, during the summer and fall of 1971, a variety of ex parte meetings were held by the Governor with members of his staff and with members of the Environmental Council and their officers, and we agreed to disagree on this subject. We had two points which we argued with them on, neither of which they were able to accept. Number One was the one I mentioned, that we felt the Legislature ought to really be given a

chance under the best conditions, and we really did not feel that they had had that chance. They disagreed, not only that they had had the chance already, but they thought the chances of their doing anything in 1971 were minimal, to put it in the best possible terms. Secondly, and I suspect that this was the major philosophical argument, if this can be raised to the height of being a philosophy, and that was that we felt that Initiative 43 simply did not give a large enough role to local units of government. Now, again, we had no illusion then, and I don't think we have any illusions at the present time, about local government any more than state government or federal government. Local government can be a very difficult beast to operate with and many times can be influenced, perhaps unduly, by interests which some would choose to call invidious, which may come up again some time. Be that as it may, we felt that there was a rather substantial expertise, a rather substantial resource which was in the various counties and it didn't really make any sense to completely exclude local units of government from the planning process in setting up this most complicated program. So, we insisted very strongly that there ought to be a larger role for local units of government and that the role should be played, not by some kind of an advisory committee that seemed to be the genius of the Environmental Council bill, but that it ought to be played by elected officials. Recognizing that we were taking a considerable chance on that and recognizing that there were considerable difficulties, we thought it ought to be done. Well, as I said, we disagreed and Initiative 43 did get enough signatures and was referred to the Legislature.

In the meantime during 1971, there were other ex parte meetings taking place. Again, with environmentalists, by their definition, but these were individuals who had perhaps a more compelling interest than the Environmental Council did in the development of various shorelines, both commercially and industrially and recreationally here in the State of Washington. We had at least two or three of these that I can recall.

Among this group of individuals there were three issues that were of grave concern to them, which I think I can outline. Number One was the scope of the bill. What's it going to cover? Is it going to cover all of the seacoasts of the state? Is it going to cover all of the rivers, all of the lakes, and, if so, how far back is it going to go? 100 feet? 300 feet? 500 feet? Just what are you talking about? How large an area? The second thing, and these are in perhaps ascending order of importance in the minds of those with whom we were talking, what is the process by which you are going to make the decisions? I think it is fair to say that this particular group of individuals felt quite keenly, again, perhaps, for completely opposite reasons, that local

government ought to have a larger role to play in the whole planning. I am not actually suggesting that they had differing reasons; I am suggesting that there is a possibility, at least that their reasons differed from those the Office of the Governor had. So, we reached some agreement that the process itself ought to involve local government but they were very concerned as to how the process would work. Thirdly, and in some sense perhaps the most important, after the process was completed and the first decision was made, where did you go from there? What was the appellate process? Who then began to make up their minds? What kind of administrative body was involved in the appellate process? Who had the right to appeal? Who had to carry the burden of proof, and so forth? These were the areas there was the gravest concern over.

Well, moving into 1971, the Executive Department again prepared a bill, this time because we had at least partially parted company with the Environmental Council, the bill was introduced by executive request as House Bill 584. Again, in retrospect, I am inclined to think that the differences between the two were somewhat magnified by the proponents of each. I think it is fair to say that both sides would be perfectly happy if either 43 or 43B happens to pass on November 7 of this year.

It became quite clear, at least from our standpoint, that the Legislature was not going to approve Initiative 43, for whatever reason. They simply were not going to do it, and some kind of an alternative had to be submitted to them and we felt that the alternative presented to them ought to be the best possible alternative, and we prepared HB 584 and with some pride of authorship said, yes, this is the thing to do. I think there were two key points in 584 that appealed to the Legislature. Number One is the one I have talked about -- local control, or local involvement I should say, in the process. Control is the wrong word because ultimate control does not rest with local units of government, but local involvement. The second item, and I give credit to my friend Charlie Roe on this side of the table for that, was coming up with the device of shorelands of statewide significance because this device tended, I suspect, in the minds of the legislators, to set it into two different categories. The fact of the matter is, I am not really sure it does that, but there was some thinking that it did. It gave the gloss, at least, that we had done some thinking about the important shorelines of the state and perhaps those that were less important. But the idea of having shorelines of statewide significance, which were listed in the bill, one after another, with a procedure for adding additional shorelines of statewide significance, by having some difference in the process for the shorelines of statewide signifi-

cance and other shorelines of the state had a substantial appeal to the Legislature.

Well, in it went and it became quite clear that this was going to be one of the key issues and one of the most important issues of the session. We were not disappointed. The House did pass 584 without too much trouble. We had some areas of disagreement in it, but then it came over to the Senate and at that time in the Senate occurred one of those things which I can only call a serendipitous exigency or, to put it another way, it gives even the village agnostic at least some feeling that a supreme being is watching over the affairs of man, because what happened was the Chairman of the Senate Natural Resources Committee suddenly felt compelled to study transportation on the continent of Europe and the burden for carrying on seacoast management fell to Bill Gissberg. Now, let me say this, in my judgment, we have 584 on the ballot because of Senator Gissberg. I give him credit for it. He got behind the bill. He became, without any question, the most informed supporter and the most dedicated and diligent supporter of the legislation that we had had in either house of the Legislature. At this particular point in time, he really took hold of it and went. Now, Senator Gissberg had some questions that he raised. There was a question on platting on which he had some concern which was able to be negotiated out. He had some additions that he wanted to put in regarding oil drilling that the Environmental Council was interested in and which we have no quarrel with. The area where we came into conflict was a matter involving the Department of Natural Resources. I have never been able to entirely figure out what the Department's real interest is in seacoast management. I know that, in the 1970 compromise, they were quite eager to have the compromise passed. Of course, I suspect the reason was that it put the jurisdiction of the land under the Department. As I said, jurisdiction over seacoast management followed ownership and the Department of Natural Resources is the largest single owner of tidelands in the State of Washington. So, they rather liked that because it got around the question as to whether someone else could control what they chose to do with their land.

In 1971 the Department of Natural Resources was still in there pitching, and they felt that two things ought to happen. Number One -- they felt that the Department ought to be considered the same as a division of local government, so that, when it came to the determination as to what would happen to this property, they would stand in exactly the same role as local government. Secondly, they felt that the Commissioner of Public Lands, Mr. Cole, or his designee, should be a member of the Shoreline Appeals Board. The Governor took exception to both of these view-

points and worked with the Senate and wrote a letter to Senator Gissberg, trying to persuade him that what should be done was to eliminate this particular grant to the Department of Natural Resources on both accounts. The Senate acted like Solomon, or at least they thought they did, and they did nothing about it at all and left them both in. The Governor, when the bill finally passed, as it did, with an item veto, which we were informed by the Attorney General was appropriate -- not necessarily the policy, but the fact of engaging in an item veto was appropriate and legal -- the Governor did have a single item veto from the bill which he simply snipped out the sentence in which it indicated that the Department of Natural Resources should be considered for the purposes of House Bill 584 as a unit of local government.

Well, that's pretty much how it got there. I think it is a good example of how a variety of conflicting interests, coming in from entirely different directions, can center on and focus on a particular piece of legislation and when it finally got through, I think that both sides got pretty much what they wanted. I think it is also an example of how a citizens' lobbying group can get the job done. This would not have happened without the ministrations of the Washington Environmental Council. To my way of thinking, during the sessions of 1970 and 1971, this organization was, without any question, the most significant lobbying force in the State of Washington. They had people who were all over the place, morning, noon, and night. When one got tired, they would send in another team, and it wasn't a second team, it was another first team. I can't say enough about this. For those of you who sometimes get discouraged with the legislative process, I will simply point to the activities of the Environmental Council and say, quite clearly and without any equivocation, that, in my judgment, this proves that a well-informed citizens' lobby can get the job done.

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A Summary of the Washington Act -- Legislative History

By

Dorothy Morrell*

As Chairman of the Salt Water Shorelines Committee for the Washington Environmental Council, it gives me a great deal of personal pleasure to see so many of you here today. Two or three years ago, few people would have attended a symposium such as this. It shows how our thinking has changed here in Washington State.

My talk is going to be quite a bit briefer than I had anticipated, because Jim Dolliver has spoken very adequately on the subject of citizen involvement. It remains only for me to fill in the gaps, but I do thank him for his kind remarks about the Washington Environmental Council.

I was worried about speaking too long anyway, for I spent over three hours on Wednesday talking to a gentleman from the American Law Institute about the subjects I would like to cover with you today, and I really don't think you want to listen to me for three whole hours. By the way, he is here in the audience today. Bill, could you stand for a minute. I would like the audience to be able to identify you. This is Mr. Bill Townsend. He was involved with the Florida Environmental Land and Water Management Act of 1972 and is presently at work with the American Law Institute on a model land use code for the states. I imagine some of you would like to talk with him before he leaves. He is only going to be in Washington until Wednesday.

Now, Jim Dolliver is right about one thing. We do differ a little bit concerning the history of these two bills. If you make the distinction between purely conservationist legislation, such as were the Wild Rivers Act and the Seashore Conservation Act, and planning legislation, as are the two measures we are discussing today, then it was exactly three years ago yesterday that the Washington Environmental Council became involved. It didn't seem like a memorable occasion at the time. Tom Wimmer, who was

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then our President, was unable to attend the June 23 Western Governors' Conference on Environment and asked me, as Chairman of the newly formed Ocean Beaches Committee of the WEC, to go in his place. There, I met some people from Oregon who told me about a bill that had passed in their 1969 session requiring the counties within the State of Oregon to zone their land within a two-year period, or the Governor would zone it for them. I wrote immediately to the Governor's office in Oregon for a copy. It was a very short bill and didn't contain much in the way of zoning standards, but the concept itself was fascinating. I remember saying to a newspaperwoman that it was just like reading poetry. I took the bill to Jim Dolliver in Olympia and said, "Jim, I think this is the way to save the ocean beaches." I didn't know him very well then and I don't think I really expected anything much to happen, but, on September 2, I got a call from the Governor's intern on environmental legislation, Dale Reed. He said, "Dotty, come on down to Olympia. We have a surprise for you." And there it was -- the Seacoast Management Act. There are times when you know your life is never going to be the same again, and this was certainly one of them for me.

Although we were fortunate in finding excellent sponsors for the bill and in receiving the Governor's support, the Legislature as a whole probably would have ignored it if it hadn't been for the Wilbour v. Gallagher decision, which had the net effect of making planning for our shorelines a prerequisite for any overwater development. Unfortunately, from our point of view, there appeared to be certain special interest groups in the state who were attempting to use the Seacoast Management Act as a tool to subvert the Wilbour v. Gallagher decision, rather than to use it in the public interest. Our decision to lobby against the final version of the Seacoast Management Act which had been so cruelly altered by the Legislature was one of the most difficult we have had to make, and perhaps especially so for me, for women can become attached to a piece of legislation almost as they do to a child.

In the spring following the 1970 Session, our role in the development of shorelines management legislation changed, and became an even more important one. Well, I didn't know much about lobbying, but I had seen people start rumors in Olympia and witnessed the effects, so during the 1970 Session I said to myself that I'd start a rumor of my own. I went to members of the Legislature (this was before they mangled the Seacoast Management Act) and told them that they had better pass our bill because I couldn't predict what the Washington Environmental Council would do if they didn't. Our organization, I told them, might start an initiative campaign. Well, the legislators didn't listen to me, but the

Environmental Council did. Thus, the idea for an initiative to protect our shorelines was born.

When we met together after the 1970 Session, we decided to draft an initiative to the Legislature. For those of you from out of state, it will be helpful to explain the difference between the two kinds of initiatives allowed by our Constitution. An initiative to the Legislature goes to the Legislature and, generally speaking, the Legislature then has three choices. It may enact the initiative into law; it may refuse to take action, in which case the measure is automatically placed on the ballot at the next general election; or it may pass a substitute measure dealing with the same subject. In the last instance, both measures must go to the people for a vote. This, of course, is what happened in the case of Initiative 43. An initiative to the people would have been preferable from our point of view, but there was simply not enough time to get the required number of signatures by the July 3 deadline.

Some of the board members of the Environmental Council had previously been involved in an initiative campaign and knew how much effort was required. It was therefore decided that, if we were to take an initiative to the Legislature, then we should put as much as we could into it and include rivers and lakes as well as salt water shorelines. As a matter of fact, we first called our initiative the Seacoast, Rivers, and Lakes Conservation Act. Thank heavens we didn't choose that for the final title, as it would have made quite a mouthful.

I think you are all probably pretty well aware of our problems in trying to get signatures in the shopping centers, and the legal roadblocks thrown at us. This harassment backfired, however, and gave us a lot of well-needed publicity just before the deadline in December. We didn't think we were going to make it the month before the deadline, but the public response after all the publicity was great, and we ended up with over 160,000 signatures, almost half again as many as we needed.

I don't think I can add much to what Jim has said regarding the 1970 Session events. The threat of our initiative going on the ballot forced the enactment of alternative 43B. Our involvement during this period was related to our concern that the Legislature's bill be a strong alternative to Initiative 43.

You have materials on both of these bills in your folder, but very briefly I'll describe Initiative 43 to you. Charlie Roe will be talking about 43B.

I think the way I should do this is to share with you some of our thinking in writing the bill as we did. One of the things that we strongly believe is that all of the shorelines of the state are important. The swamp where the redwing sings or the stream at the bottom of a small ravine are just as important to some as Puget Sound or the ocean beaches are to others. So, we made provision in the Act for all of the shorelines to be covered. The Department of Ecology must develop comprehensive plans for the shorelines of all navigable bodies of water and for lakes of 20 acres or more. For the smaller lakes and non-navigable rivers, we added a different kind of provision. We required that local governments adopt regulations or legislation to protect these bodies of water within three years. We left it very flexible. We didn't expect local governments to have to adopt a comprehensive plan for a little stream of water that is only so wide. You can't measure 500 feet inland from a swamp or a little creek very well without it costing you an awful lot of money, but the little streams still need protection.

Please remember that the Environmental Council is not a purely conservationist organization, although we started out that way. Perhaps I should tell you the story of how our group was started. Back in 1968, a small group of conservationists who wanted to protect fishing streams and wild rivers in Washington decided that, because their proposed legislation had failed, they could work more effectively if they were to get a whole lot of different conservationist organizations together under one umbrella and lobby in Olympia as a group. The only thing is, they made a mistake. They picked the wrong name for the organization. They chose the name of Washington Environmental Council. The minute they did that, everything changed. Obviously, there must have been a real need for an organization such as ours in Washington, because people who were interested in air pollution, water pollution, land use, urban housing, tax reform -- you name it -- all started coming in under this one umbrella. The umbrella sheltered too many interests to allow the Council to become a strictly single-purpose group, or a strictly conservationist group. As a result, we are no longer a single-purpose group, or the kind of organization that is opposed to any kind of development. We represent too many interests who want to protect their environment but who also know the economic facts of life. What we tried to do in drafting Initiative 43 was to say that, yes, we want development, and yes, we want jobs for the people and better schools, and you can't have those things without a sound economy, but let's put development in the right place. Let's make an effort to concentrate development in already built-up areas, rather than spreading it along our undeveloped shorelines. This policy is clearly enunciated in our act.

In the spring of 1970, Alvin Baum, then Deputy Director of the San Francisco Bay Conservation and Development Commission, appeared before the Legislative Council's Commerce Committee to discuss their recently enacted legislation, which set up a planning and permit system of management for the Bay. This appeared to us to be far more efficient than the system used in the Seacoast Management Act, and we wrote Initiative 43 along these lines, thus abandoning the concept of local zoning under state guidelines.

We also recognized the importance of a double veto system, such as is used in the Bay legislation, and incorporated this in our bill. In other words, under Initiative 43, if a local government doesn't want a development and the state does, or if the reverse is true, nothing can happen. The state and local governments have to meet to determine what is in their mutual best interest, and only when they agree can development take place. In San Francisco, by the way, this has had the effect of encouraging communication and cooperation between the regional government and the local governments involved, and it has not, incidentally, impeded development.

Well, it seems I have only three minutes left, so I must leave some of this up to Charlie Roe. But first let me make a few comments about Initiative 43. In writing it, we incorporated extensive consumer protection provisions, perhaps the most important of which is the requirement that anyone subdividing land must receive a permit to do so. This will tend to protect not only the environment, but the purchasers of residential property along our shorelines.

We also wanted to assure citizen participation in the planning process, and therefore provided for large regional citizens' councils to advise the Department of Ecology in the preparation of the comprehensive plan.

Most important of all, we wanted to centralize the responsibility for the management of our shorelines, so that the private citizen will know where to go for help and where to place the blame or the credit, as the case might be. But, although the responsibility under Initiative 43 lies with the Department of Ecology, the real power is in the hands of the people. They may bring suit to enforce the Act, for example, and have full access to all the Department's documents, including the evidence submitted by a developer to show compliance with the Act.

In closing, I would like to emphasize what I believe to be a most significant point. Providing the voters approve one or the other of the shoreline management proposals in November, we

will have been able to accomplish here in Washington State what no other state has, and we will have been able to do so without first having had to experience the environmental degradation we have witnessed elsewhere in the country. We have not had to experience a disaster, in other words, in order to react with shoreline management legislation. I think there are several reasons for this, not the least of which is the high degree of concern and cooperation that has come from the staffs of the various agencies involved, certain members of the Legislature, and perhaps, above all, from the Governor's office. When I went to Jim Dolliver three years ago with the Oregon bill, he listened, and I think that is what really made things start to happen in this state.

Yet, without the involvement of the citizens' organizations, such as the Washington Environmental Council, I doubt very much if we would all be here today, for the extraordinary energy and dedication of concerned citizens has been a vital ingredient in the development of these two measures. Once the drive for shorelines protection had been set in motion, our members just simply refused to give up.

We do not intend to stop working now. We will campaign vigorously for the enactment of shorelines protection legislation next November. Following that, we will continue to work with governmental agencies and private citizens to assure that whichever measure passes is made to work, and is used as a creative tool for the protection of the human and natural environment.

We are proud to have been a part of Washington's shoreline experience. Yet, as Alfred Tennyson wrote, "All experience is an arch wherethro' gleams that untraveled world, whose margin fades forever and forever when we move." Our voyage in search of a better environment for our state has really just begun, and only if all of us here and the interests we represent can learn to work together will we someday reach safe harbor.

# # #

A Summary of the Washington Act -- Legislative History

By

Charles B. Roe, Jr.*

BACKGROUND

No environmental issue has come to a head at a faster pace in our state's Legislature than shoreline management.[1] At the last minute of the last day for introduction of bills of a general nature during the 1969 session, Representative Alan Thompson (and two colleagues no longer in the House of Representatives) introduced the first bill to regulate, on a comprehensive basis, the uses of the tidelands and shorelands of the state.[2] While this "wetlands" bill was not the subject of any legislative hearings, its introduction did, most importantly, attract the attention of several conservation groups and Governor Evans' administration.

The next session of the Legislature, the special "environmental session" of 1970, was the scene of an explosion on the environmental scene. The session centered around seven major pieces of environmental legislation either proposed or supported by the Governor.[3] Among them, only a "seacoast management" bill developed

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[1]Acknowledgement of appreciation is made to my co-worker, Assistant Attorney General Robert V. Jensen for his valuable assistance.

[2]HB 787; former Representative, now Senator, Pete Francis was also a sponsor. A "scenic rivers" bill was introduced in 1967 under the leadership of Herb Legg of Olympia, Tom Wimmer of Seattle, and Lew Bell of Everett. See House Bill 234.

[3]The prime inclusion in the Governor's environmental package was a bill to reorganize the executive branch in dealing with problems of water and pollution. Perhaps the most publicized part of the package was the absolute liability "oil spill" bill.

by the Washington Environmental Council was not enacted.[4]

The failure of enactment of the seacoast management act was a great disappointment to many conservationist leaders. Apparently sensing little chance of enactment of a bill to their liking within the reasonably foreseeable future, they struck upon a seldom-used lawmaking tool, an initiative to the Legislature.[5] A successful signature-obtaining drive was conducted by the Washington Environmental Council and, as a result, a "shoreline protection act" was filed for consideration by the 1971 Legislative Session.[6]

While the conservationists and Governor Evans were in agreement that legislation to regulate the use of the areas under and bordering state waters was necessary, it became quite clear that they did not agree fully either on (1) the approach of the initiative to the Legislature, or (2) the contents of Initiative 43. As a result, the Governor stated that he would propose an alternative for the Legislature's consideration which would not only provide for sound environmental protection of our shorelines, but would bring local government into the picture as a valuable contributor to the protection of the state's shoreline areas.

Before the Legislature was a few days old, it had before it Initiative 43 (SB 174) and the Governor's bill (HB 584). Almost as quickly, it became apparent that Initiative 43 was without any significant support and that the legislative leadership had agreed to center its attention upon HB 584 as the vehicle for enacting alternative shoreline legislation.

The focus thus turned to the House Natural Resources Committee. Its chairman, Representative Hal Zimmerman, immediately called two executive sessions of his committee (totaling approximately six hours), for the purpose of educating his committee as to the contents of HB 584 -- a long and complex bill. At the conclusion of these meetings, it was clear that a majority of his committee did not favor the bill as introduced. At this point, Chairman Zimmerman appointed a task force of eight, consisting

[4]HB 58 and SB 6. See also Senate and House Journals as they pertain to SB 58.

[5]See Article II, §1 (Amendments 7 and 30) of the Washington State Constitution.

[6]The drive was chaired by Thomas O. Wimmer of Seattle. In large part for her efforts in this cause, Dorothy Morrell and her family of Bellevue were awarded the designation of "Environmentalists of the Year" in 1971 by the Washington Environmental Council.

equally of legislators and non-legislators, to make recommendations to his committee.[7] After a number of meetings of this group, a report recommending substantial modifications to HB 584 was made. And ultimately, a substitute bill was reported out of the House Natural Resources Committee. On April 5, 1971, the House of Representatives passed the bill after considering more than forty floor amendments.

The scene then shifted to the Senate Natural Resources Committee, where its Chairman, Senator Lowell Peterson, turned over the close evaluation of the bill to a fellow committee member, Senator William A. Gissberg. A series of negotiations followed, whereupon a number of changes were made -- many at the request of Governor Evans, who was seriously concerned with some of the actions of the House in its substitute bill.[8] Ultimately, through the leadership of Senator Gissberg,[9] the Senate passed SHB 584, with some rather important modifications, the overall thrust of which emphasized the protection of the environment.[10]

On May 26, 1971, Governor Evans, after vetoing language which exempted the Department of Natural Resources from certain requirements of the Act, signed the "Shoreline Management Act of 1971" (Chapter 286, Laws of 1971; Chapter 90.58 RCW).

What is the present status of the Shoreline Management Act?

1. It became effective on June 1, 1971, and is in effect today.

2. It will be the subject of an approval vote in the gen-

[7]This task force committee consisted of Representative Axel Julin, prime sponsor of 584, Representative John Martinis, Representative Alan Thompson, and Representative Hal Zimmerman, together with Professor Ralph W. Johnson of the University of Washington School of Law, Senior Assistant Attorney General C. B. Roe, Jr., Jack Rogers of the Association of County Commissioners, and Mrs. Joan Thomas of the Washington Environmental Council.

[8]At one point, Governor Evans suggested he would transfer his support to Initiative 43 if SHB 584 was not repaired.

[9]Senators who worked closely with Senator Gissberg included Senators Robert Bailey and George Clarke.

[10]An example of such an addition is a section which prohibits surface oil drillings in Puget Sound, or 1,000 feet landward therefrom.

eral election of November, 1972 (unless, of course, it is declared invalid by a court prior to that time). Explaining further, the electorate will, consistent with Article II, §1, of the State Constitution, be asked to vote through the answering of the following questions:

1. Do you favor shoreline use regulation legislation?

   Yes or No

2. Which do you prefer?

   Initiative 43, or
   Initiative 43B (SHB 584).

If the "no" vote to question 1 is greater than the "yes," then the answer to question 2 is irrelevant; Initiative 43 would be defeated and Initative 43B repealed. If, to the contrary, more people cast affirmative votes to question 1, then the answer to question 2 becomes very relevant; the initiative receiving the most votes becomes law.

SHORELINE MANAGEMENT ACT OF 1971 -- INITIATIVE 43B

Turning back to what is the law today -- Chapter 286, Laws of 1971, First Extraordinary Session -- one should be familiar with the policy section of the Shoreline Management Act, for it sets the tone for the entire Act. It is in Section 2 and provides:

> "Section 2. The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration, and preservation. In addition it finds that ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development of the shorelines of the state. The legislature further finds that much of the shorelines of the state and the uplands adjacent thereto are in private ownership; that unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest; and therefore, coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state while, at the

same time, recognizing and protecting private property rights consistent with the public interest. There is, therefore, a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines.

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

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

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

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

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

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

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

"(6) Increase recreational opportunities for the public in the shorelines;

"(7) Provide for any other element as defined in section 11 of this 1971 act deemed appropriate or necessary.

"In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single family residences, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state.

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

To carry out this policy, the legislation contemplates a joint and coordinated effort by state and local government. The basic ingredients for implementation of the bill, which lawyers should be aware of, are as follows:

1. Development of a comprehensive use regulation, designated a master program, for the various shoreline areas. These programs are developed by local governments, in accordance with criteria developed by the Department of Ecology, and approved by said Department. The bill provides for two types of shorelines

of the state:[11] (a) shorelines, and (b) shorelines of state-wide significance.[12] Different sets of criteria are to be prepared by the Department of Ecology for these two types. See Sections 2, 6, and 9.

2. A permit program. A permit is required before a "substantial development" may be undertaken on the shorelines of the state unless exempted. See Section 14, which provides in pertinent part:

> "No substantial development shall be undertaken on shorelines of the state without first obtaining a permit from the government entity having administrative jurisdiction under this chapter." (Subsection 2).

a. "Substantial development" is defined in Section 3 as follows:

> "'Substantial development' shall mean any development of which the cost or fair market value exceeds one thousand dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state...."

b. Exemptions from the permit section are set forth in Section 3(3)(e)(i) through (vi), as follows:

> "(i) Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements;
>
> "(ii) Construction of the normal protective bulkhead common to single family residences;
>
> "(iii) Emergency construction necessary to protect property from damage by the elements;
>
> "(iv) Construction of a barn or similar agricultural structure on wetlands;
>
> "(v) Construction or modification of navigational aids such as channel markers and anchor

[11]The geographical scope of coverage of the Act is set forth in Sections 3(a) and (b).

[12]Section 3, Chapter 286, Laws of 1971.

buoys;

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

and Section 14(8) and (9), as follows:

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

"(9) No permit shall be required for any development on shorelines of the state included within a preliminary or final plat approved by the applicable state agency or local government prior to April 1, 1971, if:

"(a) The final plat was approved after April 13, 1961, or the preliminary plat was approved after April 30, 1969, or

"(b) Sales of lots to purchasers with reference to the plat, or substantial development incident to platting or required by the plat, occurring prior to April 1, 1971, and

"(c) The development to be made without a permit meets all requirements of the applicable state agency or local government, other than requirements imposed pursuant to this chapter, and

"(d) The development does not involve construction of buildings, or involves construction on wetlands of buildings to serve only as community social or recreational facilities for the use of owners of platted lots and the buildings do not exceed a height of thirty-five feet above average grade level, and

"(e) The development is completed within two years after the effective date of this chapter."

It is important to note that only local governments (municipalities and counties) issue substantial development permits.

3. Appeals procedures. Rule-making activities, e.g., adoption of guidelines by the Department of Ecology, are subject to review as provided in the Administrative Procedures Act. See RCW 34.04.070 and RCW 34.04.080. "Contested cases" activities, e.g., the ruling on an application for a permit to undertake a substantial development, are reviewable before a shorelines hearings board. See Section 17 relating to the board and Section 18 relating to standards for and procedures to perfect appeals to said board.

4. Enforcement. The Attorney General, Prosecuting Attorneys, and city attorneys are responsible for enforcement of the Act. Section 21.

These are the basic implemental ingredients of the shorelines act.

The case of Wilbour v. Gallagher, 77 Wn.2d 306, 462 P.2d 232 (1969), is closely related to the Shoreline Management Act and is worthy of note. As you all will recall, the Washington State Supreme Court, in the "Lake Chelan" case, ordered the removal of a fill for a trailer park on the shore of Lake Chelan on the basis that "the public has a right to go where the navigable waters go," and one cannot infringe upon that right without the state's permission. This case, although not announcing new law but reaffirming long-established principles, caused considerable alarm among certain interests. To clarify the issue, the Act has "grandfathered in" certain structures and improvements which have been placed over or in the navigable waters of the state over the years. This language, which follows, is well worth close examination:

> "Section 27. (1) Nothing in this statute shall constitute authority for requiring or ordering the removal of any structures, improvements, docks, fills, or developments placed in navigable waters prior to December 4, 1969, and the consent and authorization of the state of Washington to the impairment of public rights of navigation, and corollary rights incidental thereto, caused by the retention and maintenance of said structures, improvements, docks, fills or developments are hereby granted: PROVIDED, That the consent herein given shall not relate to any structures, improvements, docks, fills, or developments placed on tidelands, or beds underlying said waters which are in trespass or in violation of state statutes.

"(2) Nothing in this section shall be construed as altering or abridging any private right of action, other than a private right which is based upon the impairment of public rights consented to in subsection (1) hereof.

"(3) Nothing in this section shall be construed as altering or abridging the authority of the state or local governments to suppress or abate nuisances or to abate pollution.

"(4) Subsection (1) of this section shall apply to any case pending in the courts of this state on the effective date of this chapter relating to the removal of structures, improvements, docks, fills, or developments based on the impairment of public navigational rights."

CONCLUSION

The enactment of the Shoreline Management Act of 1971 was almost a legislative miracle in that it brought together legislators of varied persuasions and philosophies to support compromise legislation in surprising numbers: 37 to 8 in the Senate; 89 to 10 in the House of Representatives. Like most compromises, few support or oppose it fervently.

The Act is also an experiment in state intergovernmental relations. Can state and local governments, through Chapter 90.58 RCW, work in a coordinated fashion to better our state? Indeed, the success or failure of the bill rests largely on local governments. If the cities and counties fail to meet the challenge of the Act, it is certainly doomed.

It is my plea that all public lawyers of local governments give their best efforts to make the Shoreline Management Act work. I am convinced that its successful implementation will result in the long-range betterment of the environment of our state.

# # #

The Magnuson Coastal Zone Management Act

By

Warren G. Magnuson*

Having just recently come back from Stockholm and the first United Nations Conference on the Human Environment, I am even more convinced that the industrialized nations must take the lead in protecting the world environment. And, as always happens when I'm able to come back home, the beauty of Puget Sound reminds me once more of the urgent need to protect our coastlines from contamination.

It's a special pleasure, then, to be here with you to discuss the leadership that the Senate has provided by passing the so-called Magnuson National Coastal Zone Management Act of 1972.

But before I take up that federal legislation, I want to congratulate Washington State for the leadership it has provided in this same vital area. Here, of course, I am referring to the Shorelines Management Act passed by our Legislature, and the Shorelines Protection Act which is popularly known as Initiative 43.

I do not intend to stand in judgment on either of these measures here today. That judgment must be made by the voters in November.

But I do want to commend those in this state who have accepted the responsibility for honestly weighing the conflicting demands involved in the problem of protecting our coastline and resolving those demands to the best of their ability.

I have tremendous respect for these individuals, for I know what their job has been like. I know because we have been through the same meatgrinder in the Congress for the past several years in an effort to get a meaningful federal program going for our coastal zones.

*Senior United States Senator from the State of Washington.

Seldom is anything of value achieved quickly or easily. And nowhere is that old axiom truer than in the United States Congress.

But after three years of extensive hearings, intensive study, drafting and redrafting, the Senate Commerce Committee produced a solid, workable piece of legislation to protect the nation's coastal zones.

And on April 25 of this year, that legislation -- the National Coastal Zone Management Act of 1972 -- was approved on the floor of the Senate by a unanimous vote of 68 to 0.

This bill -- in concert with appropriate state legislation -- will give states the means to avoid crises in our coastal areas.

And nowhere is the need for rational coastal management better understood than right here in our own state. For we can see how a rapidly expanding population and a growing industrial economy can make tremendous demands upon the use of land within the coastal zone. We also know that these demands can gravely endanger the coastal waters and the delicate estuaries which are in reality the very source of all ocean life.

Allow these breeding waters to become contaminated and the oceans will die.

Clearly, then, we must accomodate our economic needs to the vital need to protect our coastal environment. To do that job, my bill would allow large-scale federal aid to the states and local governments to control the manner in which beaches, salt marshes, sounds, harbors, bays, lagoons, and adjacent lands are used.

In sum, over $325 million would be made available over the next five years to pay up to two-thirds of the cost of planning and carrying out coastal zone management programs.

Fortunately, we still have time to save our coastal zones and the ocean life they sustain. But time is fast running out for the population explosion has already begun to take its environmental toll along our coastlines.

From 1922 through 1954, more than one-fourth of all the salt marshes in the nation were destroyed by man's encroachment upon the natural environment. And by the year 2000, more than 80 per cent of our population will be living within 50 miles of our coastlines.

Clearly, then, it would be in the best interests of the entire nation for the National Coastal Zones Management Act to become the National Coastal Zones Management Law before the end of the 92nd Congress in December.

Regrettably, however, this legislation has become bogged down in the House of Representatives, despite the fact that a nearly identical bill has already been approved by the House Merchant Marine and Fisheries Committee.

Major responsibility for this delay rests with the Nixon Administration. Originally, the Administration was firmly committed to the concept of coastal zone management legislation and supported my bill. But last year, the White House changed its policy and shifted to support of its land use policy legislation, which consists of two separate bills now pending before the Senate Interior Committee.

This shift in Administration policy was reflected recently when the House Rules Committee voted to delay House consideration of the Coastal Zones bill written by the Merchant Marine and Fisheries Committee. According to the Rules Committee -- which decides when bills will be considered by the full House of Representatives -- this delay was requested by the Chairman of the House Interior Committee, who hopes to get his land use bill out of Committee and to the House floor. The implication, of course, is that he intends to attach his controversial land use bill to the Coastal Zone Management legislation. The result of that action, of course, would be to jeopardize the Coastal Zone Bill and the future of our coastal environment.

To be perfectly frank, I'm concerned about what will happen to the coastal zone bill over in the House. We in the Senate made a special effort to draft our bill so that it would be compatible with the proposed land use bills.

Our bill would complement, rather than conflict with, national land use policy.

It makes full provision for cooperation among states and local governments, as well as among area-wide and interstate agencies. Furthermore, it would create a National Coastal Resources Board to resolve any disputes that might arise between coastal zone management and land use policy.

Consequently, I cannot sympathize with the decision made by the Administration and by the Rules Committee to involve the fate of coastal zone legislation in the controversy over national

land use policy.

No one doubts the need for carefully developed land use legislation. But we also know that the most immediately endangered areas are along our coastlines -- the very areas to which the Senate addressed itself by passing my National Coastal Zone Management Act.

Consequently, I hope the House of Representatives will squarely confront the threat to our coastal environment and pass the National Coastal Zone Management Bill in the very near future. And, once the House acts, I am hopeful that the President will sign it without further delay.

This is a moment for decisive action -- not delay. The leadership which the Senate Commerce Committee has given at the federal level and the leadership which Washington has provided at the state level have brought this moment near. It would be a great disservice not only to our nation -- but also to the world which awaits our leadership -- if this moment were wasted.

# # #

NOTE: The Magnuson Coastal Zone Management Act (S.3507) was passed in the closing hours of the 92nd Congress and signed into law by President Nixon on October 27, 1972 (PL 92-583).

Administering the Washington Act

By

Marvin L. Vialle*

Let us discuss the major duties and responsibilities of the Department of Ecology as it relates to the Shoreline Management Act of 1971. The major areas for review will be:

1. The supporting role of the Department;
2. The Guidelines; and
3. Public information.

The Shoreline Act states that:

The Department shall act primarily in a supportive and review capacity, with the primary emphasis on ensuring compliance with the policy and provisions of the Chapter.

Recognizing that cities and counties have the primary role in administering this Act and at their urging, the Department of Ecology has undertaken several tasks to support and assist local governments in their carrying out of their responsibilities.

1. One of the first major undertakings in this area was the preparation of inventory procedures. Under the Act, local governments are directed to prepare an inventory of the natural characteristics, ownership patterns, and land to provide guidance and to assure an acceptable degree of statewide uniformity. The Department of Ecology has prepared inventory procedures for local governments to follow.

We have also made available what we titled "Inventory Supplement #1." This is a listing of information from federal, state, and other agencies. It outlines the type of information available, its cost, and the individual to contact. Our intent was to assist

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local governments to obtain information from previous inventories, thereby avoiding overlapping functions.

Close coordination with the counties and cities is achieved through our staff and a planner working with the Association of County Commissioners.

2. A second major area of responsibility assigned the Department is that of providing guidelines. (See Appendix)

While the Shoreline Management Act of 1971 has now been in effect for a full year, and while we feel that the Act has already been instrumental in causing more sound decisions to be made concerning the use of our shorelines, those decisions have, for the most part, been made without the benefit of adequate planning information. It is the intent of the guidelines that were adopted this week to provide a sound basis for the development of information that will allow decisions on the use of shorelines to be made with the benefit of adequate planning information. As required by the Shoreline Act, the guidelines have been designed to provide guidance for the regulation of uses of the shorelines of the state prior to the adoption of master programs by local governments and, secondly, to provide criteria to local governments and the Department in developing master programs.

Being the product of a great deal of input from interested agencies and individuals, we feel that the final guidelines will provide a sound basis for continued implementation of the Shoreline Act. Like the master programs that will be developed by local governments, however, the guidelines must and will be subjected to periodic revision and update based on the experience we gain in working with them.

The express purpose of the Shoreline Management Act is to provide for management of Washington's shorelines by planning for and fostering all reasonable and appropriate uses. This policy is directed at enhancement of shorelines, rather than restriction of uses.

As required by the Shoreline Management Act of 1971, the guidelines have been written to serve as standards for implementation of the policy of this legislation for regulation of uses of the shorelines, prior to adoption of master programs, while also providing criteria to local governments and the Department of Ecology in developing master programs.

The guidelines have been written in relatively general terms so that they can be used by all local governments, regard-

less of size or geographical location. The critical point of the entire program is the manner in which local governments interpret and utilize these guidelines in the development of their master programs.

The information in this guideline package has been presented in three parts: Part I, The Program, which sets forth the procedures required for completion of the master programs; Part II, The Natural Systems, which provides a brief look at each of the natural phenomena which is part of the total shoreline environment; and Part III, The Use Activities, which presents the actual standards for the establishment of master programs and provides direction for shoreline development until master programs are completed.

These guidelines are the beginning of a program which will become more meaningful as our knowledge of our environment increases. Our knowledge is not yet sophisticated enough to precisely determine the nature of the complex and interrelated chemical, biological, physical, and aesthetic factors within our environment.

Two areas of the guidelines deserve additional emphasis. First is the area of citizen involvement. We have stressed the point that the general public should be involved in the planning process from the initial stages to completion of the master program. While it is impossible to guarantee citizen involvement, it is possible to guarantee the opportunity for citizen involvement, and we feel this opportunity is absolutely essential. Because this is so important, we have required this in the guidelines.

The second area I would like to emphasize is the planning concept. In order to plan and effectively manage shoreline resources, a system of categorizing shoreline areas is designed to provide a uniform basis for applying policies and use regulations within distinctively different shoreline areas. To accomplish this, the environmental designation to be given any specific area is to be based on the existing development pattern, the biophysical capabilities and limitations of the shoreline being considered for development, and the goals and aspirations of local citizenry.

The recommended system classifies shorelines into four distinct environments which provide the framework for implementing shoreline policies and regulatory measures. These environments are:

1. Natural;
2. Conservancy;
3. Rural; and
4. Urban.

The Natural Environment is intended to preserve and restore those natural resource systems existing relatively free of human influence. Local policies to achieve this objective should aim to regulate all potential developments degrading or changing the natural characteristics which make these areas unique and valuable.

The objective in designating a Conservancy Environment is to protect, conserve, and manage existing natural resources and valuable historic and cultural areas in order to ensure a continuous flow of recreational benefits to the public and to achieve sustained resource utilization.

The Rural Environment is intended to protect agricultural land from urban expansion, restrict intensive development along undeveloped shorelines, function as a buffer between urban areas, and maintain open spaces and opportunities for recreational use compatible with agricultural activities.

The objective of the Urban Environment is to ensure optimum utilization of shorelines within urbanized areas by providing for intensive public use and by managing development so that it enhances and maintains shorelines for a multiplicity of urban uses.

The basic concept for using this system is for local governments to designate their shorelines into environment categories that reflect the natural character of the shoreline areas and the goals for use of characteristically different shorelines.

The third major area is one that must be continued and expanded -- that of public information. We have been on the road, talking to groups and agencies, basically upon request, and we have prepared in conjunction with the Association of Cities and Counties several public information brochures. If this, or any law of this broad nature, is to be effectively carried out, this effort must continue.

In order to maintain an orderly approach in implementing the public information program as it relates to the Shoreline Management Act, it has become imperative to list some priorities. We, therefore, plan to undertake the following:

1. Develop a 30-minute slide and narrative program for distribution to central and regional offices (many of the slides have been obtained for this program).

2. Develop a list of technical people who can serve as an advisory committee to local governments for advice on shoreline management application.

3. Update public bulletin and public citizen involvement bulletin.

4. Work with local governments in advising them of our resources and of possible resources in their area relative to public information.

We plan to work with the following groups for the dissemination of shoreline material:

1. Service clubs;
2. Professional organizations;
3. Colleges and universities;
4. General public; and
5. Secondary and primary schools.

That concludes my discussion of the three major areas, but I would like to comment briefly on some other important, although secondary, topics.

The first of these is the responsibility of being required to prepare an inventory and/or a master program if any local government fails to do so. There are two counties and three or four cities for whom the Department has assumed this responsibility.

The next area is that of a permit system. The Act provides that local governments shall establish a program, consistent with rules adopted by the Department, for the administration and enforcement of the permit system. Since the permit requirement became effective on June 1, 1971, the effective date of the Act, an emergency regulation was first adopted on June 2. Through working with this and various state, local, and private groups, these regulations were modified and permanently adopted on December 15, 1971. Since the other panelists will get into this area, I will not comment further. However, on a related subject, that of permit review, I would like to comment briefly.

In terms of permit review, the Department, and also the Attorney General's office, have two responsibilities -- review and possible appeal, and review for certification purposes.

Under the law, there is a 45-day period in which we must review all local permit actions and decide whether or not to appeal. I might emphasize, since this appears to be an area of misunderstanding, that the 45 days is a statutory minimum/maximum requirement. That is to say, the Department cannot approve a permit prior to 45 days and must appeal, if that is the decision, within 45 days. To date, there have been 531 projects received by the Department; of these, 15 have been appealed by the Attorney General's office and the Department of Ecology. There have been an additional ten certified as having valid grounds for appeal.

Another area is related to the designation of those areas which fall under the jurisdiction of this Act for planning and permit purposes.

The Department is required to officially designate these areas. We are proposing to adopt these on the 28th of this month. The process utilized in defining these areas was to prepare maps showing wetlands and to send these to each city and county having shorelines. Accompanying these maps was a request for suggested changes with documentation justifying the changes. The changes were then considered in the preparation of final maps, which, as I indicated, we are to the point of adopting.

One last area that I might mention is that the Department is authorized to make and administer grants within appropriations authorized by the legislation to any local governments. This has been done, but, since Mr. Clarke will address himself to this point, I will not expand on how this has been accomplished.

# # #

Administering the Washington Act

By

Roger Almskaar*

I am Roger Almskaar and am employed as a planner by Whatcom County. Our County faces the Strait of Georgia on the west, Canada on the north, and the North Cascades on the east. We have a population of 85,000 and a diversified economy. We have rural planning problems and urban planning problems, which, fortunately, are not insoluble because of our small population.

The central motive underlying my remarks is a personal desire to see all regions of the nation rapidly improve their management of shorelines.

I shall concentrate on the weaknesses and strengths of the Washington State Shoreline Management Act of 1971, as seen by the Whatcom County Planning Department, and as felt by a person who believes our existing system of allocating shoreline resources protects neither the public interest inherent therein, nor the valuable resources unique to shorelines.

Hopefully, then, these observations and suggestions will play a small part in the ongoing improvement in shorelines management here in my home state and in the other states.

I

Planners around the state are now deeply involved in the three phases of shoreline management as prescribed by the Washington Act -- (1) data gathering and organization; (2) policy and plan formulation; and (3) administration of development regulations. The role of staff planners at the local or regional level can be crucial for at least two reasons. First, among all the various people who will take part in the Shorelines Management pro-

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gram -- elected officials, citizens, private interest groups, agency staff, scientists and scholars -- only the planner will likely be continuously and significantly involved in all three phases. Continuity in such a program is vital; if not planners, it must be someone.

Furthermore, in many localities, planners will be the persons responsible for coordinating and evaluating contributions and activities of the other participants, during the inventory, plan development, and regulation. Though the planner is only one out of many in the process, he has a strategic position and the most challenging task of all. To accomplish these charges, planners should have preparation in physical geography, administration of regulations, resource management, economics, and committee work.

In the gathering of data for the required comprehensive inventory, we have so far devoted most of our time to organizing a handful of volunteer task forces, and drawing upon public agencies, rather than extensive field work. Another large job for our planning staff has been determining what should be mapped and described in the form of specific legends for several inventory elements. This has been accomplished in cooperation with the above groups and the Ecology Department.

Planners have little difficulty inventorying ownership patterns or existing land uses, but most of us found ourselves in deep water on the natural characteristics elements. Little precise work had been done, for example, in mapping of beach characteristics, vegetation, or wildlife, at county and city scales. And practically no comprehensive interpretive mapping was available of marine or fresh-water ecosystems, even though many hours have been spent studying them.

This deplorable situation illustrates what seems to be the normal pattern in these "grantsmanship" days: a person or agency gets funds to study a certain natural phenomenon in a specific place, invents a specialized legend for depicting data, gathers data, and publishes a report -- all without any local planning agency's knowledge and without coordination with related studies of the area. We are all opposed to uncoordinated, piecemeal development of shorelines. Yet, we continue to fund uncoordinated, piecemeal, and unusable research.

Also, it is regrettable that, because of a very tight timetable for inventory completion, and the very limited funds available to local governments for inventory work, we in Washington State will not have adequate data on basic natural systems for effective shorelines management. This information is not available now for most

areas; and without extensive and costly field work by specialists, it will not be forthcoming, statewide, in 1972. Arthur Cooper, a botanist, has said, "If one attempts to develop a system of management for the Coastal Zone that does not first take into account the basic ecology of the Coastal Zone, the system is doomed to failure."[1] Inventories will not only have to be updated, but substantially augmented in the near future. The financial burden of collecting, organizing, even computerizing, needed data is too great for most counties and cities to assume. There should be a better way to pass this cost on to those who profit most through use of shorelines.

In the policy-making and planning phase, our staff planners will not have such a central role as in data gathering and administration. Rather, the opportunity to elect goals for shoreline use, to develop supportive policies, and to allocate shoreline areas among competing uses belongs to the people. Here is where the input from the public should be supreme; through citizens committees, elected officials, hearings, private interest groups, and planning commissions.

Yet the planner still has an essential part in this stage -- to be a researcher and provider of information, an illustrator of alternative courses of action and their consequences, an analyst of public input, and a true advisor -- not a "yes man" -- to decisionmakers. Implicit in the above is the coordinator role again and certain capabilities required of personnel for such work, be they planners or some other trade. Without effective support and organization, the finest public input may yield a poor harvest.

However, it is naive to assume that a citizens committee or advisory commission will consistently represent the ideas and desires of the general public, no matter how perfectly "balanced" among diverse interests, such as developers and preservationists. Individual personalities and invisible axes grinding silently play a large part in the functioning of such committees.

Thus, it is a responsibility of elected officials to seek out and represent the overall public interest in clashes over policies or specific development proposals. Consequently, it is a basic responsibility of planners to have adequate planning and technical information available, so that decisions can be made with knowledge of alternatives and probable consequences.

The guidelines soon to be adopted by the state properly

[1]James C. Hite and James M. Stepp, Editors, Coastal Zone Resource Management (New York, Praeger, 1971), p. 128.

recognize the need for each local government to follow a fair and reasonable procedure in obtaining citizen input. But the complexity of the recommended procedure is far more appropriate for planning by entire counties, metropolitan areas, or river basins, than for small cities having perhaps one mile of shoreline. Perhaps this situation indicates the importance and necessity of regional planning and joint administrative regulation of development.

Even though shorelines-oriented planning has not yet begun in most places, administration of the substantial development permit system is now required of local governments. In Whatcom County, a review and advisory function has been delegated to the Planning Commission and its staff. However, the Board of County Commissioners makes the final decision on each application, and so far has accepted every recommendation from the planning agency. Most local governments who have planning staffs have taken this course. But, of course, most small towns have no planning personnel on the payroll, and one finds the Mayor, engineer, or building inspector issuing shoreline development permits. As might be expected, that situation is potentially the weak link in the permit program.

We have established by ordinance a sub-committee of the Planning Commission, which reviews all permit applications and staff reports thereon before recommending approval or denial to the County Commissioners. This sub-committee also decides, with staff advice, if a public hearing should be conducted by the Planning Commission on an application. It has been our experience in processing 12 applications that most proposals are (1) either controversial in the community or not controversial, and (2) involve a land use question, or a resource management question, or a combination.

In this light, our procedure has worked well so far, but depends heavily on the fair-mindedness and diligence of those persons directly involved. Whatcom County so far has granted nine permits, denied one, and two were withdrawn. The denied application, for a house on pilings in a navigable lake, raised several basic land use and planning issues. Frankly, I was uncertain as to how the Planning Commission and County Commissioners would react to a negative recommendation, and a little surprised when they both concurred. The denial is being appealed by the applicant, but has not yet been heard.

The planner's main responsibility here is to see that proper procedures are followed, that the affected public is notified, and that the basic technical and legal questions raised by the application are clarified and placed before the decisionmakers. Public employees in these positions should keep in mind that the gen-

eral public is relying upon them to do the right thing. There is a critical difference between administering regulations on development so as to carry out public policy, and bending over backwards to help a few parties in improving their wealth position. If planners do not place the overall public interest first in their priorities on the job, their work will be ineffective and the public will "throw the bums out."

II

Among several persistent difficulties inherent in the application of shorelines management to specific areas, such as achieving a "balance" between conservation and development, and relationships among several levels of government, the question of how comprehensive shorelines management will be is debatable.

We have already seen how some shoreline development decisions pose issues of resource management, among compatible users, and are not land use conflicts in the traditional vein of residential use, commercial, etc. Thus, it is imperative that policies and regulation of shoreline management be based upon reliable natural resource data and sound principles of resource management.

Yet, the possibility exists that some new management plans for shoreline areas will be updated versions of old land use plans and zoning ordinances. Many of these are largely based on two factors: existing development, and hoped-for development; and are negative regluations in practice. The emphasis today on natural systems, citizen involvement, de-emphasis on growth for its own sake, are alien to many existing plans. Shorelines management must be more than old wine in new bottles, or it will fail. Successful shoreline planning must unite the best features of river basin planning, and of planned development zoning. Public purchase of rights in property, such as tidelands access and streambank easements, will also be necessary in the long run.

Every shorelines management statute or plan worthy of the name has at least one grand phrase about the desired balance between conservation and development. The frequency of this idea's repetition indicates its genuine importance. But reaching this goal in a manner satisfactory to all sides will probably be impossible in a given county or region. The critical issue of scale is never dealt with in the lofty statements. Should the balance be sought statewide, regionally, county-wide, or nationwide? Or at all four scales?

Looking at our own County, many residents would say we have already reached the balanced state. We now have a diversified

economy, ranging from logging and fishing through agriculture, pulp milling, tourism, and higher education, and oil and aluminum refining. All that with a population of less than 100,000! Of course, there are others who dream of more and more industry and commerce, desiring to reach the land of prosperity enjoyed by the middle Atlantic region. And there are a growing number who feel their home country has already been led down the primrose path.

I don't believe the people of Whatcom County are abnormal, because they disagree on the optimum ratio between development and conservation. On the contrary, many areas in the country are finding the former consensus on growth and development withering away. There is a treacherous simplicity about this goal "balance," which disguises its ambiguity and its low value as a criterion for decisionmaking. To deal effectively with the basic issue of how much development or conservation is enough in a given area, other, more measurable factors must be considered.

Desires of residents, an expanded "land ethic" per Aldo Leopold,[2] physical capabilities and limitations of resource units, and cost benefit standards which consider all losses and gains to the affected community, tangible or not, will make more useful and more sound goal inputs. Aiming for the hypothetical "balance" is a goal whose achievement cannot be measured.

Diffusion and overlapping of the regulatory programs of different levels of government has received a due portion of blame for the present lack of planning for shorelines.

Our Legislature was compelled by petition to recognize this problem, and did take some commendable first steps toward a solution. The state act assigns complementary and separate responsibilities to local and state governments, and directs them to cooperate with each other, and with federal agencies as well.

However, since this intensive, detailed kind of planning program has never been in practice at the statewide scale, many participants at all levels have not yet adapted to the new, more specialized roles assigned to them through the state act. We have observed local officials more or less ignoring their statutory responsibilities under the state act, state and federal agency people who are extremely reluctant to acknowledge a new control that local officials have over their activities, or that any local agency is competent to exercise regulation of shoreline developments.

[2]Aldo Leopold, A Sand County Almanac (New York, Oxford University Press, 1966), pp. 217-241.

It is also unfortunate that some state personnel seem unable to kick the habit of being urban planners and zoners, and seem preoccupied with local details, while the big picture of state planning goes untended. The Shorelines Management Act has created a pilot program in cooperative state and local regulation and planning for the shorelines. If the pilot program is to function as the Legislature intended, and the public expects, public servants at each level must look to their distinct responsibilities, and act accordingly.

The plethora of permits from different public agencies now needed for certain developments on or near shorelines clearly is a matter pointing to a need for legislative and administrative reform. In our state, there are flood control zone permits, stream hydraulic permits, surface mining permits, Army Corps permits, local building permits, and pollution permits, each with its own statute and administrative agency. It is difficult at the local level to build respect for planning and regulation when people are confronted with an array of permits which overlap and have conflicting requirements.

The shoreline management program has the seeds of a more coordinated and rational approach to regulation of development by permit. The several permits now required for many small projects could be combined into a single comprehensive development permit. An application could be examined and acted upon at a county-wide or regional level by all state and local agencies involved. Approval permits could be reviewed at the state level as shoreline development permits are now. However, such a system calls for a better-equipped and coordinated regional level of study and decisionmaking than now exists. I hope this crudely-presented idea will receive consideration as improvement is definitely needed.

In conclusion, successful shorelines management calls for revised thinking about man's relationship with nature, and changes in how we use our home -- Planet Earth.

Recommended Reading

Wolf Bauer, Environmental Shoreline Management Within The Critical Geo-Hydraulic System, Parts I and II, Stream and Marine Shoreline Classification System (Seattle, Wolf Bauer, 1971).

Tito Patri et al., The Santa Cruz Mountains Regional Pilot Study (Berkeley, University of California, 1970).

# # #

Administering the Washington Act

By

Ronald J. Clarke*

A few years ago, local planning assistance generally involved only comprehensive physical planning assistance to local government. The program has since been expanded to include:

1. Model Cities coordination (Tacoma and Seattle);
2. Indian Reservation planning (Makah, Lummi, Swinomish, Tulalip, Squaxin, Spokane, Quinault);
3. Disaster area planning for the development of flood damage protection areas.

One of the principal advantages of the 701 program is that it may include a wide range of eligible programs.

The Governor has taken advantage of this feature by directing $100,000 to assist each County, and the cities therein, in shoreline management. The 701 money has been matched by $100,000 from the Department of Ecology, both of which will be matched by $200,000 from the local governments.

The agency, with the Department of Ecology, assisted the Association of County Commissioners to employ a professional planner to provide technical assistance in the inventory phase of the shoreline planning program.

Another category within the 701 program is community development services. This has provided special services, which include:

1. The Nisqually Delta and Nisqually River Basin study;
2. Staff assistance to the State Land Planning

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Commission;
3. The Columbia River Gorge study;
4. North Cascades National Park Coordinating Task Force;
5. Review of Environmental Impact Statements;
6. North Bonneville New Town study;
7. Participation on all annexation review boards.

Our agency has described "state land use policy" as follows:

1. The social and economic well-being of the people of the state is closely related to the condition of the environment and to resource management.

2. Although state government has constitutional authority and responsibility to manage its land resources, it should be its policy to depend upon local government and private landowners to exercise state objectives toward preservation and conservation of land resources insofar as is possible, and the state should assist local government and private landowners in the pursuit of these objectives.

3. Each level of government should be responsible for those areas under its jurisdiction which are primarily the concern of its own citizens. In order for there to be a consistent policy and direction, the state should provide guidance, authority where needed, and financial assistance to help overcome local deficiencies and disparities.

4. At the earliest possible moment, state, county, and city governments should identify areas to be preserved and take positive actions toward preserving them in accordance with local objectives and state policy.

5. The actions of all agencies, in order to be consistent with these objectives, should be subject to statewide review and coordinating procedures.

6. It should be the policy of state government to take direct remedial action when local government and private landowners are powerless or reluctant to act in behalf of objectives.

7. State and local tax policies should be designed to support these environmental protection and resource conservation objectives.

From the successful shoreline initative petition and the subsequent drafting and passing of the legislation of the Act,

we have a clear demonstration of concern for the preservation and management of this valuable resource. Accepting this, we are now beginning to ask the question, "If the shorelines, which comprise less than 1% of the state, are so deserving of proper planning and management practices, what then about the rest of the state?"

There are, throughout the state, many comprehensive land use plans, accompanied by zoning ordinances and subdivision regulations. Few of these are grounded on the basic philosophy that land is a resource to be managed, but rather that land is a commodity to be arranged. Perhaps the next big step for the state will be to approach the rest of the land with the same attitude and identification of critical areas as in the Shoreline Management Act.

The 1971 Legislature perhaps anticipated this concern through the establishment of the State Land Planning Commission. This Commission right now is wrestling with the concepts of land management, local planning, state guidelines and regulatory review, and perhaps even regional regulations and enforcement.

I would like to say a few words about "planners" and "planning" in the world today. The planning profession is a relatively new one. But the image of the urban planner as the "master planner" or "artist" who intuitively and knowledgeably prepares the best plans for a community's future is already too old. The myth says that his plans enlighten, inspire, and stimulate human society to sacrifice present gains for a better, still imaginary, future. The myth says that planning is an art that seeks to improve the human condition. Planning gains its social justification and imperative from these myths.

Those of us who practice urban planning, when we emerge briefly from growing piles of rules, regulations, standards, guidelines, and administrative directives, know we don't plan this way.

Part of the myth is that the planner holds an all-seeing, all-encompassing view of the world. Such a comprehensive view is important to understanding the human species in its environment, since it admits to continuing ignorance and recognizes that there is no final word. Yet, the one quality that the urban planner seems to claim as proof of his social use is comprehensiveness. Almost every planning report, plan, proposal, or article cites comprehensiveness as the basic justification for planning. Comprehensiveness may not be the central element of planning.

With a little reflection, we can see that a comprehensive view of the world is always incomplete, always changing, and just

about always out of date. Comprehensiveness is not a tangible thing, unique to any one field, but merely an understanding, inherent and common to all professional and scientific inquiry. It is not, then, a particularly distinguishing characteristic of planning, nor is it central to the planning image.

Order may be a rightful end of government bureaucracy and still not a rightful end of our social system. The amount of order that we see as necessary in man's environment varies with the understanding we have concerning the parts of that environment. We can recognize that the ordering of a more total human environment, including its tangible as well as its intangible parts, may require actions beyond those legitimized by written laws. It is conceivable that a healthy human society depends on the presence and stimulation of ongoing conflict.

This conflict is probably as necessary to the improvement of the human condition as the laws, regulations, and policies which attempt to eliminate conflict. The order necessary to maintain a healthy conflict between the parts of man, his society, and his environment may be seen as disorder by a bureaucracy preoccupied with maintaining only certain of these parts.

The central element in the traditional planning-for-future-social-improvement myth is not orderliness or comprehensiveness. Rather, it is that the planner should put forward ideas of such a nature that they may not, at this time, be legitimate. By legitimate, I mean an idea that fits neatly into our existing legal, governmental, or social structures. Plans which propose really new ideas introduce such potential for social change and conflict that they represent a violent threat to those determined to maintain the world as it is or as they would wish it returned to.

A description of the shape and quality of future social environments cannot be only the work of what we traditionally think of as legitimate authority or of the planners within the establishment. For example, we are learning, in painful yet exhilarating ways, that the ideas and plans of our young, particularly when they seem to have a non-negotiable thrust, are somehow valid and viable even when they cannot be measured or weighed by legitimate standards. Eventually, and after much conflict, these ideas will become legitimate. So, therefore, it is natural that the plans of our young people stem from "non-legitimate" sources.

Speaking of illegitimate ideas, many people consider that bringing all privately owned salt water frontage properties into public ownership is a desirable goal. In consideration of the attainment of goals, an important function is to describe alter-

native ways of achieving the goal. I would like to try out one alternative of returning the salt water frontage to all the people as they were before the concept of private ownership was brought to the Northwest.

The achievement of such a goal might take the pressure off those isolated "public ownership parcels" that are occasionally purchased by state and local recreational interests. Such sites, unfortunately, are so few in proportion to demand that people who live or own land in their immediate vicinity bear the burden of being neighbors to facilities for public access to our great salt water resources.

We all know the shortcomings of an acquisition program for public access sites through the "hunt-and-peck" system we are now forced to use. The reason we are forced to use the system obviously is the great cost of acquiring such valuable properties. Therefore, perhaps we must expand our vision and think about not acquiring bits and pieces here and there, but acquiring "the whole thing."

The thought of acquiring all the salt water frontage in the State of Washington on behalf of all the people of the State of Washington is such a staggering financial concept that all traditional public financing methods, such as special millages and levies, would be but small drops in the "big salt water bucket." Waterfront properties constitute a low percentage of total land in any county -- the obvious exceptions would be our island counties. In my home county, Thurston, the salt water frontage properties account for less than 1% of the land area of the county. Perhaps we need to consider the confiscation of these properties in one gigantic land grab, this time on behalf of the people. Such confiscation might be compensated through a property tax reduction -- a substantial reduction of perhaps 50% for the next ten years, with assessments being frozen during the ten-year period. At the end of ten years, all properties would be reassessed, using the normal techniques.

At the end of ten years, the people would then own all the shoreland, and assessments would probably go back to their normally "excessive" rates for waterfront, but we would have afforded all the people in the state the right to freely walk the shorelines.

There would certainly need to be restrictions in such a concept. Such restrictions would include protection of commercial, industrial, and aquaculture interests, and the protection of ecologically fragile areas that cannot take public use without substantial deterioration of its character.

The point that I am trying to make is that we should have alternative solutions and alternative policies so that we can reason together, plan together, and, at some future time, arrive at a result in which we will be happy together.

Of course, there will be cries of anguish and moaning about the backbreaking job of picking up the litter after the crowds have left "my beach." All I can say to that is, since we do not like what we leave along our roadsides and perhaps by spending more time in one place -- on the beach, we could make a bigger mess along the waterfront. Perhaps we need to ask ourselves whether or not we should have as good housekeeping habits in public as we exercise in our own homes. In my own home, I have noticed that the kids are more conscious of roadsides and environmental litter than we adults, who have become accustomed to living among this "low density garbage."

NOTE -- This alternative approach does not necessarily reflect the opinion or policy of my sponsor.

# # #

Administering the Washington Act

By

Christopher T. Bayley*

I am pleased to participate in today's symposium on Washington's Shoreline Management Act of 1971. The prospect of preserving the shorelines of our state is a subject to which I am firmly committed, in both my role as Prosecuting Attorney for King County and as a private citizen.

King County's geographical jurisdiction under the Act includes the shoreline in all of the unincorporated areas of the county. This means we are responsible for the planning and administration of approximately 1,100 of the county's 1,300 miles of tidal, river, lake, stream, and other shorelines.

The responsibility for the administration of the county's permit system, as well as the responsibility for preparing the inventory and master program required by the Act, has been placed in the county's Department of Planning. Unlike some other local governments in this area, we have not required any legislative action by the County Council in permit decisions. The final permit decision is signed by the Director of the Department of Planning.

The county is in the process of developing an implementing ordinance. The ordinance will probably confirm the Department of Planning's role as administrator and regulator of the Act for the county. We are also considering some interesting innovations such as the requirement of a local public hearing before a decision on the permit is made in the case of (a) projects for which one or more interested persons has submitted a request for a hearing, or (b) projects estimated to cost $1,000,000 or more, or (c)

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projects determined by the Director of Planning to be of broad public significance. We are also considering the requirement of a notice and hearing before rescission of a permit.

As of June 1, 1972, one year after the effective date of the Act, King County had received approximately 50 formal permit applications. Three-fourths of these applications came from public applicants, i.e., other King County departments, the state, METRO, public utilities, and other governmental bodies. The remaining one-fourth of the applicants were private individuals and corporations. The types of projects proposed in the applications included parks and recreation, road and bridge construction, sewage lines and waste treatment, river bank stabilization, private docks, transmission lines, bulkheads and piers.

Thirty of the 50 applications have been approved, and the others are still pending. There have been no permits denied thus far, and one approval has been appealed by the state to the Shorelines Hearings Board. We do not believe, however, that these statistics alone fairly represent the Act's effect on shoreline development in King County. Many known potential denials have never reached the stage of a formal application as a result of the county explaining to potential applicants the provisions and policies of the Act. Many other potential denials have been selected out through regulatory channels, e.g., Army Corps of Engineers' applications referred to the county for comment and unclassified use permits. Finally, many potential denials among the 30 permits that have been approved were obviated by the inclusion in the permit of conditions requiring design modifications or restrictions in the manner of carrying out the construction. Approval with conditions has proven to be a very useful tool in effectuating the purposes of the Act.

I would now like to discuss some of the problems which have been encountered or considered by King County in administering the permit system under the Act. Here we cover some of the nuts and bolts of the Act's application -- how it is really working and how it can be made to work more effectively for the preservation and enhancement of the state's shorelines.

MULTIPLICITY OF JURISDICTIONS:

Depending on the particular circumstances surrounding shoreline development, a person undertaking a normal residential

project in King County may be required to obtain -- in addition to a shoreline management permit -- the following approvals:

1. COUNTY: preliminary plat approval, planned unit development approval, zoning variance, grading permit, unclassified use permit, and building permit;

2. STATE: flood control zone approval, water quality control approval, Department of Fisheries hydraulics permit; and

3. FEDERAL: U.S. Army Corps of Engineers approval.

Such a multiplicity of jurisdictions, in some cases, results in duplication of efforts and application of conflicting standards. For the inexperienced applicant, such a multiplicity may cause considerable expense and delay. Although the major corporations or public agencies are capable of dealing with such complexity, the burden on an individual citizen can be overwhelming.

The need for a kind of "combination permit" with a central coordinating agency is clear, but the obstacles to such a system appear also to be overwhelming. We should be able to resolve this problem without watering down the environmental standards brought to bear on a project by each of these individual agencies. The problem can be mitigated considerably through administrative cooperation on an intra- and inter-governmental basis. We should at least be able to achieve a combination permit for each level of government.

TIME FACTOR:

A shoreline management permit application can legally be finalized, so as to allow construction, no sooner than 83 days after application. Generally, it takes closer to 90 days. This allows at least eight days for publication of notice, 30 days for public expression of views, and 45 days of review by the Attorney General and the Department of Ecology. If appeals to the Shorelines Hearings Board are involved, the waiting period is, of course, extended further.

Even without appeals, construction on projects such as those involving Department of Fisheries approval, which typically

limits construction activity to certain summer months, could easily be delayed up to 18 months. This problem may arise with respect to river bank stabilization projects to protect private and public property when the work is not exempted as "emergency construction." The full extent of flood damage requiring such work may not be known until late May. The necessary drawings to support the shoreline management permit application may not be completed until early June. By the time the 83 days have expired, the construction season permitted by the Department of Fisheries may also be close to termination. Thus, the property to be protected may have to endure an additional season of damage.

A sizeable portion of the problems associated with the long waiting period for shoreline development permits will be resolved through more widespread public knowledge of the Act's requirements and timely planning. This is the situation typified by the single family residential homeowner who decides to build a dock in June and finds that the summer has come and gone before all of the necessary permit approvals have been finalized. The sort of problem presented by the Department of Fisheries' construction period limits may present, under the timing requirements of the Act, a clear conflict in some cases between the application of two state mandates.

We believe that the time requirements, particularly the 45-day period, are longer than necessary for many kinds of development. Shorter waiting periods would not require either local government, the state, or the public to shrink from their responsibility to give proposed shoreline development a thorough and rigorous examination.

EXEMPTIONS FROM PERMIT REQUIREMENTS:

"Normal Protective Bulkhead." Our experience has shown that interpreting the applicability of the several exemptions in the Act is as difficult as, or more difficult than, determining whether a permit should be granted for a project which requires a permit. For example, one exemption provides for the construction of a "normal protective bulkhead common to single family residences." What is normal? What is common? There exist an array of construction scales and techniques limited only by the imagination of engineers, contractors, and homeowners. What is normal or common

on a fresh water lake may be inadequate on Puget Sound. What is normal or common in a Puget Sound bay or inlet may be wholly inadequate on a point battered by high winds and currents. Just as reasonable people may differ as to what is reasonable, so also do "normal and common" people differ as to what is "normal and common."

We have defined the applicability of the bulkhead exemption somewhat by disallowing the exemption for commercial and industrial applicants even though the bulkhead is "normal," and "common to single family residences" by disallowing the exemption if the bulkhead protects several lots. The exemption should also be disallowed for projects which will result in a significant expansion or improvement of the applicant's lot, or where the bulkheading will otherwise be accompanied by a significant amount of landfill.

"Emergency Construction." The Act also exempts "emergency construction necessary to protect property." Again, these projects should be examined thoroughly to determine which portion of the work is "emergency" and which portion is embellishment and expansion. There may be a problem where a citizen claims an emergency exemeption which the county denies and the citizen subsequently suffers property damage as a result of his inability to undertake the construction. The courts will be asked to determine whether this is an appropriate exercise of the police power.

No "Material Interference With The Normal Public Use." Potential applicants are exempt if their proposed construction does not exceed $1,000 in cost or value and does not constitute "material interference with the normal public use of the water." What exactly is "material interference"? Surely, a 60-foot dock qualifies, but does a three-foot dock? Would spraying pesticide on a swamp constitute material interference with the normal public use of the water? Who is the "public"? Is it enough if there will be interference with the adjacent neighbors' use? Must the use be an existing one, or will potential future uses qualify? What does public use of the "water" mean in respect to development proposed on the 200 feet of "wetland" adjoining the water?

The circumstances surrounding each property and each

shoreline will affect the determination of "material interference." Hopefully, the preparation of a master program will further define the application of the Act for specific locations.

Some of these considerations seem insignificant, even trivial, when viewed as isolated bulkheads, docks, or repairs. However, the cumulative effect on the shorelines of hundreds of such "insignificant" exemption or permit decisions can be gargantuan. The day-to-day, case-by-case examination of shoreline development by local government must be sensitive to the cumulative result embodied in each seemingly minor policy decision.

ENFORCEMENT OF THE ACT:

Sections 21, 22, and 23 of the Act provide authority for both civil and criminal, public and private enforcement of the Act. There are two kinds of cases which will require enforcement: (1) those persons who require a permit and do not obtain one; and (2) those persons who apply for and obtain a permit, but fail to comply with the conditions of the permit, e.g., the permit may allow limited fill and bulkheading but prohibit dredging on the shoreline to obtain the fill material.

Each local government must establish an administrative inspection capacity. I think this can be similar to the system which exists in the county's building department for the detection of construction in violation of the county's zoning and building codes. Local government will also depend, however, on private persons to both bring possible violations to their attention and to bring suits enforcing the Act.

Enforcement by the local government will consist of: (1) civil injunctions to halt unlawful construction already in progress; (2) abatement actions to obtain removal of structures and restoration of the shoreline; (3) actions for money damages on behalf of the local government; (4) rescission of permits already granted, where the permittee has violated the provisions of his permit; and (5) criminal prosecution for willful violations of the Act -- criminal prosecutions should not be a substitute for civil actions which promise restoration of the shoreline to a condition consistent with the Act.

We believe there are some important limitations on the

scope of the enforcement "exemption" granted under Section 27 of the Act for structures placed in navigable waters prior to the date of the decision in Wilbour v. Gallagher, 77 Wn.2d 306, 462 P.2d 232 (December 4, 1969). It does not prevent Wilbour v. Gallagher-type suits for development occurring after December 4, 1969. Section 27 should not prevent actions against pre-existing development by private persons or governmental bodies on theories other than "impairment of public rights of navigation," e.g., easement, nuisance, violation of state or local law. Finally, the exemption provided in Section 27 does not affect pre-existing development which is within "shorelines" but not on navigable waters.

The relationship between enforcement of Wilbour v. Gallagher rights and enforcement of the Act after its effective date (June 1, 1971) is open to some question. One view is that Wilbour v. Gallagher has expired and been reincarnated in the policies of the Act. Arguably, the Act total pre-empts that decision so that development exempt from the permit requirements of the Act or qualifying for a permit under the Act is exempt from a Wilbour v. Gallagher-type of abatement. On the other hand, it may be contended that development which does not "materially interfere with the normal public use of the water" or is otherwise exempt from the permit requirements is still an obstruction to navigation and vulnerable to suit.

In conclusion, I wish to state that the Shoreline Management Act of 1971 is a vital and necessary tool to protect the county's and the state's shorelines. At the same time, I caution against memorializing or condemning it as a fixed and immutable mechanism. We should all take the responsibility to see that the Act is amended and modified with time to insure that the policies declared in that Act are achieved.

# # #

Alternative Strategies for Shorelines Management

By

Mitchell L. Moss*

Concern with the effects of human activity on the coastal ecosystem has generated an extensive debate at the local, state, and national level, concerning the design of strategies for managing coastal resources. The "popular thought" regarding the management of shoreline areas generally calls for the transfer of authority over the coastal zone from local jurisidctions to regional or statewide agencies, and is usually based on the following argument:

1. Intense pressures for utilization of coastal resources are destroying or severely damaging the natural, physical character of our coastal regions.

2. Inadequate consideration is being given to the environmental effects of such activities as deep water ports, oil refineries, power plants, residential developments, and certain recreational facilities.

3. The failure to fully weigh the environmental effects of these activities is attributed to the inadequacy of governmental arrangements and to the role of the market in land use decisions.

4. The boundaries of local governments are considered too small to take the "spillover" effects of their actions into account, while the presence of overlapping and multiple jurisdictions prevents coordinated decision making and comprehensive planning.

5. Consequently, most proposals to manage the shoreline

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represent attempts to (a) modify or replace market criteria, and (b) shift authority for allocating coastal resources to a large-scale governmental unit whose boundaries would more closely match the boundaries of the natural phenomena to be regulated.

Most discussions of shoreline management focus on the scale of the governmental unit to be used, the formal authority it will exercise, and the management procedures to be employed. As a result, little attention has been given to the factors which will largely determine the success of any coastal management agency. These factors are: (1) the social and economic forces which influence human demands for access to the coast; (2) the political-administrative environment within which a coastal zone regulatory authority must operate; and (3) the effects of large-scale organizations on access to decision making.

The success of any strategy for managing shoreline areas will be substantially affected by these factors; yet, they are rarely explicitly considered in the design of a management strategy. The "popular approach" outlined above generally assumes that there is a consensus to preserve and protect coastal areas, and that a new coastal agency will just establish rules and implement guidelines for managing shoreline areas. A national consensus of concern to preserve shoreline areas may exist, but it often pertains to values and issues so general that design of a coastal management strategy must take into consideration the social, economic, and political forces which will influence future planning and policy making for coastal resources.

Social and Economic Conditions

Human beings have long displayed a propensity for settling on or near the water. Cities were originally formed at the location of natural harbors, where there was a "break" in the transportation process, from water-oriented modes of transportation to land surfaces. Today, however, the pressures for coastal resources grow out of the needs of the large numbers of persons who live within close proximity to the coastal zone. According to a recent study, 100 million people, or 49.0% of the total U. S. population, live within 394 coastal

counties. And by 1980, the coastal county population is expected to total 119 million, or 50.8% of the U. S. population.[1]

This coastal population is not, however, distributed equally among all coastal counties. Rather, the coastal population is primarily concentrated in the metropolitan regions which are located on the coastal zone. In 1970, the 76 coastal metropolitan areas in the nation contained 87 million people, which represented 87.2% of the coastal counties population. By 1980, the 76 metropolitan areas on the coast are expected to have 104 million people.[2] In the State of Washington, three coastal counties -- King, Pierce, and Snohomish -- contain 54% of the state's total population. Of Washington's 15 coastal counties, 12 each contain less than 5% of the state's population, while one county has over one-third of the state's population.

These coastal populations are generating a wide range of pressures upon coastal resources. Deep water ports are necessary to allow the entry and exit of ocean-borne goods in order to maintain the economic infrastructure of the region. Power plants to meet the rising energy consumption patters are generally thought to be most efficiently located at coastal sites. Recreational facilities, such as marinas, beaches, and camp grounds, are also critical to support the physical and psychic health of the inland and coastal residents.

However, the extreme variation in the demographic characteristics of the coastal counties suggests that management strategies must take into account the particular social and economic, as well as physical, conditions within coastal counties. Certain rural coastal counties may be in need of employment opportunities for the local residents, and thus, development activities may be necessary to sustain the county's economic wellbeing. Frequently, the conflicts that occur in hinterland regions involve conservation-oriented urban residents who wish to maintain a natural, unspoiled environment for their second homes and summertime recreational activities, versus the needs of the year-round local residents who need jobs

[1] Miller B. Spangler, "Projections of Socioeconomic Trends in the Coastal Zone", Marine Technology Society Journal, July-August, 1972, p.21

[2] Spangler, p.22

and income to sustain themselves, often in the face of a declining population and economic base. Such a situation may produce a "colonial relationship" between the large metropolitan region and the outlying, undeveloped counties, wherein the rural land use decisions come to reflect the needs and priorities of the persons who reside in the urban areas.

The coastal zone of the metropolitan area presents a different set of resource allocation problems, but which are also concerned with a shift in the type of use or activity occurring on the coast. Market demands for residential housing on or near the shore are producing dramatic transformations in the character of the urban coastal zones. Low income uses are being replaced by high income condominiums, residential subdivisions, and high-rise apartment complexes. Intense market demands for coastal housing are reducing the opportunities for such marginal groups as the aged, artists, and the poor to live on or near the shore. Equally important are the effects of new commercial and residential developments on the opportunities for low income groups to gain access to the coast for recreational activities. New coastal high-rise apartments can generate a number of effects on the variety of groups who are able to live near or play on the beach.

> "...the construction of the apartments may require the replacement of housing utilized by low income persons, the aged and members of fringe subcultures. Second, the value of adjacent land with moderate cost housing normally increases and results in additional sites close to the coast being put to higher use. Third, where the development fronts on public beaches, it can reduce the street parking space available and may change the general social character of the area to the extent that use of the beach by low income or minority groups is discouraged."[3]

Human preferences for residential units in proximity to the shore are not likely to subside in the near future. And it is doubtful whether comprehensive planning and zoning will be sufficient to modify or replace market criteria in allocating coastal resources. If market pressures for coastal housing are to continue, then the public sector must be concerned with doing more than trying to restrain human desires to settle near the water. Therefore, management strategies must be

[3]Robert Warren et al., "Allocating Coastal Resources: Trade-off and Rationing Processes" in Boswitch Ketchum, editor, The Water's Edge: Critical Problems of the Coastal Zone, MIT Press, 1972.

developed which balance human wants with the requirements of the ecosystem, while also assuring equal opportunities for all groups to gain access to the coast.

The Political-Administrative Environment

An elaborate set of political and economic processes are currently used to manage coastal resources in Puget Sound. These include the market system, the electoral process, administrative regulation and bargaining, and adjudication. Regardless of what management strategy is adopted, federal and state agencies, coastal cities and counties, and special districts will continue to play an important role in allocating coastal resources. A 1969 study by James A. Crutchfield found that 15 single-purpose state agencies, 12 counties, and more than 30 incorporated cities exercised authority over Puget Sound, in additional to federal agencies. The activities of more than 200 special districts also influence the Sound, and six Indian reservations, seven military reservations, two national parks, and 30 state parks and monuments border the Sound and its adjacent waters.[4]

The success of a coastal management agency will depend, in large part, on its relationship to the existing and well-established organizational arrangements. It is unlikely that these agencies will yield very much, if any, authority to a new coastal management agency or to a coastal comprehensive plan. Thus, a coastal agency must develop means to work with these governmental units while also attempting to correct their deficiencies. Ignoring these governmental units creates a narrow base for the coastal agency and thus may limit the effectiveness of a newly created governmental agency with authority over the coast. A management strategy must therefore seek ways to encourage coordination and bargaining through the existing governmental units, while also providing them with technical assistance and information which might otherwise be neglected in decision making processes.

Most discussions of coastal management call for a new agency which will somehow serve as the overall coordinator of coastal zone programs and policies. Given the number,

[4] Wallace Spencer, Environmental Management for the Puget Sound Region, University of Washington Sea Grant Program, 1972, citing James A. Crutchfield, George Anderson, Francis Bartlett, Robert Bish, T. Saunders English, Max Katz, Norman Maleng, and Ernest Salo, August 1969, Socio-Economic, Institutional, and Legal Considerations in the Management of Puget Sound, Final report to the Federal Water Pollution Control Administration (Contract No. 14-12-420), 1969.

diversity, and autonomy of the existing governmental units, it is questionable whether any single agency could actually achieve that task. More importantly, it is not clear whether such a reorganization of governmental authority is entirely desirable.

The presence of overlapping and multiple jurisdictions serves several purposes which are often neglected by proponents of reorganization. The complexity of the governmental structure reflects the complexity of the interests involved in the allocation of coastal resources. Different agencies provide different groups with access to decision making and allow technical issues and specialized issues to be introduced and evaluated in the decision processes of a particular agency. Thus, the State Health Department may be able to review and evaluate information on sewage facilities, while the Department of Fish and Game considers the impact of a new marina on fish spawning grounds. The requirement for approval of a development by several agencies provides citizens groups with an opportunity to articulate their views at several different points in the decision making process. The presence of "multiple veto points" means that, if a group loses at the county planning commission, it can then go to the county board of supervisors, then to the state departments of health, fish and game, ecology, and, if unsuccessful at all those points, it still can usually find grounds to obtain a hearing in the courts. Usually, even if one agency is unresponsive to a particular set of issues, it is possible that another unit of government may be more responsive to those issues. Whether a single organization would be able to provide representation to the wide range of groups concerned with the coast and also evaluate technical information on the complex issues pertaining to coastal resources, as well as the existing array of governmental units, is highly questionable.

Large-Scale Organizations

One theme which can be found in almost all discussions of coastal zone management is the idea that local governments are too small to take the spillover effects of their actions into account. The upstream polluter, it is argued, has no reason to reduce his discharges if all the negative effects of the pollution are being borne by downstream communities. The need for mechanisms which allow externalities to be fully weighed in decision making has thus led to proposals to change the boundaries of the political system. The boundaries of

the political system, according to this view, do not fit the boundaries of physical and biological phenomena and thus prevent planning and management on a regional level. The "popular approach" is to create a new, large-scale regulatory agency whose boundaries would be defined on ecological criteria.

However, there are costs as well as benefits in shifting authority over coastal resources to a regional level. Small-scale governmental units, such as cities and counties, have desirable attributes for policy making, which should be maintained in any management strategy. They permit citizens to gain easy access to political processes with a minimum of time and money costs. A citizen can participate in a public hearing that occurs in his own community at less cost in terms of time and travel, than in a similar hearing that takes place in another county or the state capitol. Local officials, if they are consistently unresponsive to the citizenry, can be challenged through electoral processes, on the basis of their performance on specific, local issues.

On the other hand, large-scale regulatory agencies have a tendency to form coalitions with the groups they are supposed to regulate and are often insulated from public visibility. Such agencies, staffed by appointed officials, become isolated from citizens and are usually most responsive to the large private firms who have the time and money to take part in their deliberations.

The problem of gaining access to large-scale organizations suggests that the boundaries which are most suitable for ecological values may not be the most desirable in terms of policy making processes. Creating a new regional entity may meet ecological criteria, but it may also impose new costs on citizens who wish to participate in decision making processes, and thus, it is highly questionable whether a single boundary will ever be optimal for all purposes.

Rather than transferring authority to a regional level, an alternative strategy would be to improve the management capacity of existing jurisdictions. Local governments are often unable to thoroughly review and evaluate development proposals and to regulate coastal activities because they lack the technical staff and money to carry out such tasks. There is a long history of passing laws which impose new requirements on local governments but which don't provide the funds or staff necessary to adequately perform the new responsibilities. If a serious commitment were made to improve the capability of local government to generate and evaluate information,

then much of the work involved in managing the shoreline could be accomplished at the local level. To do this, the planning budgets and staffs of local jurisdictions would need to be considerably enlarged.

This discussion does not mean that there are not certain coastal problems which do require regional solutions, but rather has been designed to explore new ways to deal with the planning and management of our shorelines so that all citizens will be able to participate in decisional processes. The complex set of issues which occurs in the management of shoreline areas indicates that no single solution will be optimal for all purposes. A dynamic set of social, economic, and political forces affect the coastal zone, and thus there must be a willingness to experiment and innovate in the design of management strategies.

# # #

What's Right and What's Wrong With the Washington Act

By

Robert W. Graham*

An observer of the legislative processes by which Substitute House Bill 464 of the 42nd Legislature, 1st Extraordinary Session, was drafted can't help but marvel that there are not more potential legal problems in the bill than exist. A basic and most laudable objective of this legislation is the intelligent allocation of a limited natural resource.

The practical impact of this legislation may well be to force the statewide planning of land use by all counties of the state. Indeed, the Governor urged support of "seacoast management legislation," and much of the industrial leadership of the state concurred, because of a recognition that it was a better answer to the problem of allocating the state's limited waterfront resources than the specter of being chased from county to county by uncoordinated local planning which confronted Atlantic Richfield in Snohomish County and Northwest Aluminum at Guemes Island. Indeed, if the implementation of this legislation truly results in a balanced land use, industry has much to gain from assurances of a place to go rather than being victimized by local interests who want needed industrial sites "somewhere else."

SOME DEFINITIONAL PROBLEMS

In Section 2. One of the problems inherent in the achievement of this objective lies in the interrelationships between the statements of policy contained in the bill and its definitional concepts. I submit that any fair reading of Initiative 43 reflects that its basic thrust and objective is preservation and non-development. Unfortunately, some

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of the policy statements incorporated into this substitute for Initiative 43 are capable of the same interpretation. I invite your attention to the following language of Section 2 of the bill:

> "The legislature declares that the interest of all of the people shall be paramount in the management of shorelines of state-wide significance. The department, in adopting guidelines for shorelines of state-wide significance, and local government, in developing master programs for shorelines of state-wide significance, shall give preference to uses in the following order of preference which:
>
> "(1) Recognize and protect the state-wide interest over local interest;
>
> "(2) Preserve the natural character of the shoreline;
>
> "(3) Result in long term over short term benefit;
>
> "(4) Protect the resources and ecology of the shoreline;
>
> "(5) Increase public access to publicly owned areas of the shorelines;
>
> "(6) Increase recreational opportunities for the public in the shoreline;
>
> "(7) Provide for any other element as defined in section 11 of this 1971 act deemed appropriate or necessary."

You will note that, of the "uses" which must be incorporated "in the following order of preference" into guidelines and master programs, only items 2, 4, 5, and 6 relate to any functional utilization of the shoreline areas, and only in the reference in item 7 to Section 11 [sic] of the Act is there a "bottom of the barrel" reference to utilization of waterfront areas for industrial and economic development. I submit that this definitional statement is capable of being literally read in such fashion as would render it impossible for the City of Seattle to zone any undeveloped waterfront

areas of its downtown waterfront or elsewhere for industrial purposes. So read, Section 2 is in basic conflict with the provisions of Section 10 of the Act, which outlines the requirements of master programs.

The design of Section 2 -- and Initiative 43 even less so --is not adaptable to developed or developing areas. How can the Governor's recognition and assurance of the need for the appropriate allocation or reservation of needed industrial sites be accomodated with this language? Conceivably, it might be argued that any admittedly needed industrial sites can be provided as a use under item No. 1 to "protect the state-wide interest over local interest." If so, then any industrial development is potentially in the statewide interest.

Intelligent planning and meaningful "master programs" must provide for all competing land uses on a basis which serves the public interest. I submit that, while the concept of "shorelines of state-wide significance" may have conceptual validity, the draftsmanship that seeks to effectuate it is lousy.

The rhetoric rather than logic which was reflected in Section 2 continues:

> "In the implementation of this policy, the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline."

The basic policy is advocated of promoting "the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines." Uses shall be preferred which "are unique to or dependent upon use of the state's shoreline." Can Seattle's zoning authorize the construction of a waterfront restaurant on Elliott Bay? I submit that equally as many of the public would enjoy a good waterfront restaurant there as would enjoy looking at the natural mud flat it might replace.

Finally, in Section 2, you might look at the following:

> "Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single family residences, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state."

This declaration of policy simply is not compatible with the function of zoning a metropolitan waterfront and the injection of the phrase "in those limited instances when authorized" was pure and simple political gimmickry. Section 2 was not drawn in terms of the basic problems of planning, zoning, and use allocation, but was intended as a sop to the sponsors of Initiative 43 who, it was hoped, could be wooed into supporting its legislative alternative or substitute. The language of Section 2 is incapable of being reconciled with the definitional concepts of a "master program" which contemplates functional allocation and land use reservation as reflected in Sections 3(3)(b), 8(1), and 10(2)(a) of the Act.

"Mean Annual Flow." "Shorelines" and "shorelines of state-wide significance" on flowing waters are defined in terms of "mean annual flow" under the provisions of Sections 3(2)(d)(ii) and 3(2)(e)(v)(B) under the Act.

Apart from the fact that there are no recorded data for most of the smaller streams of the state, a real dilemma is posed in trying to answer the question, "Which mean annual flow?" Recorded data indicate that the mean annual flow of many of the state's streams varies as much as 500% from year to year, depending upon the rainfall of the area, and equally disparate measurements result depending upon the day or dates on which the measurements are taken.

SOME OTHER PROBLEMS

The Practical Moratorium Which Results. Despite the well-intentioned provision of Section 14(2)(a) for interim permits, the practical result in all too many instances has been a moratorium on any and all development simply because

local permitting authorities are unwilling to sail uncharted seas.

Under the time schedule provided by the provisions of Sections 6 and 8, a period of approximately 3-1/2 years from the effective date of the Act will elapse before local master programs become approved and operative. The net result is that improvements or development as a practical matter are confronted with an effective moratorium which the economy of the state can ill afford.

I suggest that fairness and the public interest require that compliance with existing local zoning and building codes should be effective as compliance with the Act on an interim basis pending the approval of local master programs.

The Permit System. Traditionally, land use regulations have been basically self-executing with the assumed right of the landowner to put it to an authorized land use upon the issuance of a building permit ensuring compliance with traditional land use restrictions such as setbacks, side yards, etc. No land use permit as such has been required. The Act, however, provides that, in addition to all other permit requirements such as building permits, sewer permits, etc., a permit shall be required for any development of shoreline areas of more than $1,000 value and no development may be made which is not consistent with the policy and guidelines promulgated under the Act (Sections 3, 14).

The Act is unclear as to what administrative discretion, if any, is intended to be vested in the administrative agency with respect to the issuance of permits for improvements which are admittedly for an authorized use in appropriately zoned areas. Traditional zoning legislation would indicate that a permit should follow as a matter of right for an authorized use, but the comments of many protagonists of Initiative 43 which contains comparable permit provisions during the recent legislative session would indicate that they conceive that some unspecified discretion is intended to be vested in the permitting authority under both Initiative 43 and the Act now in effect. The potential denial of permits for designated and admittedly authorized land uses gives promise of much litigation to clarify the muddy waters of legislative intent.

If the assumption is made that a master program has been approved and the proposed land use is consistent therewith,

local building permits should suffice as the vehicle to ensure compliance with the land use restrictions imposed by the Act.

With respect to the granting of interim permits under Section 14(2)(a), the Department of Ecology may appeal the grant within 30 days to the "shorelines hearing board" and the Department or the Attorney General may appeal permits issued under an approved program within 45 days.

Unfortunately, the provision in Section 18(4) requiring the shoreline hearings board to make a decision within 60 days from the hearing in cases involving appeals by local governments from guidelines or master programs adopted or approved by the Department does not apply to actions of the hearings board involving appeals under Section 18(2) from the granting or denial of permits. This may serve to precipitate one more problem of undue delay under the Act, and it may be noted that all permits must contain the provision that construction shall not commence until 45 days from final approval (see Section 14(4)), or the termination of review proceedings initiated within this 45-day period by the Department or the Attorney General (Section 18(2)).

Who Is a Person "Aggrieved"? While "any person aggrieved" may appeal under Section 18(1) to the shorelines hearings board from the grant or denial of a permit if it appears to the Attorney General or the Department that he "has valid reasons to seek review," the legislative history of this provision makes clear that he must meet the traditional test of establishing an injury which will confer standing upon him as an aggrieved party. A claim of injury to individual aesthetic sensibilities alone will not suffice. In contrast, the Governor's bill, in its original form, provided that "any person having an economic or non-economic interest who feels aggrieved by a final order...may obtain review." To be contrasted is the comparable provision in Initiative 43 which confers a right of appeal upon "any person aggrieved by a decision of the Department in granting or rescinding a permit" (Section 9), irrespective of what responsible public officials may think of the merits or bona fides of the appeal.

Some Additional Legal Problems. The enactment of S.H.B. 584 by the Legislature in the Extraordinary Session following the regular session during which Initiative 43A was submitted to it, along with the Governor's item veto of the provision in Section 3(1)(c) which would have effectively exempted the Department of Natural Resources from local zoning control,

poses a host of intriguing legal questions which the courts may be unraveling for years to come. Without doing more than suggesting a few in addition to what has been said above, some of the following may pique your curiosity.

Section 1(a), Article II, of the State Constitution provides that initiatives to the Legislature shall be submitted to it after signature verification by the Secretary of State at the following "regular session" and that such measures "shall be either enacted or rejected without change or amendment before the end of such regular session." It is further provided that "if it is rejected or if no action is taken upon it by the legislature before the end of such regular session, the secretary of state shall submit it to the people for approval or rejection at the next ensuing general election. The legislature may reject any measure so proposed by initiative petition and propose a different one dealing with the same subject, and in such event both measures shall be submitted by the secretary of state to the people for approval or rejection at the next ensuing regular general election [November, 1972]." The constitutional amendment is clear that the rejection or failure to act on the petition shall take place at the "regular session." It is not so clear when the adoption of an alternative may take place. S.H.B. 584 was enacted during the Extraordinary Session following. There are those who have argued that the Legislature was powerless to propose an alternative after the adjournment of the regular session.

As noted above, S.H.B. 584 was enacted with an emergency clause to become effective June 1 with the provision that it should be submitted to the voters as an alternative to Initiative 43A (Sections 41, 42). There are also those who have argued that the Legislature was powerless to promulgate legislation on the subject matter in the interim until the voters have acted at the 1972 general election. They argue that this would accord to the initiative petition the same effect which is provided in Article II, Section 1, for referendum petitions.

While it would appear that any interim legislation would require approval by the Governor to be a valid legislative enactment, Article II, Section 1(d), provides that "The veto power of the governor shall not extend to measures initiated by or referred to the people." Acting apparently upon advice of the Attorney General that the proposal of a legislative alternative is subject to the veto power, the Governor saw

fit to exercise the item veto with respect to the proviso in Section 3(1)(c) of S.H.B. 584 which excluded the land management functions of the Department of Natural Resources from local zoning programs. While the veto power would appear applicable to interim legislation, it is not so clear as to whether S.H.B. 584 should go on the ballot as Alternative 43B with or without the vetoed clause. If the Secretary of State follows the advice of the Attorney General and places 43B on the ballot without the vetoed clause, and if the voters approve this measure as submitted, query -- will a valid alternative have been enacted? Since 43A on this hypothesis will have been rejected by the voters, will there be any legislation remaining on the books since S.H.B. 584 expires by its terms unless approved at the next general election (Section 43)?

While these questions appear not to have unduly bothered the Attorney General (see AGO 1971 No. 5, January 26, 1971, and see informal opinions dated February 10, 1971, and April 8, 1971), it could be that nine other lawyers downstairs from him will have more trouble with some of these questions.

# # #

What's Right and What's Wrong With the Washington Act

By

Marvin Durning*

Like the rest of you, I am a man of passion and of reason, and I have two sets of notes. I really can't perhaps do them both, particularly because, for about six months now, I've been never mentioning constitutional problems with respect to the Legislature's Act, hoping that Bob Graham would be too busy doing something else. Obviously, he was not too busy and, thus, it did not escape his notice, and it undoubtedly will not escape the notice of many other lawyers of the state.

There is, without doubt, the possibility of challenging the constitutionality of the Legislature's version. It was not passed in accordance with the State Constitution, as we would literally read the State Constitution, and all I can say is, if it does come to the choice of the people and challenge is brought against it, I will work my very best to think up very persuasive reasons why it is nevertheless lawful because my passion runs one way; and yet, I think it is fair to say that the people of the state said in their Constitution that, if you pass an initiative measure to the Legislature, the Legislature is supposed to act on it before it acts on anything else, and that, if it acts on anything else within the same subject matter, then both of them are to go to the vote of the people. The entire intent and purpose of that was that the people would decide, not that one of them would come into effect -- I mean the logical possibility is that the thing

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over which the people had initiated the measure would be destroyed in the interval of time until there could be a vote on it. Now, not in this case maybe, but such an initiative about oil drilling or something other could be completely defeated if the Legislature may pass a different measure on the same subject and put it immediately into effect before there can be a vote of the people. Sorry you noticed that, Bob.

Now, I want to switch and come back at the end to some of the other problems Mr. Graham and others have raised. I have been taking notes on them and hoped that I could get back to them, but I can't restrain myself on the passionate side. You see, I came over here from visiting the Democratic Convention, a block or so away, and it is all so peaceful here. Somehow or other I still have to get rid of all that nervous tension that was building up over there. So, as I was sitting here making notes, I was thinking about the shorelines management in a different context. I was thinking of bills and all of you coming out on a Saturday to spend a whole day talking about this. How can that be? What values are at stake? What images I have of America in that convention here in the Seattle Center and the kinds of values and struggles that are going on and what this is all about today. So, before I become lawyerly about it, let me just be human, a citizen, a political -- I hope that is a good word -- about it.

A United Nations conference just ended in Stockholm and the peoples of the world, through their nations, united to discuss, to them, critical problems facing Spaceship Earth with respect to the environment. Now, I believe that sets the tone in which you have to see our debates and our discussions and the vote of the people in November, 1972, on a measure of regulation of the use of the shorelines in the State of Washington in a somewhat wider context.

If I may take just a minute to do so, in repeating some of the images that I have experienced and used, I'd like to say that I think we're in a values revolution and this is just one little tiny evidence of it that we're going through. We are in a values revolution because we are not quite sure any more who we are and who we want to be and where we want to go. I think Madison Avenue often shows us -- holds up a mirror to nature, as Shakespeare says -- and shows us in commercial art at least what it thinks we think we want to be, and then it tries to sell us something by the image. The first point is, what image do they use? Do we identify

with it? And about the most widespread image we have seen in the past years, until quite recently, has been an image which you all recognize. First, it was blasted at you by television, year after year, and became very familiar. Then it was kicked off of television and now it's on all the billboards. You know it. Marlboro Country. You live in Marlboro Country. I saw one coming here -- a billboard -- Marlboro Country -- there we are. There you are. That's what it's all about. You're a white, Anglo-Saxon Protestant with a wide brim on your hat and you are dressed up like a cowboy. Remember the TV ads? You are coming home across the prairie in the evening, in the shadows, and it is quiet and still, and there are woods in the background. As you come across the prairie, you're all alone. You're riding across the vast prairie, all alone, and you light up a cigarette. Now, they don't show you what you do with the cigarette when you're finished, but the fact is you throw it away. Now, that's an image of America and it's deep in our whole tradition. We are cowboys out on a wide prairie and, in a cowboy economy, more is better. Everything is better if it is bigger -- if there is more of it and you can conquer nature, if you can fight nature and beat it. Two cowboys are better than one cowboy because they herd more cattle. Three cowboys are better than two cowboys. More cattle are better than fewer cattle. You get richer. You can ride along, take what you want for as long as you want it, camp where you will, throw away everything you've got, move on to another camp -- there is always another one, another lake shore, another river, another seashore where you haven't been. You're cowboys, I'm a cowboy, and we're all dressed up like cowboys, riding across the prairie and there are 210 million cowboys dressed up like that, riding across that prairie, camping anywhere they want, taking anything they will, thinking there's another lake shore and another river just beyond. More is better in the cowboy economy.

And, boy, if you think this isn't real, you just have to consider that the entire ethos of the last century or two of the Western World, and of economic theory, and of the American Dream, is more is better. Bigger. Stronger. Produce more. Cut more. Sell more. The whole thing is so deep in us that it is hard to see how pervasive it is.

Then, about two years ago, probably most of you sat like I did -- most people in the world who had a television set did -- and watched another image come crashing into the consciousness of human beings. We saw some funny-looking

men and they were walking stiffly, like that, and they were grayish-white, and they weren't dressed like cowboys. They had funny big bulbs on their heads. They were climbing down a ladder and they walked around. They were the first human beings ever to leave Planet Earth and walk on another body of the universe, the Moon, and we saw it with our own eyes.

More significantly, perhaps, than just that picture, we saw another picture, which is now all over Madison Avenue, and in the television screens, and in the magazines, and on the billboards, and everything. We saw a beautiful, shining, blue-gree Earth against a vast sea of blackness all around it. And that little blue-green planet looked so kind of delicate out there against all the blackness, and we thought, "Wow! All the life there is, and all the life there has ever been in the universe, and, so far as we know, all there ever will be, is down there on that little tiny thing whirling in the blackness of space. And here we are, walking around." Those men on the Moon were walking around in a life-support system, a careful mix of gases of certain proportions and a balance of energy outputs and incomes to maintain a temperature range, and a gaseous mixture, and a moisture content. They had their life-support system. We've been walking around in our life-support system for about 2.5 billion years for life, and a lot less for humans. That life-support system is Spaceship Earth. And there are two challenging images going on. Cowboy economy, Marlboro Country -- and Spaceship Earth.

In cowboy economy, more is better and there is always more just over the horizon. In Spaceship Earth -- do you remember when three American astronauts, something went wrong, and they had to race back to Earth. Would they have been better off if there had been five astronauts? Or ten astronauts? Or 100 astronauts? Why don't we send men and women astronauts up there together? It's a system. It's balanced. All you are ever going to have is locked up in the spaceship with you, and there will never be any more, and there is a balance in everything you do. Everything is related to everything else and the system is very delicate.

Now, that's my theme. There is a clash of values and it's an honest one. Both are important; I am not trying to downgrade them, I just don't think we should brush them aside either. There is the cowboy economy and the spaceship economy. If you think there is another Hood Canal, then go ahead and screw it up. Move on. If you think there is another Nisqually Flats and another Skagit Flats, then go ahead and dredge them up and build deep water ports there, and move on. You have

been doing it for 150 years, but you've reached the western shore now, and there is only the Skagit Flats and there is only the Nisqually Flats left in the State of Washington as natural estuarial bodies. You see, we are spacemen in a spaceship; we're not cowboys on the prairie. You look might silly, 210 million people, dressed up like cowboys, all crammed together in a spaceship. These values are coming through. And they're coming through in Shorelines Acts, and they're coming through in Clean Water Acts, and they're coming through in Refuse Act permit programs, and they're coming through in United Nations conferences and all. There is no way to brush them aside. They are going to be rough.

I support both these measures. I think they are modest measures, frankly. I think they are going to soon be found by analysis to have fallen far short of what was necessary to achieve the kind of balance we need to protect the shorelines -- both the measures, not either one, both the measures. The differences between them are going to be seen in about five to ten years as very minute indeed in the face of all the other problems they didn't solve, which perhaps we wish they would have. I will support both, but I prefer the Initiative. The Initiative comes a little bit closer to recognizing the size and the scale and the rapidity of the problems.

I would like to do a political science analysis of why I favor it, and it is going to be, I suspect, unpopular with some of the best people in this state, who might be right. I just might be wrong, but at least it's why I favor it. For the same reason Bob pointed out. The real issue is state and local.

Where is the locus of authority placed for making, perhaps, the spirit and the guide for the master plans and programs and the administration of the Act? Initiative 43 tips it to the state government and 43B tips it to the local government. Now, that is why we sat down and worked hundreds of hours drafting 43 -- because we didn't want it to be at the local government.

You see, nothing had ever prevented the local government from having its own shorelines regulations. Only nobody got any. There was no law in effect that said that the cities and counties of the state couldn't regulate the shorelines under their planning enabling acts and planning authorities, but they didn't do it. As a matter of fact, if we would read out the list of Soos Creek, Bitter Lake, Thornton Creek, Alderbrook Inn in Hood Canal, Guemes Island, Fort Susan Bay, the Port

of Tacoma's desire to dredge up the Nisqually Flats, Birch Bay, the Columbia River Gorge threatened with an aluminum plant, the Portland airport filling half the Columbia River for a six-mile stretch for a jet runway, the Seahurst Park dispute to date, the Lake Chelan case itself, Anderson Cove -- it's just a litany, of increasing momentum, of giant projects on the shorelands and tidelands and waterfronts and lake fronts of the state. And if you looked around those waterfronts and lake fronts, you would see in this state -- no different from anywhere else in America -- insofar as they were once developed in the urban areas, they were developed as transportation corridors. They were the wharfs and piers and the backyards of the warehousing and manufacturing. They looked like hell! They were run down. They were, to some extent, being redeveloped, but not that rapidly -- more moving on. There was a cumulative effect to destroy what was left of the natural beauty of a gorgeous state.

And in that context, with the Legislature several times refusing even to pass an inventory act, much less get on with a regulatory act, some other people said, "Well, maybe there's another way to legislate in this state, and that's to collect enough signatures and pose the question under our Constitution to the voters of the state." And that's why there was Initiative 43.

It wasn't because we were dissatisfied with what the Legislature had done, or dissatisfied with what the regulations on the shorelines of the cities and counties were. It was because they hadn't done anything, except permit all the wrong things.

Now, for that reason, I favor the state act with state jurisdiction. We are an urban country. We are a metropolitan country. Two-thirds to three-quarters of us are living in big metropolitan areas. We are a mobile country. The people who owned property around Alderbrook Inn on Hood Canal were not full-time residents of Mason County. They had no voice in Mason County politics and they were essentially unrepresented in the decision making of the Mason County Commissioners. Luckily, in that case, we had a forum (the Corps of Engineers) which represented a broader interest and which could consider the interests of people who lived in Seattle, Tacoma, and elsewhere but also had property and recreational values on Hood Canal.

Now, I seem to have some interests down there along the Columbia River in the Portland Airport, and in the Columbia River Gorge and the like, but I don't think the Klickitat County Commissioners represent me very well or the long-term values of the whole people of the State of Washington interested in those assets. Essentially, local government is too local for this issue. That's the trouble with it -- for this issue, it is too local. To get an interest, a viewpoint, which is beyond the local economy, we have to rise to a larger governmental jurisdiction with a larger territory and, in my opinion, for this purpose, the best one is the state. We talk a lot about regional governments. We've got one -- it's called the State of Washington. It has all the authorities it needs and you don't have to create another tier of government. It has the sovereign power of the people. And it is able to carry out land use planning to regulate the shorelines and rivers and lakes of the state.

Secondly, the political power of the ubran voter can be exercised toward the Office of the Governor and the State Legislature. There is nothing you can do about the Klickitat or Mason County Commissioners if you don't live in that particular county, and most of the unspoiled shorelines are in the places where the people don't live.

Now, the political facts are then, if you want to have an effect and participate in the decision, you have to raise it out of the local government level. That's why I was for doing it.

I am going to switch off at this point and take, very quickly, some of Bob's problems. He has done us really a great favor in raising them. I'm not disagreeing with what Mr. Graham was raising about problems of interpretation and the like. I would like to suggest that the Act, whichever one is passed, can be amended if there should turn out to be difficult problems of interpretation. That is natural in new acts, and we try to define them and see what is a better solution to them and take the amendments down and work on them.

As for the land grab -- no question about it -- there has to be a fine balance between regulation and, when it gets a little bit too far, it becomes, constitutionally, confiscation and becomes unlawful unless compensated for. Some concerns

have been expressed about Initiative 43 which I think are unnecessary. Initiative 43 specifically says -- it defers to and states that --nothing in it shall be interpreted to mean that property may be taken without just compensation. I believe that if you interpret an act in a manner that says that you have to account for everything in the act, then you must interpret the other parts of the act to account for the statement that you are not to interpret them so as to take without compensation. At that point, I think there is a saving clause in the Initiative that should keep the administration just back from the edge -- I hope not too far back -- but just up the steps.

The second question Bob raised is state versus local. I have discussed that. What happens if nothing passes, or if the legislative act doesn't pass? What happens about the things which were permitted in the interval and then, even more basically, what about the retroactive effect on structures which were in shorelands before the enactment of either of the acts? As I read Wilbour v. Gallagher, the decision has two parts: was the structure lawful or not, and then there was a discussion of the remedy to be applied. I don't believe that the remedy of tear-it-out is necessarily, under that decision, available in all cases in which you have already decided that maybe the thing had been put in unlawfully. Many things unlawfully done have ripened into lawfulness by simply being there for a while, and then maybe laches on the part of the opponents and all the rest that would prevent it. I suspect that the Court would not be ordering the tearing up of, for example, the Alaskan Way Viaduct or Harbor Island. It might be a good idea, but I'm just not counting on the Court to do it. I would suspect it would not in any event.

Now, as to the argument about the interpretation of the preferences, it is with caution that I approach it because I don't have the full text before me, but, at least in the Initiative, the structure of the preferences were, as Mr. Graham pointed out in his paper, weighted slightly more to the preservation ethic than they are in the legislative version. It is for that reason, among others, that I prefer them. But they are both a balance of preservation and development. The question is how the master plans will be developed and where they will locate the developments.

For example, in the drafting of the Initiative, we were careful to state that, for deep water ports and the like, that preference be given to existing port areas and that, for development purposes in other areas of shorelines, preference be given to areas already developed. In other words, instead of scattering out along the shorelands, let's do well what we do. Instead of sprawling, let's bunch. And it may well be that the Initiative will be the best protection the Port of Seattle has and the Port of Tacoma has to see to that that they are not victims of land grabs that go out for cheaper places. It should see to it for the redevelopment of the waterfronts of Seattle, Everett, Tacoma and the like. There is plenty of room there and we would all like to see it happen.

Who is an aggreived person? Bob just touched all the right bases about that, and the fact that the language left out the words "economic interest" just makes it in line with the latest decisions of the United States Supreme Court in the question of who is aggreived. Really, the question for non-lawyers is this: Who do you have to be to take a dispute to the Court and get them to decide it for you about one of these shoreline permits or developments? Who do you have to be? What do you have to say? This kind of a question is important in all judicial systems. In the United States federal system, it has been much litigated and, in cases called Data Processing and Barlow and, recently, in the so-called Mineral King decision, it has been fairly well worked out for the federal law of standing.

First, the interests protected do not have to be economic; they may be economic, aesthetic, recreational, spiritual, or other. In Mineral King, the Supreme Court has specifically said that all these other kinds of interest are part of the quality of life, and for the first time the quality of life crept into a Supreme Court decision. Secondly, you must show some injury in fact, economic or otherwise. Now, that is still vague enough, but you have to be somebody who actually is being, in some way, put upon, and you can't just come in and say, "I am who I am. I don't live around here. I came in briefly from Mexico City, and I don't like what you're doing." That's one extreme. On the other hand, you don't have to own the nearby property. "I am who I am. I'm a member of this organization or that, or I'm just who I am, and I use that water down there, and I can prove to you that my family and I picnic, hike, and that sort of thing and, if you put that there, that's going to interfere with our activities."

Not "we own it," but "it interferes" with a value, aesthetic, recreational, economic, or other. It is a broad standard. I think that's good; others may disagree.

Fellow spacemen, why don't we take off the guns and the cowboy uniforms and admit that we're all crowded together here in Seattle, Washington, in the Seattle Center, and we aren't out there on the prairie, and there are no more Hood Canals after we ruin this one.

# # #

What's Right and What's Wrong With the Washington Act

By

Jack Rogers*

The Washington Association of Counties, which I represent, has been paying close attention to the Act that has been passed, House Bill 584, now identified on the ballot as the alternative, 43B, because 584 is a legislative act in being and it is being administered throughout the State of Washington by local government in concert with the Department of Ecology, which has just this last week come out with its guidelines, I am happy to report to this group of friends of the environment and persons who are eager to preserve shorelines that the Act is working. We foresee great possibilities in its continued functioning, and this is not to say that there are not some areas which need improvement and possible future amendment by the Legislature and it is not to say that there are not areas where further administrative development is possible.

Now, in order to be a little bit more specific about what I mean, and in order also not to repeat some of the things that have been said by prior panelists that I had intended to include had they not been covered -- such things as the important assistance that the counties and cities have received from the Department of Ecology and the State Planning and Community Affairs Agency. First, planning assistance -- some money has been made available, I am happy to say. Federal funds have been channeled into this planning effort, and we are just now factually beginning to identify the enormity of the task to inventory and to bring about the regulation of these shorelines that is contemplated in this legislative Act. I might say at the outset that I feel that the Act which the Legislature passed was passed as many good legislative enactments are, in the spirit, somewhat, of compromise, but the Act is stern enough in its directives to the Department

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of Ecology and to the local governments to assure that there is going to be an effective system of shoreline preservation in the State of Washington. This, after all, is the objective that the Legislature set forward in its definition of the purposes of the Act.

One of the gentlemen who served on the committee was Axel Julin, who is present here and, I believe, on the next panel, and I certainly feel, and I must say publicly, that I think the Legislature did its work and did it well, and now it is the responsibility of the federal, state, and local governments, working in an honest partnership, to make this Act work. I report to you that it is working. That evidence came from the remarks of Marvin Vialle, who said that there had been 531 permits applied for and that only 25 appeals are pending, 15 by the Department of Ecology and the Attorney General, and 10 by private property owners. This is less than a 5% appeals record, and I might say in this connection that the gentleman who reviews the permits for the Department of Ecology tells us that, of these 25 appeals, they expect most of them to be worked out by negotiation, that five or six will probably go before the Shorelines Hearing Board, with the remainder to be negotiated. So you can see that the administrative functioning of this Act is working in what I believe to be a remarkably good way because we are dealing here, as has been stressed by Matt Anderson, the previous speaker, with a very sensitive area, and that is the use of one's property.

This is a traditional role for local government, which has done all the land use regulating that has been done in the State of Washington thus far. It has been done by local governments, cities and counties. It has not always been sublimely perfect in its application. We are willing to admit that, but I can point to you many triumphs of local planning in this state where the uses of property have been regulated and they have been upheld in the Supreme Court of our state, and we have some track record on local planning working and it is working in the shorelines area as well. The facts are borne out by the statistics, and the proof of the pudding is whether or not, in fact, there is preservation consonant with limited types of shoreline development. The proof of that pudding will be seen as we go down the line and find out whether or not there is any raping of the seashores or anything of that nature. I don't like to use that kind of language, but it is used sometimes, and we are certainly opposed

to the idea of the destruction of the shorelines of the State of Washington. The county officials of this state are just as eager to preserve those shorelines for posterity as anyone else, and I would like to say that thelocally elected officials who make these decisions in line with reasonable and well thought out guidelines -- guidelines in which we have had a part as local officials in preparing -- that we feel perfectly able to make these decisions, but I think a most important point was made by Christopher Bayley, the Prosecuting Attorney of King County. It is not enough simply to have the law and the direction that decision making will be local in consonance with the Department of Ecology's guidelines. There must be planning, and able planning, done by the planners of the state, and there also must be able legal advice for the boards of commissioners if they are to carry out their functions correctly.

Now, in the large and sophisticated County of King, they have a legal staff which provides excellent advice to the planning department, the agency that handles shorelines permits. In some of our smaller counties, I am sorry to report that the legal advice which the commissioners are able to obtain from the independently elected prosecuting attorney is not always as sophisticated or as readily available as it is in King County. I have opened negotiations with the Prosecuting Attorneys Association to ask them to "beef up" the type of advice that is given to our decision makers, or Boards of Commissioners and our King County Council. We wish to proceed in the administration of this Act in the very best legal manner, and I will acknowledge that we need some additional legal help in some of the smaller counties.

Now, the next Legislature is going to be asked, as was indicated earlier, to continue this task and to help local government to perfect the next phase, following the inventory phase, and that is the development of master plans, which are roughly comparable to comprehensive plans of land use which are in being in many of the counties of the state at the present time, in fact, in most of the counties of the state at the present time. The need for expertise here is obvious. If we develop in cooperation with the federal and state governments reasonable regulations that can be administered and enforced for the purpose of preserving shorelines, we will accomplish our objective. I think that it can be done; I am certain that it can be done, and we must insist, I would say, on a high level of administration, from County Commissioners, from Prosecuting Attorneys, from planners. This is a challenge that we all face, and it is a challege

that we can all meet if we work together and do it.

I would like to point out just a few of the other specifics. There are, as it has been reported, 37 of the 39 counties in the process of the inventory preparation. At first, there were 38 counties, but Lewis County declined to do the inventory, and Ecology is doing it and there will be no loss of time or expertise there. Skamania County, a small county on the Columbia River, has decided, after first filing a letter of intent to do its inventory work, that its planning staff is presently inadequate to carry on this important work of the inventory and it has asked the Department of Ecology to handle it. There are only three or four cities that have asked the Department of Ecology to handle this task, as you heard earlier.

Now, we have some reports from some of our counties that reflect an uncertainty as to the procedural methodology. That is, most planners involved in the inventory-taking process have never undertaken a project of this nature and, as a matter of fact, I know that this audience will realize that we are plowing new ground in the State of Washington and, frankly, we are plowing new ground as far as the United States is concerned in many of these concepts that have been written into this Act.

The survey of natural characteristics requirement is quite comprehensive and requires a broader range of skills than most planners possess. Identifying types of vegetation, of soil limitations and geological formations, mineral resources, water fluctuation levels, duration and timing, characteristic vegetation and characteristic species of animals -- these are the areas that will require the greatest challenge and these are the areas, ladies and gentlemen, that require the local planners to come in with consulting expertise. I was privy to an investigation of a marina siting on Hood Canal, and the Department of Natural Resources has an agency known as the Marine Resources Advisory Council which is peopled by many experts such as Jon Lindberg, an eminent oceanographer, and university professors of zoology and biology, and all the disciplines that bear on marine resources are represented on this committee, and it was amazing to me to find out the detail with which they had to investigate this application for a marina -- the flora and fauna below the surface of the water; the availability of food for the creatures that live in the sea and in the seashore. Many of these considerations

are obviously not decisions to be made by planners on county staffs but by persons with technical knowledge and expertise of the highest level. I think here is a place where the state government can assist local governments in providing such expertise when it is required in issuing permits.

Some counties have displayed real ingenuity in obtaining citizen support and involvement in this area. Some of the groups volunteering their assistance have included the Air National Guard which has done some work in this area, the Army National Guard, Boy Scout groups, the League of Women Voters, the Audubon Society, garden clubs, and many concerned professional botanists, archaeologists, engineers, and types of that nature. These types and these groups have made the planner's work considerably easier in some of the counties.

One of the greatest hurdles that the counties must overcome, and I wish to emphasize this, is the lack of adequate base maps, upon which they must display their accumulated data. Some counties are using the Metzger prints for work maps, and others are using the United States Geological Survey quadrangle maps. State Highway Department maps and the Department of Natural Resources maps, which are aerial photographs that the Department has made available to some of the counties, are being used. Some fortunate counties have or are ordering reproducable aerial photos. Some have adequate based maps developed under the county assessor's revaluation programs, but this is an area where we could use some more technical assistance from the cooperating state and federal governments.

The inventories are just in their infancy as to completion. Another problem has developed in the area of coding, the different types of coding -- I am not going to go into detail there, but I will said that the Department of Ecology and the State Planning and Community Affairs Agency have cooperated with our office in placing on our staff a planner -- he is present here; I will ask him to stand in case any of you have not met Ray Card, I would be happy if you would talk to him; Ray Card is the planner on our staff who is assisting in the specific task of coordination between the counties, the planning departments, and the Department of Ecology. I have his work reports and he is getting around and seeing a lot of counties, a lot of planners, and identifying problems and attempting to make this Act work. I must say that, when I suggested this staff member on our staff, to be selected by us and paid by the

Department of Ecology and the State Department of Planning and Community Affairs, I made this suggestion originally to John Biggs of the Department of Ecology and he very kindly agreed that this was an important function, and I am willing to report to you at this time that we feel that we are going to be able to help in the administration of this Act because we have this person on our staff. He is going to help particularly in some of the smaller counties that do not have professional planning assistance of a nature that could get this job done.

I would like to report to you the hopeful and optimistic position that our Association feels that this Act is in being and it is working, and we hope that the voters in the election of November would see fit to pass 43B and let us continue this work --this important task of preserving the shorelines of our state.

# # #

What's Right and What's Wrong With the Washington Act

By

Matt R. Anderson*

On June 8 of this year, the Trustees of the Washington Forest Protection Association adopted, as part of the operating policy of that organization, a statement of position concerning the shoreline management measures which will appear on the November ballot. In essence, it reaffirms the WFPA position of several years standing which declares our support of comprehensive land use planning and zoning for all the lands in the state, carried out at the local level under standards which would be uniform statewide. On the basis of the earlier policy, the position taken on June 8 further expresses disfavor with land use regulatory proposals which consider only limited segments of our total land resource. In other words, we are not too happy with any proposal which deals only with shoreline areas. We would much rather see regulation of land use along the shorelines of the state made a part of overall land use regulation, with proper emphasis on its significance relative to all the land in the state.

We do, however, pride ourselves on being political realists. Our official association policy expressed the hoped-for, and not entirely unattainable, ideal. In the real work of today, however, we are faced with making a choice between less-than-perfect options. Without unduly prostituting our overriding policy concerning land use regulation, our position in the current controversy over shoreline management is that the Legislature's alternative, 43B, is the more acceptable of the two measures. Whether we like or not, emotion will probably dictate that regulation of our shoreline areas is going to happen. The federal government is standing in the

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wings, waiting to take over, if the performance at the local or state level is not acceptable to the folks in Washington, D. C. Alternative measure 43B falls somewhat short of our liking. But it is less onerous than any other proposal we have before us.

You may rightfully be asking the significance of our position in this matter. What is the Washington Forest Protection Association? Who are we? Our organization represents the owners of private commercial forestland in the State of Washington. The Association assists and represents its members regarding protection of forests from fire, insect, disease, and animal damage; and in the fields of forest taxation and governmental affairs. Our members own a total of more than 5 million acres of forestland throughout the state, which includes virtually all of the industrial ownerships as well as many non-corporate individuals.

For the remainder of my alloted time, I wish to discuss some of the feelings which private forestland owners have about land use regulation. There was a time when our country had more land than it knew what to do with. In the early 1800's, Congress went to great lengths to devise schemes to get rid of millions of acres of surplus public land; and to make a few bucks for the Treasury in the bargain. America was land-poor. Those days have long since passed. And it's safe to say that we will never see them again. Our population has increased, and our tastes have become more sophisticated, to the point where virtually every acre of land is now a battle-field for advocates of conflicting uses. Forestland is certainly not excluded. Our commercial forestland base, on which this great industry is based, is currently shrinking at the rate of 100 square miles per year. What is needed now is a rationale which can resolve these conflicts; one which can view our land resources in toto. We need a land use planning concept which can relate our total land base to the total needs of our society. A promising approach would be one such as that being taken by the Washington State Land Planning Commission.

It boils down to this. The managers of commercial forestland, whether in private or public ownership, need assurance that the land base available for commercial forest production will remain stable. Just as it is necessary to designate some areas primarily for wilderness or recreational use, it is equally necessary that a sufficient forestland base be maintained to meet our material needs. Such determinations, however, should only be made after the most knowledgeable

considertation of our total resources and our total needs.

A review of both shoreline management measures reveals specific provisions dealing with forest practices. They stipulate that only certain harvesting methods will be allowed within certain shoreline areas. This is an example of the regulatory imprudence which, more than anything else, rankles professional forestland managers. Those who have devoted their lives to learning what makes a forest tick know that it is impractical to legislate specific forest practices. Trees, being complex living organisms, are a lot like people. They have individual and group "personalities" which are distinctive and peculiar to each individual tree and community of trees. Like people, trees are the product of an infinite interplay of genetic and environmental influences. Can any law which purports to regulate professional forestry practices really do the job without allowing for all environmental variables? We submit that it cannot. If such an attempt were made, what a horrendous document it would be.

The point I'm trying to make is this. Foresters have the expertise to know what should or should not be done in order to maximize the goods and services that the forests have to offer. Where there is legitimate public concern about the forest resources, governmental bodies should lay down realistic, and diligently enforced, standards of forest performance. But, let the foresters work out the technical details for achieving those standards.

Finally, I would like to mention a problem which is more in your sphere of expertise than in mine. Recently, we have been witnessing attempts to impose considerable restriction upon the extent to which a forestland owner may use his property. Supposedly, our Constitutions, state and federal, guarantee that government shall not deprive a person of his property without due process of law and just compensation. On the other hand, we see recent decisions handed down by our State Supreme Court and the United States Supreme Court which would indicate that there is a philosophy developing which places legislative interpretation of public desires above constitutional guarantees. We are concerned about what appears to us to be a serious departure from the traditional requirement of judicial determination of public need on a case-by-case basis in favor of blanket legislative determinations.

Most private forestland owners realize that there are instances where the infringement of private property rights

is justified to satisfy legitimate public needs. By the same token, however, they expect the public to compensate the owner for the loss of his rights. It appears that the concept of compensation is being swept aside by legislative limitations on property rights such as evidenced by the shoreline management measures. Quite frankly, we fear that adherence to such a philosophy can only lead to a further deterioration of individual rights.

# # #

What's Right and What's Wrong With the Washington Act

By

Jack B. Robertson*

The question of government's ability to respond to the demands of citizens is a complex one. It belies conventional wisdom which says that the more local a government the more accessible it is to the people and the smaller the group of citizens need be to influence government policy. Local government is thus more responsive than other levels of government. Simply stated, a citizen of Podunk can reach and influence his mayor more easily than he can the President of the United States.

As appealing as it is, this analysis ignores the relative nature of politics. In considering which level of government is more open to the individual citizen, it is not merely a question of which government he can physically get to more readily, but rather the following: "Where can the individual citizen be heard most readily? When he is heard, will he be listened to? And finally, if he is heard and listened to, can government act to serve him?"

A thorough examination of these questions guided the Washington Environmental Council in the preparation of Initiative 43, the Shorelines Protection Act. Likewise, in our meeting today, as we look at state versus local government control on shorelines protection, we must examine the following issues: (1) the power of local government to act to meet the needs of the people; (2) the accessibility of local government to the people; and (3) the willingness of local government to act in the public interest when the public interest conflicts with private interests.

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The Power to Act. The ability of local government to act is determined by two factors: (a) the jurisdiction it claims; and (b) the resources it has available to apply to the problem. The former factor affects local governments well nigh universally, the latter does not.

Let us see how jurisdiction of local government fares in certain environmental matters in the State of Washington.

In Tacoma, residents are affected by the Tacoma smelter almost every day. Yet, they can do little about it because it is located across the city limits, in Ruston. Another example: An oil spill in Puget Sound would affect the citizens of many cities, towns and counties; yet, the citizens of only one of these towns or counties need want a superport or a large refinery in order to create the possibility of an oil spill. A third example is the plight of the San Juan Islands -- an area valuable to the whole state for its natural beauty and tranquility. For a decade, the local press has carried articles which point out that the citizens of that area, like the citizens of this state, have no governmental tools to prevent the islands from being destroyed by a carpet of developments.

In their book, United States Government and Politics, authors Yinger and Zaharopolous describe local government as follows:

> "...Local government in most states is a patchwork of overlapping municipalities, special districts, unincorporated areas, and counties. One of the greatest difficulties of local government is that of securing cooperation among these various units of government for common ends, replacing the conflict and competition which is so often the case. Most cities and counties were given their charters in an age when the problems faced were relatively simple compared to those of the 1970's."[1]

This view finds an echo in a study done by the Committee for Economic Development in 1970:

[1] Jon Yinger and George Zaharopoulos, United States Government and Politics, Chandler Publishing Company, Scranton, Pa. 1969, p.150.

> "to cope with new problems, new governments were created, but they were not created with a rational view to the future. Rather, they seemed to spring up -- in endless proliferation. These new governments, tacked on to one another around the central city have formed the crazy quilt that is metropolitan America today."[2]

In essence, local government has not stood the test of urbanization. Urbanization means greater physical magnitude and complexity. It also means greater social integration. Political and governmental problems have reflected these changes and grown in size, complexity, and area of impact. Local governments have not. Their power and boundaries have remained generally static.

In preparing Initiative 43, the Washington Environmental Council noted, for example, that Hood Canal lies in three counties; that all of the state's major rivers, except the Nooksack, flow through more than one county; and that there are eleven planning jurisdictions bordering on Lake Washington.

We asked ourselves two basic questions. Can such fragmented jurisdictions prepare comprehensive plans which would harmonize with each other? Would these state resources be treated as an ecological system -- which they are. It was the judgment of the Board of Directors of the Environmental Council that fragmented jurisdiction was not capable of passing the test posed in these two questions.

This is why Initiative 43 relies on a Regional Citizens Council to advise the Department of Ecology in the preparation of comprehensive plans for their region. And this is why the State Ecological Commission was chosen as the final approval authority for comprehensive shoreline plans.

We do not have the slighest doubt that, if Washington and other states continue to fail to protect their shoreline resources, the federal government will step in and do the job -- as some 30 land use planning bills introduced in Congress clearly portend.

A tragedy which may be greater than that occasioned by shoreline destruction is the rapacious destruction of Class 1 and 2 agricultural lands in the name of progress -- parking

[2] Research and Policy Committee ofthe Committee for Economic Development, Reshaping Government in Metropolitan Areas, 1970, p.11.

lots, marshalling yards, trailer courts, and shopping centers. Washington State, and particularly its western section, has so few acres of this valuable resource. We must find a way to ensure that such land remains in agricultural use. Unless state legislatures measure up to their responsibility to protect this valuable natural resource, an appeal to Congress may be our only effective response. The sad fact is, our problems will not fit themselves to the governmental structure. Rather, we must shape the governmental structure to measure up to the problems we face.

The second factor in the ability of government to act is resources. What are the resources available to apply to the problem? Will individual governments meet problems which face them separately or will they contribute to an integral solution which is mutually beneficial to all of them? Obviously, such capacities are unevenly distributed. Robert Woods describes the situation in his book, 1400 Governments:

> "Out of this diversity of experiences, one municipality may find itself so insulated from the pressures of urban growth that it has real choices about the level and extent of its public services. Another may be captive of its environment -- with little industrial property and with low value residences, yet with a population which requires large expenditures simply to provide minimal services and meet the urgent needs of the moment."[3]

The point that some local governments are unable to meet their responsibilities is also obvious. But the effect that their incapacity has on other, more viable local governments who share regional problems with them is often missed. It is a practical impossibility for one or even several local governments, no matter how rich in resources, to overcome the failure of others who share the problem but not the wealth. The phenomenon of governments willing and able to perform but frustrated by their less able neighbors is common. Here is an excerpt from The Political Side of Urban Development -- The New Urbanization, by Greer and Minar:

> "Out of this diffusion of power and dilution of responsibility comes a curious rigidity of process

[3] Robert C. Wood, 1400 Governments, Harvard University Press, Cambridge, Massachusetts, 1961, p.63.

that enervates program!...It is as though policy must follow an open road full of ruts and chuck-holes, with hairpin curves and false crossroads to confuse the trip."[4]

Cooperative effort among local governments is a rarity, for the politics of local governments seems to preclude one local government from carrying the burden of another.

The conclusion here is clear. Very often citizens find their local governments unresponsive when they present them with critical needs simply because these governments are unable to perform. Accessible as they may be, local government officials may be accessible only to commiserate with their constituents -- not to hear them and act on their problems.

Accessibility. It is axiomatic that the closer a government is to its constituents physically, the more accessible it is. It is so axiomatic, indeed, that very little serious study has been made of this principle.

A recent study shows, however, that there are factors which qualify the sheer physical localism of the equation stated above. One such factor is identifiability. The citizen must be able to identify and fix a given official as being responsible in a given case before physical proximity comes into play in determining that official's accessibility. This factor is especially pertinent when one again considers the maze that local government in the United States presents to the average citizen. Beyond that, one must consider the greater ability a single state agency has to make its case as a service agency active in the same field.

The study cited here is by David Grant and is based on the results of surveys conducted in Toronto, Nashville, and Miami -- cities which have recently adopted a metropolitan form of government to supersede the local governments of the regions. A sample of the population was asked to compare political accessibility under the old and new forms. Mr. Grant summarizes:

"A comparative picture of the three metro's effects

4 Scott Greer and David Minar, The Political Side of Urban Development - The New Urbanization, St. Martinas Press, New York, New York, 1969, p.304.

> on political access, at the risk of oversimplification, would indicate as clearly easier in Nashville, slightly easier in Miami and slightly more difficult in Toronto. Differences in formal structure of metro are most frequently cited as explanatory factors related to the three city differences in political access, e.g., one tier versus two tiers, and direct election of officials versus indirect election or appointment."[5]

The applicability of this study cannot be extended too far. It is not claimed that this study provides firm evidence to support a statement to that effect that state government, for example, is more accessible than local government. Rather, it is evidence that local governments are not necessarily more accessible to the average citizen than regional or state governments. There are other factors which come into play in determining whether a citizen actually finds it easier to reach a responsible official at one level of government rather than another. Furthermore, it is evidence that the fragmentation of local government which so characterizes local government in our state, as elsewhere, tends to cause it to become less accessible. This, in turn, vitiates local government's ability to respond to the needs of its citizens. After all, accessibility is the one factor most often cited in local government's claim to be first in responsiveness.

Private Influence and Local Government. The susceptibility of local government to private influence is a fact, though its manifestations may be less blatant today than in earlier periods of our history. The structure of local government naturally produces a system of unequal advantage to a few, as pointed out in the report by the Committee for Economic Development:

> "...a fragmented system of government works better for some than for others. In gaining access to the system, citizens with greater political influence and sophistication may succeed in bypassing bureaucratic governmental procedures."[6]

[5] David R. Grant, Political Access Under Metropolitan Government, Comparative Urban Research, Sage Publications: Beverly Hills, California., 1969, p.270.

[6] Research and Policy Committee of the Committee for Economic Development, ibid., p.10.

Another, equally critical, factor in private influence is that local governments listen to private interests because they are more dependent on them. From the book Private Power and American Democracy by McConnell:

> "The factor of first importance here is the diversity that accompanies size. In a small community there will probably be fewer different interests -- economic, religious, ethnic, or other -- than in a larger community....
>
> "What happens at the far end of the scale of power is just as important. As the most important and influential local interests gain power by being placed in a small sphere, the least influential interests lose power. In a purely democratic system many interests may be represented in a small community by numbers so small as to be less than the minimum necessary for defense of those interests in any setting."[7]

The fact is that, whether the arrangement is nefarious or not, the private interest which offers the local government tax revenues is going to be heard. As its relative significance to the tax rolls grows, the more its voice tends to drown out the voice of all others. This factor is especially significant in the area of land use planning. The following is from the National Estuarine Study:

> "The salient point is each level of government tends to express these values perceived by its constituents. The higher the level of government, the more diverse is the constituency and the more remote the constituency will be from the influence of individual profit and loss situations."[8]

The report goes on to say:

> "The tendency to assume cohesiveness is more pronounced in the treatment accorded local government by the major coastal studies. It is acknowledged

[7] Grant McConnell, Private Power and American Democracy, Alfred A. Knopf, New York, New York, 1966, pp 104-5.

[8] United States Department of Interior, National Estuarine Study, Volume II, Washington, D. C., 1970, p.26.

> that the past practice by the state level has vested the local level with the majority of the power to regulate the use of land through the use of codes and ordinances. On the basis of an examination of past performance, the prognosis of future effectiveness of local zoning ordinances in meeting the problems of estuaries is pessimistic."[9]

The plain truth is that government -- in order to be responsive in those critical situations where there are conflicts among interests, public and private -- must be able to transcend those situations. Local governments find it most difficult to do so. They do not have the power, nor do they have the resources to be disinterested.

The concern of the Washington Environmental Council is that major land use decisions which are the concern of all of the people of the state -- such as those which affect shorelines or prime agricultural lands -- be made cooperatively with state officials who are in a position to serve the interests of all of the people of the state and, thus, can be objective about long-term environmental values. We are concerned that such decisions not be, in effect, private ones ratified by an overwhelmed local government searching for tax revenues.

Conclusion. In conclusion, we find that much more than physical closeness affects government's ability to respond. Government's response to the needs of its citizens is relative. It depends on three important factors: (1) government's accessibility to the citizen; (2) its ability to meet effectively the problem the citizen raises; and (3) its ability to act impartially for the common good in situations of conflict.

When we examine the performance of local governments in these three areas, we discover that their ability to respond is very limited indeed. In fact, the breakdown of effectiveness of local government is one of the subjects most commented upon in the current literature of politics.

It is commonly agreed that local government's rigid, outmoded and fragmented structure has left it so impotent in the face of virtually every problem the citizen considers important that accessibility is meaningless. Moreover, this impotence causes local government to become more dependent

[9] United States Department of Interior, ibid., p. 39.

on special interests which purport to offer it positive benefits. Special interests demand special consideration; and in situations of conflict, the individual citizen may be precluded from influencing the decision. Finally, even the vaunted accessibility of local government has come into question. Confusion born of fragmentation and impotence makes it difficult for citizens to find a responsible authority. Thus, frustration tends to vitiate the beneficial effects of its physical proximity.

Because of this combination of factors, local government is severely limited in its ability to respond to citizen needs. This limitation becomes more acute in proportion to the complexity and magnitude of the problem. Robert Wood's imagery in 1400 Governments is appropriate:

> "It may not be too far fetched, though it is certainly an oversimplification, to think of local governments as players at a roulette wheel, waiting to see what number will come up as a result of decisions beyond their direct control."10

This is why land use policy decisions, including shoreline protection, will be made more and more at the state and federal levels. This is why the Washington Environmental Council was compelled to place the key responsibility for the protection of the shorelines at the state level in Initiative 43, the Shorelines Protection Act.

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10 Robert C. Wood, ibid., p. 62.

What's Right and What's Wrong With the Washington Act

By

Richard D. Ford*

The hour is late, and I will try to be brief, and maybe one reason I am going to be briefer than otherwise is that I am in a state of emotional trauma after listening to Marvin Durning. He just killed Santa Claus. I can remember that little cowboy suit I got some forty years ago. It's really shaken me up to think that all my great cowboy heros have to go down the tube and I have to rebuild from scratch. I don't know if there are enough years left to replace the cowboy with a spaceman, but I will try.

In the port industry, we are trying. After a lot of wailing, tears, and gnashing of teeth, we have accepted the fact that something was happening in shoreline protection. The ports of this state, in solemn assembly, voted to endorse Initiative 43B. Now, Jack, maybe that is only halfway, but it is a giant step for the ports. We are proud that we were able to make that half step out of the Middle Ages.

I would like briefly to address the problem of shoreline regulation from the point of view of a user. The ports are significant users of the waterfront of this state, but not in terms of total area. Our own Port of Seattle, which is a pretty substantial operation, owns or controls about six and a half miles of waterfront. You heard Chris Bayley say that there are about 1,300 miles of waterfront under this Act in King County. So, the port has maybe one-half of one per cent of the total waterfront area in this county. About 39,000 people earn their living in this county from the port and water-related activities, so it is an important part of

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the community. We have talked mostly today about other uses of the waterfront. There have been references to recreation and the other aspects of life's values, but there is a value in the economy that cannot be overlooked. Many of the things we want to enjoy depend on what the economy can produce. When I listened to some of the earlier speakers talking about the fact that, by the year 2000, 80% of the people will live within 50 miles of the shoreline, this didn't surprise me. People live close to the shoreline because this is where their livelihoods are and it is certainly true in this community. The people came here by sea. They earned their livelihood by the sea and they continue to depend on the waterfront for a busy economy.

Both 43 and 43B recognize that ports cannot exist without access to the water. This is, I think, a sterling concession on the part of the drafters of these bills. We have not yet developed a system that would permit us to operate away from the water. With that recognition, they proceed to establish various criteria, some of which we in Seattle, I think for many years, have concurred in. For example, where possible, we should try to develop our existing facilities more intensively. We should redevelop areas that in past years have been devoted to marine terminal uses to more modern terminals so that we can get higher productivity. In Seattle, we have done this with the help of the taxpayers in this community and a very high economic price has been paid. I think this is something that should be considered. We have undertaken a heavy program of redevelopment of the waterfront of Seattle in terms of our ports and terminals but to do this we have, in the last ten years alone, used more than 50 million dollars of taxpayers' funds to make it possible. The waterfront development in this county uses land that has a value in excess of 100 thousand dollars an acre. You can go down the road a short distance and find undeveloped property available in other ports that can be developed and put into use for perhaps a quarter of that price. The economic incentives of moving out of Seattle and tearing up new countryside are pretty great. So, if you pursue a policy, as I think generally enunciated in these initiatives, that is to redevelop and intensively use existing areas that are devoted to port development, you are going to pay an economic price for it, and that price will be reflected back in the goods that you buy and the services that you use or the taxes that you pay.

There is another area that is important to those of us who depend upon the use of this waterfront resource, and

I have to touch on it because I wouldn't want to leave this meeting on too high a note. I would hope those here from the Department of Ecology and the local planning agencies would work diligently to make sure that we don't simply develop a new and better bureaucracy while we continue to degrade the environment. I mean this quite seriously. We need to work very hard to get some real reason into the administration of these programs. The problems and the tribulations of developing the policy I think have been pretty well enunciated. Americans are great believers that all they have to do is develop a policy, write a law, and then forget about it, and somehow things are going to go all right from there on out. This is not the way things go. One of the things I would hope these policy planners would do is help the administrators get a lot of the trivia into a routine that would not require an inordinate amount of time to resolve smaller issues.

An area, for example, that is quite important in our industry is rehabilitation. We are constantly rehabilitating and modifying facilities -- not changing their basic character really, but carrying on all kinds of additions, upgrading, and so forth. It seems to me that there should be a method by which those kinds of things could be done rather simply without a lot of undue red tape or delay. These types of things should be rationalized so that we don't have to spend a lot of time and manpower trying to pursue them. An example that is a very practical one is that road rights-of-way generally carry with them various types of public facilities such as power, water, sewer systems, and so forth within the right-of-way. These are normal parts of those developments. It seems to me that, once the roadway system is approved, these other types of uses should automatically be allowed. These kinds of things, while they may seem like trivia to a policy group of this type, can consume most of the management resources. They certainly don't have the glamour of lobbying manipulations and gyrations in Olympia to get something passed. They become very important, however, because, if we dissipate resources on trivia of this type, we will not be able to address ourselves to the major job, which is trying to determine the proper location and major uses of waterfront areas to come forward with the fullest possible program for all the needs of the community. I think with that I will sit down and thank you very much.

# # #

What's Right and What's Wrong With the Washington Act

By

Axel Julin*

I sincerely feel that it is rather impossible for me to add anything of real significance to a day that has been filled with remarks by knowledgeable people in this overall area of shoreline management. I am going to be brief, but I would like to call a couple of points to your attention at least.

One, for the lawyers present, I would suggest that, in processing or dealing with any case involving a shoreline permit or, for that matter, in my opinion, any permit that deals with land use, you look at the Washington Environmental Protection Act of 1970, and I think you will find, at least my research in a recent case I had involving this told me, that it is virtually identical in its provisions with the National Environmental Protection Act, and the significance of that to me is that you should, in all cases, make sure that there is considered by the governing body that is making the governmental action, an environmental impact statement. I suggest that, if you do not have that consideration, you may very well have a legal bug in your ultimate governmental action. In the case that I had recently, we were dealing with a small county that did not have the professional staff or expertise to provide for such, and I recommended to my client and they did, in fact, secure the services of a well known professional so that we could get an impact statement for consideration by the board.

Another comment for those of you who are lawyers, you have heard comments about the uncertainty and some of the many legal problems that are undoubtedly lurking around in the woods in either one of these pieces of legislation. I suggest for your serious consideration that there is a rather extensive legislative record of various and extended debate

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and discussion of a multitude of amendments. When both the acts were considered back in 1970, I know I, for one, offered some 32 amendments and they were discussed and debated as they went through the House. Over 50 were proposed and suggested during the deliberation in the 1971 Session. The remarks and action of the House and Senate on each of those amendments may very well be important to you in your case in determining what was the legislative intent.

I also suggest that you take a look at the term, "navigable waters." I believe Professor Johnson was much narrower in his definition of what might be deemed navigable waters than might actually be held to be the case, particularly if you take a look at Initiative 43, which I believe says, in essence, that anything that is now or hereafter used for recreational purposes on the navigable waters of the state means that you are in navigable waters. I suggest you consider that the modern styrofoam paddle board used by little children gets you pretty close, pretty shallow water.

There is another area that I would just like to point out to you, in spite of what I sense is a strong enthusiasm for shoreline legislation which I share because I am convinced that the process of having case-by-case development of the law as a result of the Wilbour v. Gallagher case is not in the best interest. The Legislature, I think, was addressing itself to try to shortcut that process, but in that connection I think you should all, as supporters of the basic concept, keep in mind that it was the result of severe compromise and adjustment of many differences of opinion. I think you have heard some of them expressed up here today and can sense others that were left unsaid today. I personally like to characterize consideration of this entire legislative area as trying to take the emotion out from between environment and economy. You will recall that, at the time we were considering the Shoreline Management Act in the 1971 Session, there were also serious concerns about the economic situation in the state and that overriding concern did have its impact in arriving and working out some of the compromises that went into the measure.

That leads me to touch on the comment made that we didn't realize the magnitude of the work we were shipping down to local government. Yes, we did, but money is tough to come by in Olympia and it was particularly hard to get some at that particular time.

A couple of other things that I think you should keep in mind that are political problems that I feel are inherent in the bill that we passed. Just the broadness of the coverage as opposed to the original Seacoast Management Act poses a problem when you realize that either one of them must obtain a majority vote by the people in November. The statewide coverage has generated a substantial amount of opposition in the eastern part of the State of Washington. The so-called seacoast management legislation did not cover that area of the state, but the shoreline initiative and the act by the Legislature, 43B, both do. They feel, many of them, that this is none of the state's affair. For that reason, some opposition has been generated.

Another problem that is inherent in this area and is the basis for some opposition is that the legislative action does give the power of eminent domain, and that's a kind of a nasty word in the eyes and minds of many, many people.

Another problem that I think you should keep in mind that really was a significant factor in making the Legislature be persuaded that the role of management should be at the local level was an emotional and politically charged contention that the Department of Ecology was simply another super-agency and that this was simply another effort to give the entire State of Washington's property use to that state department. That factor did go into the deliberations of the Senate and the House in arriving at the compromise.

Finally, with reference to the legal problems, I can't let them pass because I am a lawyer myself. I voted for and worked on this measure, as you have heard earlier. To say that there are legal problems in this measure is to state the obvious. We used, for example, the lawyer's favorite word, "reasonable." That is like a rubber band -- what does it mean? So there are legal problems -- so what's new? We have now in our office pending a case before the State Supreme Court involving the constitutionality of a statute passed in 1927. So, there is nothing new about the problems and so, for those of you who are lawyers, I suppose we made you a fair amount of work. On the other hand, I think, in the best interest of the state, we tried to do something so that not every development and every project and every use of a piece of property must have the specter of ultimate trial and appeal to the State Supreme Court. With all its imperfections, and I acknowledge there are many, I do think that, if you

compare the situation we might have if both these measures fail and return us to the uncertainty of Wilbour v. Gallagher, that you should, and I hope you will, vote for 43B, the legislative act.

# # #

What's Right and What's Wrong With the Washington Act

By

J. E. Swanson*

Most of the matters of concern have been discussed at some length by previous speakers. There are some points, however, that particularly concern those involved in the residential or recreational development of land. On the matter of 43 as against 43B, I am particularly pleased that, aside from the members of the Washington Environmental Council, it seems that the support for 43B as opposed to 43 is unanimous. This is understandable in view of the fact that 43B was formulated through the legislative process as a result of discussions and compromise among many, many groups and, at least to my view, this will always result in a better law than one formulated and written by a single group representing a single interest.

In the operation of the shoreline act to date, one of the primary concerns is not so much how the act was written, but that it is being interpreted by some people as being designed to prohibit rather than to regulate. The purpose is to achieve planned use of shoreline areas that are reasonable and appropriate uses as defined by the act. It is disturbing then to see articles such as the one that appeared in one of our local newspapers recently, in which the shoreline act and, in particular, the 200-foot strip upland of the actual shorelines was analyzed. The article included the statement that "such a strip would remain virtually undeveloped, a buffer between what is left between wilderness and civilization." This kind of language leads the general public to believe that the effect of the shoreline act is one of giving to the public all property upland of shorelines a distance of 200 feet. Of course, the only way this can be accomplished in our country, with our political process, is through the public purchase of this land. It is of particular significance that the administrators of this act must remember that its purpose is not to prohibit, but is to regulate. It is designed as a planning tool to

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ensure that use of the shorelines is reasonable and appropriate, well planned and not disruptive.

One of the biggest problems in dealing with the shoreline act is a result of the fact that it is very broad and general. Because the act is couched in very general terms, the counties and cities have many questions that are unanswered, as do the people who seek permits to develop. While these are serious problems, in the long run everybody is going to be much better off for having the flexibility of this process through the guidelines to eventual rules and regulations that are well thought out and leading to the situation where one seeking a permit for development has room for some give and take with the administrators of the act.

One of the unfortunate problems of the act is the time involved in securing a permit. In many routine situations that aren't the subject of any controversy, it creates some extreme hardships to be required to wait three or more months after applying for a permit, before being allowed to proceed with construction. Land developers, since the passage of the act, largely because of the economic situation, but somewhat because of the uncertainty of procedures, have really not sought a great volume of permits under the act. I don't know of a single case, for instance, of a developer seeking a shoreline permit to plat property. There have, however, been some applications for condominium developments of which the following are two examples:

A proposed condominium development within the 200-foot strip on a previously planned large recreational tract was investigated in terms of the Shoreline Act guidelines. A presentation was prepared by the developer and a request for permit made to the county commissioners. After publication of notice, the matter was referred to a Citizens' Advisory Committee by the Commissioners. The advisory group visited the site, studied the plans, and recommended the granting of the permit. The permit was granted by the Commissioners after the 45-day waiting period. There being no objection to the granting of the permit, after another 45-day period, the Department of Ecology approved the granting of the permit. This is the procedure for appropriate development as contemplated by the Act. Something over three months is an example of the unwarranted delay in the circumstances where there were no objections to the development.

The essential elements of this example are:

1. Development was attractive, well planned with the Shoreline Guidelines in mind.

2. Development was of a type consistent with the overall plan for a large recreational tract under a single ownership.

3. There were no objections to the granting of the permit.

Another condominium development within 200 feet of the shoreline was proposed to be located in an area along a town waterfront adjacent to other commercial activity. An architect and a planner were retained to design the structure and to ensure that Shoreline Act criteria were met. The hearing was held, attended by a very large number of protesters; testimony was taken, and exhibits were examined, following which a permit under the Shoreline Act was granted. There were something over 300 people who objected to the granting of the permit and signed a petition requesting that the granting of the permit be appealed. Both the office of the Attorney General and the Ecology Department, in due course, gave notice of their intention to appeal the granting of the permit to the Shorelines Appeal Board.

Investigators sent out by the state agencies to gather evidence in support of the appeal did not talk to the developers, nor the developers' architect, nor the developers' planner, and apparently there was no effort to determine the exact nature of the proposed development. The appeal is still pending, and, at the earliest, will be heard some time in the middle of next summer.

Apparently, the objections were based not on violations of the Shoreline Management Act, but on the fact that the protesters didn't want this kind of activity in the community.

In this example:

1. The development was attractive and well planned with the shoreline guidelines in mind.

2. The development was of a type compatible with the surrounding commercial character of the land use.

3. There was strenuous objection to the granting

of the permit.

In the previous two examples, neither of which involves shorelines of statewide significance, the only essential difference appears to be in the large number of objectors to the granting of the permit in the second example.

It is of some considerable concern that the action may have been to some extent politically motivated. Certainly in operating under the act, both the Department of Ecology and the Attorney General's office should limit their activity in appealing the granting of permits to those cases where the granting of the permit was clearly unwarranted under the Act.

As a final example, is the case of the request for a permit to construct recreational facilities on land within the 200-foot strip upland of the shoreline on a previously undeveloped location which was part of a very large residential-recreational area. The petitioner, in appearing before the Advisory Commission appointed by the County Commissioners, was confronted by members of the Commission who indicated that they were opposed to any type of development in this particular area. The developer felt that he had no chance to obtain a favorable recommendation from this group and consequently withdrew his petition. In this case, the developer had planned for recreational facilities which would be available to the public. Since, under the Act and under the Guildelines, this was one of the reasonable and appropriate uses for shoreline areas, he felt that a permit for a well planned recreation area would be routinely issued. The Commission, in opposing the developer's plan, failed to recognize the property rights of the developer and their obligation to proceed in the handling of requests for permits as set forth in the Act and Guidelines.

These examples were meant to point up some of the good and some of the bad as applies to the administration of the Shorelines Act toward land developers. The Act will certainly lead to well planned, well organized shoreline development in that it requires developers to approach development by matching it to the criteria set forth in the Act and the Guidelines. Probably the biggest dangers are that the various administrators of the Act may not have the necessary recognition of the private property rights involved, and that they may be unduly influenced by protests of groups and individuals based not on the criteria spelled out in the Act, but rather on their personal desires for use of the shoreline in question.

# # #

Allocating Coastal Resources

By

Dennis W. Ducsik*

INTRODUCTION

Beginning with the formation of the Commission on Marine Science, Engineering, and Resources (Stratton Commission) in 1966 and continuing with the introduction of the Coastal Zone Management Act (Magnuson Bill) of 1972, federal activities have been highlighting the need for enhanced public management of the nation's coastal resources. Considerable attention has been focused on the coastal states as broadly-based governmental units best suited to the management task, and a number of these states have responded with the development of management programs and the passage of appropriate legislation. Now the path of coastal resource management is approaching a crucial juncture, where the question arises: Can new or revised institutional arrangements be made that will, in fact, lead to a distribution of coastal resources more representative of social values, more responsive to public needs? This is the issue of designing an allocative system and defining an effective mode of governmental participation in it. Unfortunately, with the trend toward increased public involvement in coastal affairs, not enough consideration has been given the allocative process as a whole, of which public control is but a part. I would suggest that the burden of proof should be on the advocate of increased public participation in the actual allocative process, and that the substitution of one form of public control for another has no a priori justification. The fact that coastal resource management in the public sector is enhanced does not imply that it will be enlightened; there is a real

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danger that society could be worse off under a new system than under the old. Only careful analysis of the strengths and weaknesses of each component of the allocative process can avoid this danger when the issue of how to make resource-use decisions is confronted by each coastal state. Thus, understanding allocative processes is the prerequisite for the development of effective coastal resource management programs. To do this, we must examine the goals of allocative policy, defects in the mechanisms employed to reach these goals, and the implications that can be drawn for the design of new allocative systems.

EFFICIENCY AND SOCIAL BALANCE AS GOALS OF PUBLIC POLICY

Why are we so concerned with managing coastal resources? It is because we perceive that historical processes have been under-representing certain important social values while over-representing others. Public recreation has not been competitive with private interests as the price of coastal acreage soars; industrial and municipal pollution have made sewers out of many estuaries; wetlands have been dredged and filled indiscriminately; and commerce as well has suffered in the absence of effectively managed development. In short, present institutional arrangements have, in many cases, led to a misallocation of coastal lands and waters among competing uses (including non-use). This suggests that the goal of public policy should be an optimal allocation of scarce coastal resources, one that is consistent with the aggregated needs and values of affected sectors of society. Incorporated in this goal of optimality are the concepts of efficiency and social balance, which must be given clear and well-defined meaning.

Efficiency and social balance are important concepts because there are only a limited amount of resources available to our society. Limited resources include labor, technology, and natural resources, all of which are allocated to the production of a wide variety of products. An economic "product" is nothing more than something society finds desirable, be it physical, psychological, aesthetic, or otherwise. Clean air and public beaches can be thought of as "products" in this sense, along with automobiles, television sets, health care, and other familiar goods and services. Since resources are limited, the total of all the products that can be produced is also limited, and we will achieve this level only if we are efficient in the utilization of all the resources at our disposal. The fact that resources are limited also implies

that we can have only so much of each product that is available, depending on how much of other products we desire. In other words, there are many combinations of products that society might have and, when the allocation of resources to a particular combination is consistent with the aggregated values of society -- however articulated -- then social balance has been attained. Thus, an optimal allocation of resources is one which attains the maximum level of total production (efficiency) and a distribution of individual production levels that reflects aggregated public values (social balance).

These concepts are illustrated in Figure 1, which depicts what is known as a production possibility curve for a hypothetical economy in which only two "products" using coastal land resources are available to society -- electric power and recreation. The curve shows that, if no coastal land is devoted to recreation (Point 1), we can obtain a certain very high level of power production by locating plants at the coast (where the required cooling water supplies are available). Similarly, if no power is generated, all the coastal land could be used for recreation (Point 2). Between these two extremes, there exist many production combinations of the two "products" (Points 3, 4, 5, etc.), all of which represent an efficient use of the land, labor, and technical resources available. It is important here to distinguish between efficient and inefficient allocations. When efficiency is attained, having more of one product requires that we have less of others. An inefficient allocation of resources implies that we could have more of one "product" without reducing the amount that we can have of the other one (assuming that society always prefers more of a particular "product" to less). Point 6 in Figure 1 represents an inefficient allocation since it does not lie on the production possibility curve; hence, society could move toward Point 3, 4, or 5 and be better off! This means that a more complete utilization of resources could enable us to have more power without decreasing the amount of recreational land available, and vice versa.

While all the points on the production possibility curve represent an efficient use of resources, each corresponds to a different set of social priorities regarding the production combination. A society operating at Point 3 would value having more power plants and fewer recreational areas than it would if it were operating at Points 4 or 5, assuming that social values are effectively articulated and weighed. If this is not the case, note that it may be possible for resources to be allocated efficiently yet result in a distribution of production levels that is not reflective of social needs and values.

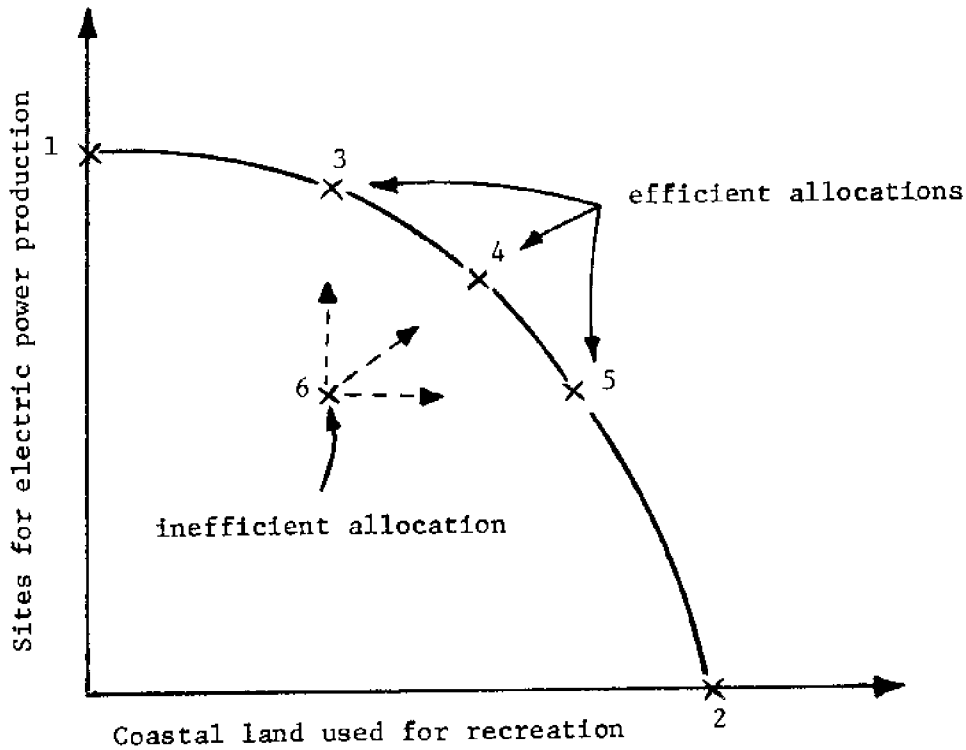

Figure 1: The production - possibility curve for a two product economy

For example, the distribution of products may be at Point 4, whereas the social values -- if properly represented -- would allocate more resources to recreational areas, causing a shift to Point 5. When the allocation of resources to the production of each product matches the desires of society for the consumption of that product, then social balance has been achieved.

A more realistic production possibility curve would actually be a multi-dimensional surface, a complex representation of the possible combinations of all available "products." However, the concepts of efficiency and social balance remain unchanged. Within this context, we can think of ecological protection and public uses of the coastal zone as desirable products to which coastal land and water can be allocated, along with other "products" (energy, waste disposal, private housing, industrial goods, etc.) that represent other aspects of social well-being (e.g., economic, health, etc.). The responsibility of government is then to help society reach optimality, i.e., efficiency in production together with the most desirable balance between the different dimensions of well-being, with increased attention to the amount of resources that should be allocated to environmental "products" (wetlands preservation, public beaches, scenic and historic areas, clean water, etc.). In this context, there are four kinds of activities the public sector would engage in when managing coastal resources:

1. Establish an initial level of ecological protection through direct regulation and control.

2. Help society become "environmentally efficient," i.e., increase the level of environmental well-being without decreasing other levels. An example would be requirements for the maintenance of public access to coastal areas in the planning of private developments.

3. Help society extend the production possibility frontier, i.e., find ways that will make us better off from both environmental and other social standpoints. For example, some land use conflicts may be eliminated through the implementation of innovative technology, such as siting power plants at offshore locations rather than in ecologically fragile estuarine areas.

4. Help society move along the production possibility curve to an allocation more consistent with current values. It is this task that may be the most difficult, since to have

more of environmental "products" when efficiency is already present will mean having less of some other "products."

At this point, it is clear that the responsibilities of government in managing the coastal environment go beyond the requirements of pollution control. It is equally important that it take a positive role in encouraging coastal resource utilizations that can be beneficial from both environmental and other perspectives. In addition, it must be sensitive to the trade-offs on certain issues where uses are in absolute conflict, and take steps to ensure the effective articulation of public values within the decision making process. Thus, government officials must, at different times, wear three different "hats" -- that of a regulator, a promoter, and a catalyst -- in seeking an optimal allocation of coastal resources. Let us now turn to an examination of the process by which such resources are allocated and the deficiencies that can lead to situations that are significantly less than optimal.

THE ALLOCATIVE PROCESS AND ITS DEFICIENCIES

In this country, the allocation of scarce resources has always been determined within the economic environment of the private marketplace, operating under constraints imposed by the public sector. Historically, the early concept of laissez faire and an unregulated market has been modified to the point that, today, it is generally acknowledged that allocative efficiency and social balance is one of the broad areas in which goals of public policy should be defined and collective action taken in the public interest.

The allocative process in the coastal zone can be viewed as a combination of institutional mechanisms which exert controlling influences on decision making. The mechanisms of primary importance are:

1. The operations of the private market.
2. The powers of local government and quasi-public authorities.
3. Public investment in land acquisition and development.
4. Legal and regulatory constraints.

An examination of how these mechanisms work to bring about efficiency and social balance, and in what circumstances they

are deficient, is a prerequisite to a critical review of the overall allocative process.

The Private Market. The private marketplace is the foremost mechanism through which society exercises the choice among the combinations of "products" it might have, thus determining the allocation of resources. A properly functioning market translates aggregated personal values into desired amounts of production through the workings of the price-profit system. In such a market, competition among buyers assumes that goods and services will be allocated in conformity with the relative desires and abilities of the participants to pay. If certain basic conditions are met, there will exist a set of market prices such that profit-maximizing firms and benefit-maximizing consumers who respond to those prices will automatically direct the economic system into an efficient allocative position.

There are two very important concepts to be emphasized here. The first is that the market does not always function in the proper way, leading to an inefficient allocation of resources. There are certain circumstances in which markets underproduce certain desired outputs and overproduce others. Such inefficient situations come about when the conditions and assumptions upon which conclusions are made about the effectiveness of a market system are not satisfied in reality. One such condition is that the price of a given product must reflect the total social cost of lost opportunity, i.e., the value for other uses that is given up by applying resources to one particular use. If the total cost is not reflected in the price of a "product," the private market will tend to overcommit resources to the production of that product, thereby foreclosing the opportunity to allocate some of those resources to a more valued use. (Externalities are the most frequently cited examples.)

The second point to be made is that social values are articulated by the market only in the form of willingness-to-pay. Thus, the efficiency which the market provides is based on the current distribution of income. Note that the distribution of income may not correspond to the values society places on having a certain combination of "products." Poor people may desire private beaches, but these desires are not counted if they cannot be translated into a willingness-to-pay. Therefore, even though the market can bring about efficiency, this may not correspond to social balance if one does not accept the distribution of income as an adequate reflection of social values. In addition, many values cannot be translated

into a willingness-to-pay since markets often do not exist for intangible products such as clean air or a noise-free environment.

In sum, there are two ways in which markets may not provide an optimal (efficiency with social balance) allocation of resources: through market failure, and by being responsive only to willingness-to-pay.

Local and Other Special Interest Controls. The institutional environmental of the American shoreline is composed of a large, diverse group of local governmental units having jurisdiction and control over varying amounts of coastal property. These units establish the most influential constraints under which the private market operates and are focal points for any collective action that might be required to compensate for market deficiencies. Through the powers of zoning, subdivision control, acquisition, eminent domain, taxation, and the like, local governments and quasi-public authorities are in a good position to effect policies that could move the overall allocative process toward a socially optimal use of coastal land. However, limited jurisdictional boundaries can also have the stifling effect of permitting a diffusion of problems throughout a region while blocking any corresponding flow of governmental responsibility; and special interest organizations often exert monopoly power in areas inappropriate for the exercise of such power. Thus, decisions controlling the allocation of resources that may affect an entire region are too often made solely within the context of local or special needs and values. Rather than serving as a constant check and balance on the private market (which is no respecter of political boundaries), local and vested interest controls have the potential to further perpetuate inefficient land utilization.

Public Investment. It has long been recognized that certain deficiencies in the mechanisms of the private market and parochial control (local or quasi-public) require collective action at a higher level, generally in the form of state or federal acquisition and development of coastal land. Yet, this too can lead to inefficiencies, either in the form of too little or too much public intervention. In the case of shoreline recreation, for example, most governmental units react only to short-range problems of supply and demand for public facilities because of a lack of funds. This is understandable to the extent that state and local governments do not have or are not willing to appropriate the large amounts of

money necessary to buy outright all the coastal land that is needed. In this component of the allocative system, social values are articulated through the political process, never noted for efficiency in representing the public interest, particularly when issues arise relative to a major redistribution of wealth such as a wholesale provision of public beaches would entail. As a result, governments try to buy small stretches of shoreland when it is needed, planning only for the pressing demands of the next five or ten years. But, while this has been going on, potential sites have been privately bought and developed to the point where, in many areas, practically nothing remains to be acquired.

In other instances, certain public investments or their bureaucracies may be outdated with respect to contemporary needs and values. Armed services installations on the coast often needlessly restrict public and private access or use of shoreline that may not be essential to military operations. Another case in point is that of special purpose agencies with charters that reflect limited perspectives but are relatively difficult to modify as a wider range of considerations become significant. Finally, the traditional bureaucratic shortcomings of administrative sluggishness, jurisdictional conflicts, lack of coordination in planning, and susceptibility to various forms of narrow political pressures can be obstacles to the effective participation of the public investment mechanism in the allocative process.

Legal and Regulatory Constraints. The legal and regulatory framework within which the aforementioned allocative mechanisms for coastal land operate consists of a hodgepodge of constitutional and common law doctrines, together with a grab bag of federal and state controls in matters of public health, interstate commerce, environmental protection, transportation, construction, housing, national defense, waste disposal, public utilities, offshore resources extraction, etc., etc., etc. This constitutes an additional layer of collective action intended to compensate for inadequacies in other allocative mechanisms. Again we encounter a number of difficulties that may render these mechanisms ineffective in fostering the desired move toward optimal land utilization.

Courts most frequently become involved in the allocative process when an individual or a small group of individuals suffers the adverse consequences associated with a particular land use to a greater degree than the community as a whole. An important thing to bear in mind is that the courts operate

retrospectively, dealing with problems only after they have been identified as problems, and have always hesitated to take a positive role in the actual decision making process. This passive nature on the part of the courts and the difficulties encountered in their use (restrictive rules of evidence and standing, dilatory tactics, etc.) make it clear that they do not serve as a primary instrument for efficient land management. However, when the courts act as a part of the governmental administrative structure, they seem to have considerable influence stemming from their power to determine who should participate in certain decisions and what factors should be weighed. On balance, it must be acknowledged that the legal system, at best, has a limited though potentially valuable role to play in the overall allocative system.

The regulatory machinery of government is also subject to certain drawbacks that may inhibit its participation in allocative processes. Here, decisions have in the past been made on an ad hoc basis by a variety of official and unofficial decision-makers, sometimes with little or no perception of the combined effects of such decisions within the overall system. In the administrative agency sector, mixed questions of regulation and development are often resolved in terms of their bearing on the interests of individuals and groups whose general objectives are closely allied with a given agency. This is one aspect of the more general phenomenon of the "politicization" of decision making in which adversarial processes take the place of bidding or other systematic approaches to resource allocation. A case in point is the effect of the National Environmental Policy Act on the location and design of electric power plants. While the flow of information has been enhanced in the required publication of environmental impact statements, the choice of site and plant design remains solely within the discretion of the utility company and is subject to review only after their decision is made. It is perfectly conceivable that within this context the power plant siting process of the 1970's will reflect the highway location process of the 1960's, i.e., a time-consuming and costly iteration of utility proposals and concerned citizen rejections continuing until the real issue of effective interjection of public values throughout the process is confronted in a meaningful way.

Allocative Deficiencies in the Coastal Zone. Deficiencies in the allocative system as described above have resulted in a misallocation of coastal lands and waters in many states, especially in relation to recreational, ecological, aesthetic, historic, and economic uses of broad public value.

Historically, these uses that could pay the highest prices for coastal land have pre-empted most of the shoreline. These uses have most frequently been for housing, private recreation, and industrial and commercial development, all of which have for a long time been relatively well established in the competitive marketplace. The allocative mechanisms of the market have functioned well with regard to the distribution of coastal land among these competitors, based on their willingness-to-pay. On the other hand, ecology, public recreation, and aesthetics have often been unable to participate effectively in the competitive process since markets in general do not exist for these "products." There are few effective means by which the recreational, aesthetic, and ecological values of shoreline resources to an entire region can be reflected in the market price of coastal land. The greatest difficulty in this regard has always been to put a price on certain values, much less find a way to translate these values into revenue. Yet, the private market demands that this be done by any use which seeks to compete for control of coastal land. This factor, combined with the inability or unwillingness of the public sector to compensate for it, has resulted in a situation where the bids for private use have far outstripped those for public use, as evidenced by the facts that only a small percentage of the entire shoreline is publicly owned for recreation, ecological disruption is widespread, and scenic and other aesthetic amenities are often precluded by indiscriminant or poorly designed development. A strong case can also be made to the effect that the net regional economy can also suffer in the presence of inefficient allocative processes, having to do not with the private market, but with certain forms of public control.

In the next section, we will explore issues in public decision making relative to the task of managing coastal resources to correct for the present situation and avoid the difficulties of the past.

ISSUES IN PUBLIC DECISION MAKING

The Challenge. Of the four primary components of the decision making system surrounding the allocation of coastal land -- private market, local control, public investment, and legal and regulatory constraints -- the latter three represent various forms of collective action within the public sector. As long as there was plenty of shoreline available to satisfy all the demands from competing private uses while leaving adequate opportunities for public activities, there was no

perceived need to reassess the distribution of functions between these two sectors. The public sector was content with acquiring and managing public lands and otherwise adopting laissez faire posture in setting the boundary constraints for private sector decisions. But today, with the increasing concentrations of population and development in the coastal zone and the rapidly diminishing supply of resources to accomodate the needs attendant to this growth, the nature of the interface between the public and private sectors is changing significantly. Increasingly, coastal resources (and environmental resources in general) are recognized as being inefficiently allocated, and government is being required to play a more integral role in the allocative process. Unfortunately, scant attention has been devoted to understanding the effects that a reallocation of roles and functions between the public and private sectors will have relative to the concept of efficiency and true social balance. We are just beginning to acknowledge that, while private market mechanisms can be inadequate in dealing with problems at the public-private interface, public sector methods may be at least as bad or even worse. Basically political, adversarial processes may not be any better than market processes in terms of allocative efficiency. The point is that wholesale rejection or pre-emption of any one component in the allocative system is not likely to solve problems of resource misallocation. What is required is a careful analysis of the strengths and weaknesses of each component and how they might be coordinated in a way that retains the positive aspects of each. This is the real challenge to government with regard to coastal resource management!

The Role of Government. The fundamental issue that must be dealt with regarding decision making in the public sector is: What is the proper sphere of action -- or combination of spheres -- within which a given problem should be handled? In many cases, the environment of the private market operating under specific public sector constraints is perfectly adequate for the making of allocative decisions. But when this environment is found to be deficient (as often happens in the case of coastal resources), it must be modified or redesigned based upon a careful examination of the available alternatives, including (1) reliance on some sort of adjusted market system; (2) pure collective action (economic or political) outside the private market; or (3) some combination of the two.

In choosing among these alternatives, we must look carefully at which governmental level -- federal, state, local,

or regional -- or which combination of levels, is best suited to manage the problem, and whether some form of reorganization is needed. Also, it is essential to understand when markets do and do not work well. It is of major importance to understand the characteristic strengths and weaknesses of various segments of the public and private sectors and their basic functional differences. How are values articulated in each sector? Are political processes more desirable than market ones? Government policy-makers must determine how (if at all) markets can be revised to do the job, and what actions should be taken if the market cannot be adjusted properly. In many cases, arguments can be made to the effect that market adjustment is preferable to most other collective actions on the grounds that it preserves the clear advantages of free and decentralized decision making, greater flexibility in attaining efficiency, and more effective proportional representation of individuals' values through the dollar "vote." If such an adjustment is not possible, policy-makers may attempt to simulate the market to determine what outcomes would result if the market were working under the proper conditions and then take steps (through legislation or public spending) to bring about these desired outcomes. If this fails, government may find it necessary to take pure collective action in the form of prohibitive laws or special purpose agencies to directly control an otherwise unmanageable situation. The proper sphere of action as discussed here must be determined by a close examination of the nature of each particular coastal problem and the availability of appropriate public policy tools.

We have observed previously that government should at appropriate times play the role of a watchdog, of an advocate, or of a catalyst, depending upon the particular sphere of action within which certain resources are managed. Probably the most difficult of these functions is that of the catalyst, when public officials are called upon to help society choose among environmental and other desirable "products" in situations where it is impossible to have more of both. One problem here will be how to illuminate trade-offs between quantifiable economic benefits and intangible social values. This necessarily involves a determination and articulation of the public interest. In the private market, goods have a dynamic, organic mechanism whereby collective demands can be felt; whenever enough individuals want something at a given price, there is an incentive for someone to produce it at a profit. Thus, many individual preferences can be satisfied since each individual's "vote" (in dollars spent) goes relatively far in determining the available supply. Environmental "products" differ in that

private markets may fail to respond to the entire range of individual demands, giving rise to a need for collective action. The question is, how can individual preferences for these products be summed through basically political means to determine if the aggregate benefit is sufficient to justify the total cost? This is a central question in the area of welfare economics, and the resolution of the issues involved must ultimately play an important role in the formulation of management policy concerning a state's coastal resources. A related question is how to deal with circumstances in which trade-offs between basic rights in a free democratic society seem unavoidable, e.g., the private right to own, control, and develop property versus the public right to swim at an ocean beach or explore a rocky bluff. While the answers to all these questions are not immediately available, the first step is to seek new, non-disruptive mechanisms by which social values can be articulated and represented throughout all stages of decision making on coastal resource allocation. The determination of what is an optimal allocation must always involve the questions "according to whose values?", and careful attention must be paid to the means by which those values are to be articulated and weighed.

Within the above context, it should be clear that the appropriate response to the need for enhanced coastal resource management entails much more than the creation of new institutional arrangements. How well suited such arrangements might be to confront the critical decision making issues must also be considered. Some have suggested reliance on a privileged public body -- a state "super-agency" -- with sweeping powers and a broad mandate. But again, the burden of proof must be on the advocate of such an agency to show how the allocation of coastal resources that would result would be more consistent with social values. This is a complex problem area which lies squarely at the public-private interface and on the very frontier of environmental management.

# # #

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

SHORELINE MANAGEMENT ACT OF 1971

Chapter 90.58

90.58.010 Short title. This chapter shall be known and may be cited as the "Shoreline Management Act of 1971". [1971 1st ex.s. c 286 § 1.]

90.58.020 Legislative findings--State policy enunciated--Use preference. The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration, and preservation. In addition it finds that ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development of the shorelines of the state. The legislature further finds that much of the shorelines of the state and the uplands adjacent thereto are in private ownership; that unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest; and therefore, coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state while, at the same time, recognizing and protecting private property rights consistent with the public interest. There is, therefore, a clear and urgent demand for a planned, rational and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines.

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

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

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

(2) Preserve the natural character of the shoreline;
(3) Result in long term over short term benefit;
(4) Protect the resources and ecology of the shoreline;
(5) Increase public access to publicly owned areas of the shorelines;
(6) Increase recreational opportunities for the public in the shoreline;
(7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment or are unique to or dependent upon use of the state's shoreline. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single family residences, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state.

Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water. [1971 1st ex.s. c286 § 2.]

Reviser's note: In subsection (7), a literal translation of the session law's reference " . . . section 11 of this 1971 act . . ." would read "RCW 90.58.110". The above reference to "RCW 90.58.100" which codifies section 10 of this act is believed proper in that (1) section 10 lists the elements includable within the master programs while section 11 neither defines nor mentions such elements, and (2) in the course of passage of the bill, section 7 was deleted causing old section 11 to be renumbered section 10, but the above reference was not amended in consonance with the renumbering.

90.58.030 Definitions and concepts. As used in this chapter, unless the context otherwise requires, the following definitions and concepts apply:
(1) Administration:
(a) "Department" means the department of ecology;
(b) "Director" means the director of the department of ecology;

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

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

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

(2) Geographical:

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

(b) "Ordinary high water mark" on all lakes, streams, and tidal water is that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971 or as it may naturally change thereafter: Provided, That in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) "Wetlands" or "wetland areas" means those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; and all marshes, bogs, swamps, floodways, river deltas, and flood plains associated with the streams, lakes and tidal waters which are subject to the provisions of this chapter; the same to be designated as to location by the department of ecology.

(3) Procedural terms:

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

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

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

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

(e) "Substantial development" shall mean any development of which the total cost or fair market value exceeds one thousand dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state; except that the following shall not be considered

substantial developments for the purpose of this chapter:

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

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

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

(iv) Construction of a barn or similar agricultural structure on wetlands;

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

(vi) Construction on wetlands by an owner, lessee or contract purchaser of a single family residence for his own use or for the use of his family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to this chapter. [1971 1st ex.s. c 286 § 3.]

90.58.040 Program applicable to shorelines of the state. The shoreline management program of this chapter shall apply to the shorelines of the state as defined in this chapter. [1971 1st ex.s. c 286 § 4.]

90.58.050 Program as cooperative between local government and state--Responsibilities differentiated. This chapter establishes a cooperative program of shoreline management between local government and the state. Local government shall have the primary responsibility for initiating and administering the regulatory program of this chapter. The department shall act primarily in a supportive and review capacity with primary emphasis on insuring compliance with the policy and provisions of this chapter. [1971 1st ex.s. c 286 § 5.]

90.58.060 Timetable for adoption of initial guidelines--Public hearings, notice of. (1) Within one hundred twenty days from June 1, 1971, the department shall submit to all local governments proposed guidelines consistent with RCW 90.58.020 for:

(a) Development of master programs for regulations of the uses of shorelines; and

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

(2) Within sixty days from receipt of such proposed guidelines, local governments shall submit to the department in writing proposed changes, if any, and comments upon the proposed guidelines.

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

(4) Within sixty days thereafter public hearings shall be held by the department in Olympia and Spokane, at which interested public and private parties shall have the opportunity to present statements and views on the proposed guidelines. Notice of such hearings shall be published at least once in each of the three weeks immediately preceding the hearing in one or more newspapers of general circulation in each county of the state.

(5) Within ninety days following such public hearings, the department at a public hearing to be held in Olympia shall adopt guidelines. [1971 1st ex.s. c 286 § 6.]

90.58.070 Local governments to submit letters of intent--Department to act upon failure of local government. (1) Local governments are directed with regard to shorelines of the state in their various jurisdictions to submit to the director of the department, within six months from June 1, 1971, letters stating that they propose to complete an inventory and develop master programs for these shorelines as provided for in RCW 90.58.080.

(2) If any local government fails to submit a letter as provided in subsection (1) of this section, or fails to adopt a master program for the shorelines of the state within its jurisdiction in accordance with the time schedule provided in this chapter, the department shall carry out the requirements of RCW 90.58.080 and adopt a master program for the shorelines of the state within the jurisdiction of the local government. [1971 1st ex.s. c 286 § 7.]

90.58.080 Timetable for local governments to complete shoreline inventories and master programs. Local governments are directed with regard to shorelines of the state within their various jurisdictions as follows:

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

(2) To develop, within eighteen months after the adoption of guidelines as provided in RCW 90.58.060, a master program for regulation of uses of the shorelines of the state consistent with the guidelines adopted. [1971 1st ex.s. c 286 § 8.]

90.58.090 Approval of master program or segments thereof, when--Departmental alternatives when shorelines of state-wide significance--Later adoption of master program supersedes departmental program. Master programs or segments thereof shall become effective when adopted or approved by the department as appropriate. Within the time period provided in

RCW 90.58.080, each local government shall have submitted a master program, either totally or by segments, for all shorelines of the state within its jurisdiction to the department for review and approval.

(1) As to those segments of the master program relating to shorelines, they shall be approved by the department unless it determines that the submitted segments are not consistent with the policy of RCW 90.58.020 and the applicable guidelines. If approval is denied, the department shall state within ninety days from the date of submission in detail the precise facts upon which that decision is based, and shall submit to the local government suggested modifications to the program to make it consistent with said policy and guidelines. The local government shall have ninety days after it receives recommendations from the department to make modifications designed to eliminate the inconsistencies and to resubmit the program to the department for approval. Any resubmitted program shall take effect when and in such form and content as is approved by the department.

(2) As to those segments of the master program relating to shorelines of state-wide significance the department shall have full authority following review and evaluation of the submission by local government to develop and adopt an alternative to the local government's proposal if in the department's opinion the program submitted does not provide the optimum implementation of the policy of this chapter to satisfy the state-wide interest. If the submission by local government is not approved, the department shall suggest modifications to the local government within ninety days from receipt of the submission. The local government shall have ninety days after it receives said modifications to consider the same and resubmit a master program to the department. Thereafter, the department shall adopt the resubmitted program or, if the department determines that said program does not provide for optimum implementation, it may develop and adopt an alternative as hereinbefore provided.

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

Upon approval of such master program by the department it shall supersede such master program as may have been adopted by the department for such shorelines. [1971 1st ex.s. c 286 § 9.]

90.58.100 Programs as constituting use regulations--Duties when preparing programs and amendments thereto--Program contents. (1) The master programs provided for in this

chapter, when adopted and approved by the department, as appropriate, shall constitute use regulations for the various shorelines of the state. In preparing the master programs, and any amendments thereto, the department and local governments shall to the extent feasible:

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) An historic, cultural, scientific, and educational element for the protection and restoration of buildings, sites,

and areas having historic, cultural, scientific, or educational values; and

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

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

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

(5) Each master program shall contain provisions to allow for the varying of the application of use regulations of the program, including provisions for permits for conditional uses and variances, to insure that strict implementation of a program will not create unnecessary hardships or thwart the policy enumerated in RCW 90.58.020. Any such varying shall be allowed only if extraordinary circumstances are shown and the public interest suffers no substantial detrimental effect. The concept of this subsection shall be incorporated in the rules adopted by the department relating to the establishment of a permit system as provided in RCW 90.58.140(3). [1971 1st ex.s. c 286 § 10.]

90.58.110 Development of program within two or more adjacent local government jurisdictions--Development of program in segments, when. (1) Whenever it shall appear to the director that a master program should be developed for a region of the shorelines of the state which includes lands and waters located in two or more adjacent local government jurisdictions, the director shall designate such region and notifiy the appropriate units of local government thereof. It shall be the duty of the notified units to develop cooperatively an inventory and master program in accordance with and within the time provided in RCW 90.58.080.

(2) At the discretion of the department, a local government master program may be adopted in segments applicable to particular areas so that immediate attention may be given to those areas of the shorelines of the state in most need of a use regulation. [1971 1st ex.s. c 286 § 11.]

90.58.120 Adoption of rules, programs, etc., subject to RCW 34.04.025--Public hearings, notice of--Public inspection after approval or adoption. All rules and regulations, master programs, designations and guidelines, shall be adopted or approved in accordance with the provisions of RCW 34.04.025 insofar as such provisions are not inconsistent with the provisions of this chapter. In addition:

(1) Prior to the approval or adoption by the department of a master program, or portion thereof, at least one public hearing shall be held in each county affected by a program or

portion thereof for the purpose of obtaining the views and comments of the public. Notice of each such hearing shall be published at least once in each of the three weeks immediately preceding the hearing in one or more newpapers of general circulation in the county in which the hearing is to be held.

(2) All guidelines, regulations, designations or master programs adopted or approved under this chapter shall be available for public inspection at the office of the department or the appropriate county auditor and city clerk. The terms "adopt" and "approve" for purposes of this section, shall include modifications and rescission of guidelines. [1971 1st ex.s. c 286 § 12.]

90.58.130 Involvement of all persons and entities having interest, means. To insure that all persons and entities having an interest in the guidelines and master programs developed under this chapter are provided with a full opportunity for involvement in both their development and implementation, the department and local governments shall:

(1) Make reasonable efforts to inform the people of the state about the shoreline management program of this chapter and in the performance of the responsibilities provided in this chapter, shall not only invite but actively encourage participation by all persons and private groups and entities showing an interest in shoreline management programs of this chapter; and

(2) Invite and encourage participation by all agencies of federal, state, and local government, including municipal and public corporations, having interests or responsibilities relating to the shorelines of the state. State and local agencies are directed to participate fully to insure that their interests are fully considered by the department and local governments. [1971 1st ex.s. c 286 § 13.]

90.58.140 Development permits--Grounds for granting--Departmental appeal on issuance--Administration by local government, conditions--Rescission--When permits not required--Approval when permit for variance or conditional use. (1) No development shall be undertaken on the shorelines of the state except those which are consistent with the policy of this chapter and, after adoption or approval, as appropriate, the applicable guidelines, regulations or master program.

(2) No substantial development shall be undertaken on shorelines of the state without first obtaining a permit from the government entity having administrative jurisdiction under this chapter.

A permit shall be granted:

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

the master program being developed for the area. In the event the department is of the opinion that any permit granted under this subsection is inconsistent with the policy declared in RCW 90.58.020 or is otherwise not authorized by this section, the department may appeal the issuance of such permit within thirty days to the hearings board upon written notice to the local government and the permittee;

(b) After adoption or approval, as appropriate, by the department of an applicable master program, only when the development proposed is consistent with the applicable master program and the policy of RCW 90.58.020.

(3) Local government shall establish a program, consistent with rules adopted by the department, for the administration and enforcement of the permit system provided in this section. Any such system shall include a requirement that all applications and permits shall be subject to the same public notice procedures as provided for applications for waste disposal permits for new operations under RCW 90.48.170. The administration of the system so established shall be performed exclusively by local government.

(4) Such system shall include provisions to assure that construction pursuant to a permit will not begin or be authorized until forty-five days from the date of final approval by the local government or until all review proceedings are terminated if such proceedings were initiated within forty-five days from the date of final approval by the local government.

(5) Any ruling on an application for a permit under authority of this section, whether it be an approval or a denial, shall, concurrently with the transmittal of the ruling to the applicant, be filed with the department and the attorney general.

(6) Applicants for permits under this section shall have the burden of proving that a proposed substantial development is consistent with the criteria which must be met before a permit is granted. In any review of the granting or denial of an application for a permit as provided in RCW 90.58.160 (1), the person requesting the review shall have the burden of proof.

(7) Any permit may be rescinded by the issuing authority upon the finding that a permittee has not complied with conditions of a permit. In the event the department is of the opinion that such noncompliance exists, the department may appeal within thirty days to the hearings board for a rescission of such permit upon written notice to the local government and the permittee.

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

(9) No permit shall be required for any development on shorelines of the state included within a preliminary or final plat approved by the applicable state agency or local government prior to April 1, 1971, if:

(a) The final plat was approved after April 13, 1961, or the preliminary plat was approved after April 30 , 1969, or

(b) Sales of lots to purchasers with reference to the plat, or substantial development incident to platting or required by the plat, occurred prior to April 1, 1971, and

(c) The development to be made without a permit meets all requirements of the applicable state agency or local government, other than requirements imposed pursuant to this chapter, and

(d) The development does not involve construction of buildings, or involves construction on wetlands of buildings to serve only as community social or recreational facilities for the use of owners of platted lots and the buildings do not exceed a height of thirty-five feet above average grade level, and

(e) The development is completed within two years after the effective date of this chapter.

(10) The applicable state agency or local government is authorized to approve a final plat with respect to shorelines of the state included within a preliminary plat approved after April 30, 1969, and prior to April 1, 1971: Provided, That any substantial development within the platted shorelines of the state is authorized by a permit granted pursuant to this section, or does not require a permit as provided in subsection (9) of this section, or does not require a permit because of substantial development occurred prior to June 1, 1971.

(11) Any permit for a variance or a conditional use by local government under approved master programs must be submitted to the department for its approval or disapproval. [1971 1st ex.s. c 286 § 14.]

90.58.150 Selective commercial timber cutting, when. With respect to timber situated within two hundred feet abutting landward of the ordinary high water mark within shorelines of state-wide significance, the department or local government shall allow only selective commerical timber cutting, so that no more than thirty percent of the merchantable trees may be harvested in any ten year period of time: Provided, That other timber harvesting methods may be permitted in those limited instances where the topography, soil conditions of silviculture practices necessary for regeneration render selective logging ecologically detrimental: Provided further, That clear cutting of timber which is solely incidental to the preparation of land for other uses authorized by this chapter may be permitted. [1971 1st ex.s. c 286 § 15.]

90.58.160 Prohibition against surface drilling for oil or gas, where. Surface drilling for oil or gas is prohibited in the waters of Puget Sound north to the Canadian boundary and the Strait of Juan de Fuca seaward from the ordinary high water mark and on all lands within one thousand feet landward from said mark. [1971 1st ex.s. c 286 § 16.]

90.58.170 Shorelines hearings board--Established--Members --Chairman--Quorum for decision--Administrative and clerical

assistance--Expenses of members. A shorelines hearings board sitting as a quasi judicial body is hereby established which shall be made up of six members: Three members shall be members of the pollution control hearings board; two members, one appointed by the association of Washington cities and one appointed by the association of county commissioners, both to serve at the pleasure of the associations; and the state land commissioner or his designee. The chairman of the pollution control hearings board shall be the chairman of the shorelines hearings board. A decision must be agreed to by at least four members of the board to be final. The pollution control hearings board shall provide the shorelines appeals board such administrative and clerical assistance as the latter may require. The members of the shorelines appeals board shall receive the compensation, travel, and subsistence expenses as provided in RCW 43.03.050 and 43.03.060. [1971 1st ex.s. c 286 § 17.]

90.58.180 Appeals from granting, denying or rescinding permits, procedure--Board to act, when--Local government appeals to board--Grounds for declaring master program invalid--Appeals to court, procedure. (1) Any person aggrieved by the granting or denying of a permit on shorelines of the state, or rescinding a permit pursuant to RCW 90.58.150 may seek review from the shorelines hearings board by filing a request for the same within thirty days of receipt of the final order. Concurrently with the filing of any request for review with the board as provided in this section pertaining to a final order of a local government, the requestor shall file a copy of his request with the department and the attorney general. If it appears to the department or the attorney general that the requestor has valid reasons to seek review, either the department or the attorney general may certify the request within thirty days after its receipt to the shorelines hearings board following which the board shall then, but not otherwise, review the matter covered by the requestor: Provided, That the failure to obtain such certification shall not preclude the requestor from obtaining a review in the superior court under any right to review otherwise available to the requestor. The department and the attorney general may intervene to protect the public interest and insure that the provisions of this chapter are complied with at any time within forty-five days from the date of the filing of said copies by the requestor.

(2) The department or the attorney general may obtain review of any final order granting a permit, or granting or denying an application for a permit issued by a local government by filing a written request with the shorelines appeals board and the appropriate local government within forty-five days from the date the final order was filed as provided in subsection (5) of RCW 90.58.140.

(3) The review proceedings authorized in subsection (1) and (2) of this section are subject to the provisions of chapter 34.04 RCW pertaining to procedures in contested cases. The provisions of chapter 43.21B RCW and the regulations adopted

pursuant thereto by the pollution control hearings board, insofar as they are not inconsistent with chapter 34.04 RCW, relating to the procedures for the conduct of hearings and judicial review thereof, shall be applicable to all requests for review as provided for in subsections (1) and (2) of this section.

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

(a) In an appeal relating to a master program for shorelines, the board, after full consideration of the positions of the local government and the department, shall determine the validity of the master program. If the board determines that said program:

(i) is clearly erroneous in light of the policy of this chapter; or

(ii) constitutes an implementation of this chapter in violation of constitutional or statutory provisions; or

(iii) is arbitrary and capricious; or

(iv) was developed without fully considering and evaluating all proposed master programs submitted to the department by the local government; or

(v) was not adopted in accordance with required procedures; the board shall enter a final decision declaring the program invalid, remanding the master program to the department with a statement of the reasons in support of the determination, and directing the department to adopt, after a thorough consultation with the affected local government, a new master program. Unless the board makes one or more of the determinations as hereinbefore provided, the board shall find the master program to be valid and enter a final decision to that effect.

(b) In an appeal relating to a master program for shorelines of state-wide significance the board shall approve the master program adopted by the department unless a local government shall, by clear and convincing evidence and argument, persuade the board that the master program approved by the department is inconsistent with the policy of RCW 90.58.020 and the applicable guidelines.

(c) In an appeal relating to rules, regulations, guidelines, master programs of state-wide significance and designations, the standard of review provided in RCW 34.04.070 shall apply.

(5) Rules, regulations, designations, master programs and guidelines shall be subject to review in superior court, if authorized pursuant to RCW 34.04.070: Provided, That no review shall be granted by a superior court on petition from a local government unless the local government shall first have obtained review under subsection (4) of this section and the petition for court review is filed within three months after the date of final decision by the shorelines hearings board. [1971 1st ex.s. c 286 § 18.]

90.58.190 Review and adjustments to master programs. The department and each local government shall periodically review any master programs under its jurisdiction and make such adjustments thereto as are necessary. Each local government shall submit any proposed adjustments, to the department as soon as they are completed. No such adjustment shall become effective until it has been approved by the department. [1971 1st ex.s. c 286 § 19.]

90.58.200 Rules and regulations. The department and local governments are authorized to adopt such rules as are necessary and appropriate to carry out the provisions of this chapter. [1971 1st ex.s. c 286 § 20.]

90.58.210 Court actions to insure against conflicting uses and to enforce. The attorney general or the attorney for the local government shall bring such injunctive, declaratory, or other actions as are necessary to insure that no uses are made of the shorelines of the state in conflict with the provisions and programs of this chapter, and to otherwise enforce the provisions of this chapter. [1971 1st ex.s. c 286 § 21.]

90.58.220 General penalty. In addition to incurring civil liability under RCW 90.58.210, any person found to have wilfully engaged in activities on the shorelines of the state in violation of the provisions of this chapter or any of the master programs, rules, or regulations adopted pursuant thereto shall be guilty of a gross misdemeanor, and shall be punished by a fine of not less than twenty-five nor more than one thousand dollars or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment: Provided, That the fine for the third and all subsequent violations in any five-year period shall be not less than five hundred nor more than ten thousand dollars. [1971 1st ex.s. c 286 § 22.]

90.58.230 Violators liable for damages resulting from violation--Attorney's fees and costs. Any person subject to the regulatory program of this chapter who violates any provision of this chapter or permit issued pursuant thereto shall be liable for all damage to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to violation. The attorney general or local government attorney shall bring suit for damages under this section on behalf of the state or local governments. Private persons shall have the right to bring suit for damages under this section on their own behalf and on the behalf of all persons similarly situated. If liability has been established for the cost of restoring an area affected by a violation the court shall make provision to assure that restoration will be accomplished within a reasonable time at the expense of the violator. In addition to such relief, including money damages, the court in its discretion may award attorney's fees and costs of the suit to the prevailing party. [1971 1st ex.s. c 286 § 23.]

90.58.240 Additional authority granted department and local governments. In addition to any other powers granted hereunder, the department and local governments may:

(1) Acquire lands and easements within shorelines of the state by purchase, lease, or gift, either alone or in concert with other governmental entities, when necessary to achieve implementation of master programs adopted hereunder;

(2) Accept grants, contributions, and appropriations from any agency, public or private, or individual for the purposes of this chapter;

(3) Appoint advisory committees to assist in carrying out the purposes of this chapter;

(4) Contract for professional or technical services required by it which cannot be performed by its employees. [1972 1st ex.s. 53 § 1; 1971 ex.s. c 286 § 24.]

90.58.250 Department to cooperate with local governments--Grants for development of master programs. The department is directed to cooperate fully with local governments in discharging their responsibilities under this chapter. Funds shall be available for distribution to local governments on the basis of applications for preparation of master programs. Such applications shall be submitted in accordance with regulations developed by the department. The department is authorized to make and administer grants within appropriations authorized by the legislature to any local government within the state for the purpose of developing a master shorelines program. No grant shall be made in an amount in excess of the recipient's contribution to the estimated cost of such program. [1971 1st ex.s. c 286 § 25.]

90.58.260 State to represent its interest before federal agencies, interstate agencies and courts. The state, through the department of ecology and the attorney general, shall represent its interest before water resource regulation management, development, and use agencies of the United States, including among others, the federal power commission, environmental protection agency, corps of engineers, department of interior, department of agriculture and the atomic energy commission, before interstate agencies and the courts with regard to activities or uses of shorelines of the state and the program of this chapter. Where federal or interstate agency plans, activities, or procedures conflict with state policies, all reasonable steps available shall be taken by the state to preserve the integrity of its policies. [1971 1st ex.s. c 286 § 26.]

90.58.270 Nonapplication to certain structures, docks, developments, etc., placed in navigable waters--Nonapplication to certain rights of action, authority. (1) Nothing in this statute shall constitute authority for requiring or ordering the removal of any structures, improvements, docks, fills, or

developments placed in navigable waters prior to December 4, 1969, and the consent and authorization of the state of Washington to the impairment of public rights of navigation, and corollary rights incidental thereto, caused by the retention and maintenance of said structures, improvements, docks, fills or developments are hereby granted: Provided, That the consent herein given shall not relate to any structures, improvements, docks, fills, or developments placed on tidelands, shorelands, or beds underlying said waters which are in trespass or in violation of state statutes.

(2) Nothing in this section shall be construed as altering or abridging any private right of action, other than a private right which is based upon the impairment of public rights consented to in subsection (1) hereof.

(3) Nothing in this section shall be construed as altering or abridging the authority of the state or local governments to suppress or abate nuisances or to abate pollution.

(4) Subsection (1) of this section shall apply to any case pending in the courts of this state on June 1, 1971 relating to the removal of structures, improvements, docks, fills, or developments based on the impairment of public navigational rights. [1971 1st ex.s. c 286 § 27.]

90.58.280 Application to all state agencies, counties, public and municipal corporations. The provisions of this chapter shall be applicable to all agencies of state government, counties, and public and municipal corporations and to all shorelines of the state owned or administered by them. [1971 1st ex.s. c 286 § 28.]

90.58.290 Restrictions as affecting fair market value of property. The restrictions imposed by this chapter shall be considered by the county assessor in establishing the fair market value of the property. [1971 1st ex.s. c 286 § 29.]

90.58.300 Department as regulating state agency--Special authority. The department of ecology is designated the state agency responsible for the program of regulation of the shorelines of the state, including coastal shorelines and the shorelines of the inner tidal waters of the state, and is authorized to cooperate with the federal government and sister states and to receive benefits of any statutes of the United States whenever enacted which relate to programs of this chapter. [1971 1st ex.s. c 286 § 30.]

90.58.310 Designation of shorelines of state-wide significance by legislature--Recommendation by director, procedure. Additional shorelines of the state shall be designated shorelines of state-wide significance only by affirmative action of the legislature.

The director of the department may, however, from time to time, recommend to the legislature areas of the shorelines of

the state which have state-wide significance relating to special economic, ecological, educational, developmental, recreational, or aesthetic values to be designated as shorelines of state-wide significance.

Prior to making any such recommendation the director shall hold a public hearing in the county or counties where the shoreline under consideration is located. It shall be the duty of the county commissioners of each county where such a hearing is conducted to submit their views with regard to a proposed designation to the director at such date as the director determines but in no event shall the date be later than sixty days after the public hearing in the county. [1971 1st ex.s. 286 § 31.]

90.58.320 Height limitation respecting permits. No permit shall be issued pursuant to this chapter for any new or expanded building or structure of more than thirty-five feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served. [1971 1st ex.s. c 286 § 32.]

90.58.330 Study of shorelines of cities and towns submitted to legislature--Scope. The department of ecology, the attorney general, and the harbor line commission are directed as a matter of high priority to undertake jointly a study of the locations, uses and activities, both proposed and existing, relating to the shorelines of the cities, and towns of the state and submit a report which shall include but not be limited to the following:

(1) Events leading to the establishment of the various harbor lines pertaining to cities of the state:

(2) The location of all such harbor lines;

(3) The authority for establishment and criteria used in location of the same;

(4) Present acitivities and uses made within harbors and their relationship to harbor lines;

(5) Legal aspects pertaining to any uncertainty and inconsistency; and

(6) The relationship of federal, state and local governments to regulation of uses and activities pertaining to the area of study.

The report shall be submitted to the legislature not later than December 1, 1972. [1971 1st ex.s c 286 § 33.]

90.58.340 Use policies for land adjacent to shorelines, development of. All state agencies, counties, and public and municipal corporations shall review administrative and management policies, regulations, plans, and ordinances relative to lands under their respective jurisdictions adjacent to the shorelines of the state so as to [to] achieve a use policy on said land consistent with the policy of this chapter, the

guidelines, and the master programs for the shorelines of the state. The department may develop recommendations for land use control for such lands. Local governments shall, in developing use regulations for such areas, take into consideration any recommendations developed by the department as well as any other state agencies or units of local government. [1971 1st ex.s. c 286 § 34.]

90.58.350 Nonapplication to treaty rights. Nothing in this chapter shall affect any rights established by treaty to which the United States is a party [1971 1st ex.s. c 286 § 35.]

90.58.360 Existing requirements for permits, certificates, etc., not obviated. Nothing in this chapter shall obviate any requirement to obtain any permit, certificate, license, or approval from any state agency or local government. [1971 1st ex.s. c 286 § 36.]

90.58.900 Liberal construction--1971 1st ex.s. c 286. This chapter is exempted from the rule of strict construction, and it shall be liberally construed to give full effect to the objectives and purposes for which it was enacted. [1971 1st ex.s. c 286 § 37.]

90.58.910 Severability--1971 1st ex.s. c 286. If any provision of this chapter, or its application to any person or legal entity or circumstances, is held invalid, the remainder of the act, or the application of the provision to other persons or legal entities or circumstances, shall not be affected. [1971 1st ex.s. c 286 § 40.]

90.58.920 Effective date--1971 1st ex.s. c 286. This chapter is necessary for the immediate preservation of the public peace, health and safety, the support of the state government, and its existing institutions. This 1971 act shall take effect on June 1, 1971. The director of ecology is authorized to immediately take such steps as are necessary to insure that this 1971 act is implemented on its effective date. [1971 1st ex.s. c 286 § 41.]

90.58.930 Referendum to the people--1971 act--Determining if act continues in force and effect. This 1971 act constitutes an alternative to Initiative 43. The secretary of state is directed to place this 1971 act on the ballot in conjunction with Initiative 43 at the next ensuing regular election.

This 1971 act shall continue in force and effect until the secretary of state certifies the election results on this 1971 act. If affirmatively approved at the ensuing regular general election, the act shall continue in effect thereafter. [1971 1st ex.s. c 286 § 42.]

APPENDIX B

State of Washington Department of Ecology

FINAL GUIDELINES SHORELINE MANAGEMENT ACT OF 1971

June 20, 1972

INTRODUCTION

The Shoreline Management Act of 1971 is based on the philosophy that the shorelines of the State are among the most valuable, and fragile, of its natural resources and that there is great concern throughout the State relating to their utilization, protection, restoration, and preservation. Therefore, coordinated planning is necessary in order to protect the public interest associated with the shorelines of the State, while at the same time recognizing and protecting private property rights consistent with public interest. This planning is to be a rational and concerted effort, jointly performed by federal, state and local government. It is further felt that the interest of all of the people shall be paramount in the management of shorelines of statewide significance, and that the public should have the opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the State.

The express purpose of the Shoreline Management Act is to provide for management of Washington's shorelines by planning for and fostering all reasonable and appropriate uses. This policy is directed at enhancement of shorelines rather than restriction of uses.

As required by the Shoreline Management Act of 1971, these guidelines have been written to serve as standards for implementation of the policy of this legislation for regulation of uses of the shorelines, prior to adoption of master programs, while also providing criteria to local governments and the Department of Ecology in developing master programs.

The guidelines have been written in relatively general terms so that they can be used by all local governments, regardless of size or geographical location. The critical point of the entire program is the manner in which local governments interpret and utilize these guidelines in the development of their master programs.

The information in this guideline package has been presented in three parts: The Master Program, which sets forth the procedures required for completion of the master programs; The Natural Systems, which provides a brief look at each of the natural phenomena which is part of the total shoreline environment; and, The Use Activities, which presents the actual standards for the establishment of master programs and provides direction for shoreline development until master programs are completed. Each of the parts is preceded by an explanatory paragraph which relates that part to the others in the program.

These guidelines are the beginning of a program which will become more meaningful as our knowledge of our environment increases. Our knowledge is not yet sophisticated enough to precisely determine the nature of the complex and interrelated chemical, biological, physical and aesthetic factors within our environment.

The guidelines were written with a spirit of optimism, with the hope that our legacy of natural grandeur in Washington will be used more wisely in the brief period of time it is entrusted to us, so that succeeding generations may have it to enjoy and extend our concern into their future.

THE MASTER PROGRAM

(WAC 173-16-040)

The master program is to be developed by local government to provide an objective guide for regulating the use of shorelines. The master program should clearly state local policies for the development of shorelands and indicate how these policies relate to the goals of the local citizens and to specific regulations of uses affecting the physical development of land and water resources throughout the local governments' jurisdiction.

The master program developed by each local government will reflect the unique shoreline conditions and the development requirements which exist and are projected in that area. As part of the process of master program development, local governments can identify problems and seek solutions which best satisfy their needs.

A master program, by its definition, is general, comprehensive and long-range in order to be applicable to the whole area for a reasonable length of time under changing conditions.

"General" means that the policies, proposals and guidelines are not directed towards any specific sites.

"Comprehensive" means that the program is directed towards all land and water uses, their impact on the environment and logical estimates of future growth. It also means that the program shall recognize plans and programs of the other government units, adjacent jurisdictions and private developers.

"Long-range" means that the program is to be directed at least 20 to 30 years into the future, look beyond immediate issues, and follow creative objectives rather than a simple projection of current trends and conditions.

Finally, chapter 90.58 RCW requires that the master program shall constitute use regulations for the various shorelines of the state. Specific guidelines are outlined in RCW 90.58.100(1) for preparing the master programs to accomplish this purpose. It is the intention of these guidelines, especially those related to citizen involvement, and the inventory to aid in carrying out this section of the act.

To facilitate an effective implementation of chapter 90.58 RCW throughout the state, the procedures on the following pages shall be observed while developing master programs for the shorelines. Exceptions to some of the specific provisions of these guidelines may occur where unique circumstances justify such departure. Any departure from these guidelines must, however, be compatible with the intent of the Shoreline Management Act as enunciated in RCW 90.58.020. Further, in all cases, local governments must meet the master program requirements specified in the Shoreline Management Act of 1971.

Citizen Involvement (WAC 173-16-040(1))

While public involvement and notification is required of the master program at the time of adoption by the act, the general public must be involved in the initial planning stage during formulation of the master plan.

The act requires that prior to approval or adoption of a master program, or a portion thereof, by the department, at least one public hearing shall be held in each county affected by the program for the purpose of obtaining the views and comments of the public.

The act charges the state and local government with not only the responsibility of making reasonable efforts to inform the people of the state about the shoreline management program, but also actively encourages participation by all persons, private groups, and entities, which have an interest in shoreline management.

To meet these responsibilities, the local government agencies responsible for the development of the master program should establish a method for obtaining and utilizing citizen involvement. The extent of citizen involvement in the formulation of the master program will be considered by the department in the review of the program. A failure by the local government to encourage and utilize citizen involvement, or to justify not having done so, may be noted as a failure to comply with the act.

Though the department recognizes various forms of citizen involvement as viable approaches for involving the public in the master program, the local government will be encouraged to utilize the method as suggested in these guidelines. If a local government does not follow these guidelines, it should provide an explanation of the method used. The department will be available to explain and help organize the suggested approach to citizen involvement upon request.

The suggested approach to citizen involvement to be utilized by the local government agency responsible for the development of the master program includes the following:

(a) Appoint a citizen advisory committee whose function will be to guide the formulation of the master program through a series of public evening meetings and at least one public hearing. The committee members should represent both commercial interests as well as environmentalists. However, the advisory committee itself is not to be a substitute for general citizen involvement and input. The aim of the committee will be to utilize citizen input in:

(i) Studying existing public policies related to shorelines.

(ii) Defining the needs to satisfy local demands for shorelines.

(iii) Studying the type and condition of local shorelines relative to needs.

(iv) Developing goals and policies for the master program with the local government fulfilling the specifications of the master program, including designation of the environments.

(v) Identifying use conflicts.

(vi) Proposing alternatives for the use of shorelines.

(vii) Examining the effects of the master program on the environment.

(b) The citizen advisory committee should hold at least three public meetings during development of the master program and designation of the environments according to the following guidelines:

(i) Public notice (as stated in subsection 1 below)

must be provided seven days prior to the evening meeting.

(ii) All meetings must be open to the public for free discussion.

(iii) Meetings should be held in the evening at a location accessible to the general public.

(iv) Record of all meetings should be filed with the local government and made available to the public.

(v) Local government should provide resource persons to assist in the preparation, organization and diffusion of information.

(vi) The final evening meeting should be held at least seven days prior to the public hearing.

(c) A newsletter should be published by the advisory committee in cooperation with the local government.

(i) The information sheet should be available to the public at posted locations.

(ii) It should be available after the first evening public meeting and prior to the second.

(iii) The date, time, and location of future meetings and hearings should be stated.

(iv) A phone number should be provided to obtain further information.

(v) Public notice should be made of the availability of the newsletter as stated in subsection (d)

(d) Publicity of the master program should utilize:

(i) Public notice postings as per subsection (i) below.

(ii) Newsletter.

(iii) Radio, T.V. and local news media.

(iv) A local paper of general circulation.

(v) Announcements to community groups.

(e) At least one public hearing should be held by the local government after the three public meetings have been held to discuss the proposed master plan.

(i) Public notice (as stated in subsection (i) below) must be made a minimum of once in each of three weeks immediately preceding the hearing in one or more newspapers of general circulation in the area in which the hearing is to be held.

(ii) The master program should be available for public inspection at the local government office and available upon request at least seven days prior to the public hearing.

(f) Prior to adoption of the master program, all reasonable attempts should have been made to obtain a general concurrence of the public and the advisory committee. The method of obtaining or measuring concurrence must be established by the local government and must provide a clear indication of how citizen input is utilized.

(g) If the level of concurrence on the master program is not considered adequate by the advisory committee at the conclusion of the public hearing, the local government should hold subsequent public meetings and public hearings until such time as adequate concurrence as per subsection (f) above is reached.

(h) Attached to the master program upon its submission to the department of ecology shall be a record of public meetings and citizen involvement. A discussion of the use of citizen involvement and measurement on concurrence should be included.

(i) Public notice shall include:

(i) Reference to the authority under which the rule is proposed.

(ii) A statement of either the terms or substance of the proposed rule or a description of the subjects and issues involved.

(iii) The time, place and manner in which interested persons may present their views thereon (as stated in RCW 30.04.025).

Policy Statements (WAC 173-16-040(2))

Each local government shall submit policy statements, developed through the citizen involvement process, regarding shoreline development as part of its master program. Because goal statements are often too general to be useful to very specific decision problems, the policy statements are to provide a bridge for formulating and relating use regulations to the goals also developed through the citizen involvement process. In summary, the policy statements must reflect the intent of the act, the goals of the local citizens, and specifically relate the shoreline management goals to the master program use regulations.

Clearly stated policies are essential to the viability of the master programs. The policy statements will not only support the environmental designations explained below, but, also being more specific than goal statements, will provide an indication of needed environmental designations and use regulations.

The following methodology for developing policy statements is recommended:

(a) Obtain a broad citizen input in developing policy by involving interested citizens and all private and public entities having interest or responsibilities relating to shorelines. Form a citizen advisory committee and conduct public meetings as outlined in WAC 173-16-040(1) to encourage citizens to become involved in developing a master program.

(b) Analyze existing policies to identify those policies that may be incorporated into the master program and those which conflict with the intent of the act. Further, identify constraints to local planning and policy implementation which are a result of previous government actions, existing land-use patterns, actions of adjacent jurisdictions or other factors not subject to local control or influence.

(c) Formulate goals for the use of shoreline areas and develop policies to guide shoreland activities to achieve these goals.

The policies should be consistent with RCW 90.58.020 and provide guidance and support to local government actions regarding shoreline management. Additionally, the policies should express the desires of local citizens and be based on principles of resource management which reflect the state-wide public interest in all shorelines of state-wide significance.

Master Program Elements (WAC 173-16-040(3))

Consistent with the general nature of master programs, the following land and water use elements are to be dealt with, when appropriate, in the local master programs. By dealing with shoreline uses, systematically as belonging to these generic classes of activities, the policies and goals in the master programs can be clearly applied to different shoreline uses. In

the absence of this kind of specificity in the master programs, the application of policy and use regulations could be inconsistent and arbitrary.

The plan elements are:

(a) **Economic development element** for the location and design of industries, transportation facilities, port facilities, tourist facilities, commercial and other developments that are particularly dependent on shoreland locations.

(b) **Public access elements** for assessing the need for providing public access to shoreline areas.

(c) **Circulation element** for assessing the location and extent of existing and proposed major thoroughfares, transportation routes, terminals and other public facilities and correlating those facilities with the shoreline use elements.

(d) **Recreational element** for the preservation and expansion of recreational opportunities through programs of acquisition, development and various means of less-than-fee acquisition.

(e) **Shoreline use element** for considering:

(i) The pattern of distribution and location requirements of land uses on shorelines and adjacent areas, including, but not limited to, housing, commerce, industry, transportation, public buildings and utilities, agriculture, education and natural resources.

(ii) The pattern of distribution and location requirements of water uses including, but not limited to, aquaculture, recreation and transportation.

(f) **Conservation element** for the preservation of the natural shoreline resources, considering such characteristics as scenic vistas, parkways, estuarine areas for fish and wildlife protection, beaches and other valuable natural or aesthetic features.

(g) **Historical/cultural eelment** for protection and restoration of buildings, sites and areas having historic, cultural, educational or scientific values.

(h) In addition to the above-described elements, local governments are encouraged to include in their master programs, an element concerned with the restoration of areas to a natural useful condition which are blighted by abandoned and dilapidated structures. Local governments are also encouraged to include in their master programs any other elements, which, because of present uses or future needs, are deemed appropriate and necessary to effectuate the Shoreline Management Act.

Environments (WAC 173-16-040(4))

In order to plan and effectively manage shoreline resources, a system of categorizing shoreline areas is required for use by local governments in the preparation of master programs. The system is designed to provide a uniform basis for applying policies and use regulations within distinctively different shoreline areas. To accomplish this, the environmental designation to be given any specific area is to be based on the existing development pattern, the biophysical capabilities and limitations of the shoreline being considered for development and the goals and aspirations of local citizenry.

The recommended system classifies shorelines into four distinct environments (natural, conservancy, rural and urban) which provide the framework for implementing shoreline policies and regulatory measures.

This system is designed to encourage uses in each environment which enhance the character of that environment. At the same time, local government may place reasonable standards and restrictions on development so that such development does not disrupt or destroy the character of the environment.

The basic intent of this system is to utilize performance standards which regulate use activities in accordance with goals and objectives defined locally rather than to exclude any use from any one environment. Thus, the particular uses or type of developments placed in each environment must be designed and located so that there are no effects detrimental to achieving the objectives of the environment designations and local development criteria.

This approach provides an "umbrella" environment class over local planning and zoning on the shorelines. Since every area is endowed with different resources, has different intensity of development and attaches different social values to these physical and economic characteristics, the environment designations should not be regarded as a substitute for local planning and land-use regulations.

The basic concept for using the system is for local governments to designate their shorelines into environment categories that reflect the natural character of the shoreline areas and the goals for use of characteristically different shorelines. The determination as to which designation should be given any specific area should be made in the following manner:

(i) The resources of the shoreline areas should be analyzed for their opportunities and limitations for different uses. Completion of the comprehensive inventory of resources is a requisite to identifying resource attributes which determine these opportunities and limitations.

(ii) Each of the plan elements should be analyzed for their effect on the various resources throughout shoreline areas. Since shorelines are only a part of the system of resources within local jurisdiction, it is particularly important that planning for shorelines be considered an integral part of area-wide planning. Further, plans, policies and regulations for lands adjacent to the shorelines of the state should be reviewed in accordance with RCW 90-.58.340.

(iii) Public desires should be considered through the citizen involvement process to determine which environment designations reflect local values and aspirations for the development of different shoreline areas.

The management objectives and features which characterize each of the environments are given below to provide a basis for environment designation within local jurisdictions.

Natural Environment (WAC 173-16-040(4)(b)(i)) The natural environment is intended to preserve and restore those natural resource systems existing relatively free of human influence. Local policies to achieve this objective should aim to regulate all potential developments degrading or changing the natural characteristics which make these areas unique and valuable.

The main emphasis of regulation in these areas should be on natural systems and resources which require severe restrictions of intensities and types of uses to maintain them in a natural state. Therefore, activities which may degrade the actual or potential value of this environment should be strictly regulated. Any activity which would bring about a change in the existing situation would be desirable only if such a change would contribute to the preservation of the existing character.

The primary determinant for designating an area as a natural environment is the actual presence of some unique natural or cultural features considered valuable in their natural or original condition which are relatively intolerant of intensive human use. Such features should be defined, identified and quantified in the shoreline inventory. The relative value of the resources is to be based on local citizen opinion and the needs and desires of other people in the rest of the state.

Conservancy Environment (WAC 173-16-040(4)(b)(ii)) The objective in designating a conservancy environment is to protect, conserve and manage existing natural resources and valuable historic and cultural areas in order to ensure a continuous flow of recreational benefits to the public and to achieve sustained resource utilization.

The conservancy environment is for those areas which are intended to maintain their existing character. The preferred uses are those which are nonconsumptive of the physical and biological resources of the area. Nonconsumptive uses are those uses which can utilize resources on a sustained yield basis while minimally reducing opportunities for other future uses of the resources in the area. Activities and uses of a nonpermanent nature which do not substantially degrade the existing character of an area are appropriate uses for a conservancy environment. Examples of uses that might be predominant in a conservancy environment include diffuse outdoor recreation activities, timber harvesting on a sustained yield basis, passive agricultural uses such as pasture and range lands, and other related uses and activities.

The designation of conservancy environments should seek to satisfy the needs of the community as to the present and future location of recreational areas proximate to concentrations of population, either existing or projected. For example, a conservancy environment designation can be used to complement city, county or state plans to legally acquire public access to the water.

The conservancy environment would also be the most suitable designation for those areas which present too severe biophysical limitations to be designated as rural or urban environments. Such limitations would include areas of steep slopes presenting erosion and slide hazards, areas prone to flooding, and areas which cannot provide adequate water supply or sewage disposal.

Rural Environment (WAC 173-16-040(4)(b)(iii)) The rural environment is intended to protect agricultural land from urban expansion, restrict intensive development along undeveloped shorelines, function as a buffer between urban areas, and maintain open spaces and opportunities for recreational uses compatible with agricultural activities.

The rural environment is intended for those areas characterized by intensive agricultural and recreational uses and those areas having a high capability to support active agricultural practices and intensive recreational development. Hence, those areas that are already used for agricultural purposes, or which have agricultural potential should be maintained for present and future agricultural needs. Designation of rural environments should also seek to alleviate pressures of urban expansion on prime farming areas.

New developments in a rural environment are to reflect the character of the surrounding area by limiting residential density, providing permanent open space and by maintaining adequate building setbacks from water to prevent shoreline resources from being destroyed for other rural types of uses.

Public recreation facilities for public use which can be located and designed to minimize conflicts with agricultural activities are recommended for the rural environment. Linear water access which will prevent overcrowding in any one area, trail systems for safe nonmotorized traffic along scenic corridors and provisions for recreational viewing of water areas illustrate some of the ways to ensure maximum enjoyment of recreational opportunities along shorelines without conflicting with agricultural uses. In a similar fashion, agricultural activities should be conducted in a manner which will enhance the opportunities for shoreline recreation. Farm management practices which prevent erosion and subsequent siltation of water bodies and minimize the flow of waste material into water courses are to be encouraged by the master program for rural environments.

Urban Environment (WAC 173-16-040(4)(b)(iv)) The objective of the urban environment is to ensure optimum utilization of shorelines within urbanized areas by providing for intensive public use and by managing development so that it enhances and maintains shorelines for a multiplicity of urban uses.

The urban environment is an area of high-intensity land-use including residential, commercial, and industrial development. The environment does not necessarily include all shorelines within an incorporated city, but is particularly suitable to those areas presently subjected to extremely intensive use pressure, as well as areas planned to accommodate urban expansion. Shorelines planned for future urban expansion should present few biophysical limitations for urban activities and not have a high priority for designation as an alternative environment.

Because shorelines suitable for urban uses are a limited resource, emphasis should be given to development within already developed areas and particularly to water-dependent industrial and commercial uses requiring frontage on navigable waters.

In the master program, priority is also to be given to planning for public visual and physical access to water in the urban environment. Identifying needs and planning for the acquisition of urban land for permanent public access to the water in the urban environment should be accomplished in the master program. To enhance waterfront and ensure maximum public use, industrial and commercial facilities should

be designed to permit pedestrian waterfront activities. Where practicable, various access points ought to be linked to nonmotorized transportation routes, such as bicycle and hiking paths.

Shorelines of State-wide Significance (WAC 173-16-040(5))

The act designated certain shorelines as shorelines of state-wide significance. Shorelines thus designated are important to the entire state. Because these shorelines are major resources from which all people in the state derive benefit, the guidelines and master programs must give preference to uses which favor public and long-range goals.

Accordingly, the act established that local master programs shall give preference to uses which meet the principles outlined below in order of preference. Guidelines for ensuring that these principles are incorporated into the master programs and adhered to in implementing the act follow each principle.

(a) **Recognize and protect the state-wide interest over local interest.** Development guidelines:

(i) Solicit comments and opinions from groups and individuals representing state-wide interests by circulating proposed master programs for review and comment by state agencies, adjacent jurisdictions' citizen advisory committees, and state-wide interest groups. (See appendix, Reference No. 32.)

(ii) Recognize and take into account state agencies' policies, programs and recommendations in developing use regulations. Reference to many of these agencies' policies are provided in the appendix. This information can also be obtained by contacting agencies listed in the **Shoreline Inventory Supplement Number One.**

(iii) Solicit comments, opinions and advice from individuals with expertise in ecology, oceanography, geology, limnology, aquaculture and other scientific fields pertinent to shoreline management. Names of organizations and individuals which can provide expert advice can be obtained from the department's resource specialist listing.

(b) **Preserve the natural character of the shoreline.** Development guidelines:

(i) Designate environments and use regulations to minimize man-made intrusions on shorelines.

(ii) Where intensive development already occurs, upgrade and redevelop those areas to reduce their adverse impact on the environment and to accommodate future growth rather than allowing high intensity uses to extend into low intensity use or underdeveloped areas.

(iii) Ensure that where commercial timber-cutting is allowed as provided in RCW 90.58.150, reforestation will be possible and accomplished as soon as practicable.

(c) **Result in long-term over short-term benefit.** Development guidelines:

(i) Prepare master programs on the basis of preserving the shorelines for future generations. For example, actions that would convert resources into irreversible uses or detrimentally alter natural conditions characteristic of shorelines of state-wide significance, should be severely limited.

(ii) Evaluate the short-term economic gain or convenience of developments in relationship to long-term and potentially costly impairments to the natural environment.

(iii) Actively promote aesthetic considerations when contemplating new development, redevelopment of existing facilities or for the general enhancement of shoreline areas.

(d) **Protect the resources and ecology of shorelines.** Development guidelines:

(i) Leave undeveloped those areas which contain a unique or fragile natural resource.

(ii) Prevent erosion and sedimentation that would alter the natural function of the water system. In areas where erosion and sediment control practices will not be effective, excavations or other activities which increase erosion are to be severely limited.

(iii) Restrict or prohibit public access onto areas which cannot be maintained in a natural condition under human uses.

(e) **Increase public access to publicly owned areas of the shorelines.** Development guidelines:

(i) In master programs, give priority to developing paths and trails to shoreline areas, linear access along the shorelines, and to developing upland parking.

(ii) Locate development inland from the ordinary highwater mark so that access is enhanced.

(f) **Increase recreational opportunities for the public on the shorelines.** Development guidelines:

(i) Plan for and encourage development of facilities for recreational use of the shorelines.

(ii) Reserve areas for lodging and related facilities on uplands well away from the shorelines with provisions for nonmotorized access to the shorelines.

THE NATURAL SYSTEMS

(WAC 173-16-050)

This section contains brief and general descriptions of the natural geographic systems around which the shoreline management program is designed. The intent of this section is to define those natural systems to which the Shoreline Management Act applies, to highlight some of the features of those systems which are susceptible to damage from human activity, and to provide a basis for the guidelines pertaining to human-use activities contained in WAC 173-16-060.

It is intended that this section will provide criteria to local governments in the development of their master programs, as required in RCW 90.58.030(a).

(1) **Marine Beaches**—Beaches are relatively level land areas which are contiguous with the sea and are directly affected by the sea even to the point of origination. The most common types of beaches in Washington marine waters are:

Sandy beaches: Waves, wind, tide and geological material are the principal factors involved in the formation of beaches. The beach material can usually be traced to one of four possible sources: The cliffs behind the beach; from the land via rivers; offshore wind; and finally from longshore drifting of material. Longshore-drifting material must have been derived initially from the first three sources. Most beach material

in Puget Sound is eroded from the adjacent bluffs composed of glacial till.

The effect of wave action on the movement and deposition of beach material varies depending upon the size of the material. Hence, in most cases, beaches composed of different sized material are usually characterized by different slopes and profiles. The entire process of beach formation is a dynamic process resulting from the effect of wave action on material transport and deposition. Initially, wave action will establish currents which transport and deposit material in various patterns. However, once a particular beach form and profile is established it begins to modify the effects of waves thus altering the initial patterns of material transport and deposition. Hence, in building beach structures such as groins, bulkheads or jetties, it is particularly important to recognize that subsequent changes in wave and current patterns will result in a series of changes in beach formation over time. [See WAC 173-16-060(6), (11), (12) and (13)].

In the process of beach formation, sand particles are transported up the beach by breaking waves that wash onto the beach in a diagonal direction and retreat in a vertical direction. At the same time, longshore currents are created in the submerged intertidal area by the force of diagonally approaching waves. Beach material suspended by the force of the breaking waves is transported in one direction or another by the longshore current. Longshore drifting of material often results in the net transportation of beach material in one direction causing the loss of material in some areas and gains in others.

The profile of a beach at any time will be determined by the wave conditions during the preceding period. Severe storms will erode or scour much material away from the beaches due to the force of retreating waves. During calm weather, however, the waves will constructively move material back onto the beach. This destructive and constructive action, called cut and fill, is evidenced by the presence of beach ridges or berms. New ridges are built up in front of those that survive storm conditions as sand is supplied to the beach in succeeding phases of calmer weather. In time, the more stable landward ridges are colonized by successional stages of vegetation. The vegetation stabilizes the ridges, protects them from erosion and promotes the development of soil.

Rocky beaches: Rocky beaches, composed of cobbles, boulders and/or exposed bedrock are usually steeper and more stable than sandy shores. Coarse material is very permeable which allows attacking waves to sink into the beach causing the backwash to be reduced correspondingly. On sandy shores a strong backwash distributes sand more evenly, thus creating a flatter slope.

On rocky shores a zonal pattern in the distribution of plants and animals is more evident than on muddy or sandy shores. The upper beach zone is frequently very dry, limiting inhabitants to species which can tolerate a dry environment. The intertidal zone is a narrow area between mean low tide and mean high tide that experiences uninterrupted covering and uncovering by tidal action. One of the major characteristics of this zone is the occurrence of tidal pools which harbor separate communities which can be considered subzones within the intertidal zone. The subtidal zone is characterized by less stressful tidal influences but is subject to the forces of waves and currents which affect the distribution and kinds of organisms in this zone.

Muddy shores: Muddy shores occur where the energy of coastal currents and wave action is minimal, allowing fine particles of silt to settle to the bottom. The result is an accumulation of mud on the shores of protected bays and mouths of coastal streams and rivers. Most muddy beaches occur in estuarine areas. However, some muddy shore areas may be found in coastal inlets and embayments where salinity is about the same as the adjacent sea.

Few plants have adapted to living on muddy shores. Their growth is restricted by turbidity which reduces light penetration into the water and thereby inhibits photosynthesis. In addition, the lack of solid structures to which algae may attach itself and siltation which smothers plants effectively prevents much plant colonization of muddy shores. While the lack of oxygen in mud makes life for fauna in muddy shores difficult, the abundance of food as organic detritus provides nutrition for a large number of detritus feeders.

(2) **Spits and Bars**—Spits and bars are natural formations composed of sand and gravel and shaped by wind and water currents and littoral drifting. Generally a spit is formed from a headland beach (tall cliff with a curved beach at the foot) and extends out into the water (hooks are simply hookshaped spits). While spits usually have one end free in open water, bars generally are attached to land at both ends. These natural forms enclose an area which is protected from wave action, allowing life forms such as shellfish, to reproduce and live protected from the violence of the open coast. [See WAC 173-16-060(16)].

(3) **Dunes**—Dunes are mounds or hills of sand which have been heaped up by wind action. Typically, dunes exhibit four distinct features:

Primary dunes: The first system of dunes shoreward of the water, having little or no vegetation, which are intolerant of unnatural disturbances.

Secondary dunes: The second system of dunes shoreward from the water, with some vegetative cover.

Back dunes: The system of dunes behind the secondary dunes, generally having vegetation and some top soil, and being more tolerant of development than the primary and secondary systems.

Troughs: The valleys between the dune systems.

Dunes are a natural levee and a final protection line against the sea. The destructive leveling of, or interference with the primary dune system (such as cutting through the dunes for access) can endanger upland areas by subjecting them to flooding from heavy wave action during severe storms and destroy a distinct and disappearing natural feature. Removal of sand from the beach and shore in dune areas starves dunes of their natural supply of sand and may cause their destruction from lack of sand. [See WAC 173-16-060(16)]. Appropriate vegation can and should be encouraged throughout the entire system for stabilization. [See WAC 173-16-060(21)].

(4) **Islands**—An island, broadly defined, is a land mass surrounded by water. Islands are particularly important to the state of Washington since two entire counties are made up of islands and parts of several other counties are islands. A fairly small island, such as those in our Puget Sound and north coast area, is an intriguing ecosystem, in that no problem or area of study can be isolated. Every living and nonliving thing is an integral part of the functioning system. Each island, along with the mystique afforded it by man, is a world of its own, with a biological chain, fragile and delicately balanced. Obviously it does not take as much to upset this balance as it would the mainland system. Because of this, projects should be planned with a more critical eye toward preserving the very qualities which make island environments viable systems as well as aesthetically captivating to humans.

(5) **Estuaries**—An estuary is that portion of a coastal stream influenced by the tide of the marine waters into which it flows and within which the sea water is measurably diluted with freshwater derived from land drainage.

Estuaries are zones of ecological transition between fresh and saltwater. The coastal brackish water areas are rich in aquatic life, some species of which are important food organisms for anadromous fish species which use these areas for feeding, rearing and migration. An estuarine area left untouched by man is rare since historically they have been the sites for major cities and port developments. Because of their importance in the food production chain and their natural beauty, the limited estuarial areas require careful attention in the planning function. Close scrutiny should be given to all plans for development in estuaries which reduce the area of the estuary and interfere with water flow. [See WAC 173-16-060(14)]. Special attention should be given to plans for upstream projects which could deplete the freshwater supply of the estuary.

(6) **Marshes, Bogs and Swamps**—Marshes, bogs and swamps are areas which have a water table very close to the surface of the ground. They are areas which were formerly shallow water areas that gradually filled through nature's processes of sedimentation (often accelerated by man's activities) and the decay of shallow water vegetation.

Although considered abysmal wastelands by many, these wet areas are extremely important to the food chain. Many species of both animal and plant life depend on this wet environment for existence. Birds and waterfowl choose these locations for nesting places. Wet areas are important as ground water recharge areas and have tremendous flood control value.

The high-water table and poor foundation support provided by the organic soils in these areas usually prevent development on them. The extraction of peat from bogs is possible when it is accomplished in such a manner that the surrounding vegetation and wildlife is left undisturbed and the access roads and shorelines are returned to a natural state upon completion of the operation.

The potential of marshes, bogs and swamps to provide permanent open space in urbanizing regions is high because of the costs involved in making these areas suitable for use. Unlimited public access into them, however, may cause damage to the fragile plant and animal life residing there.

(7) **Lakes**—A lake can be defined broadly as a body of standing water located inland. Lakes originate in several ways. Many lakes are created each year by man, either by digging a lake basin or by damming a natural valley. Natural lakes can be formed in several ways: by glaciers gouging basins and melting and depositing materials in such a way as to form natural dams; by landslides which close off open ends of valleys; extinct craters which fill with water; changes in the earth's crust, as can happen during earthquakes, forming basins which fill with water; or by changes in a river or stream course which isolate parts of the old course forming lakes, called oxbow lakes.

A lake, like its inhabitants, has a life span. This lifetime may be thousands of years for a large lake or just a few years for a pond. This process of a lake aging is known generally as eutrophication. It is a natural process which is usually accelerated by man's activities. Human sewage, industrial waste, and the drainage from agricultural lands increases the nutrients in a lake which in turn increases the growth of algae and other plants. As plants die, the chemical process of decomposition depletes the water's supply of oxygen necessary for fish and other animal life. These life forms then disappear from the lake, and the lake becomes a marsh or swamp.

Shallow lakes are extremely susceptible to increases in the rate of eutrophication resulting from discharges of waste and nutrient-laden-runoff waters. Temperature stratification does not normally occur in shallow lakes. Efficient bottom-to-surface circulation of water in these shallow lakes moves nutrients to the surface photosynthetic zone encouraging increased biotic productivity. Large quantities of organic matter are produced under these conditions. Upon decomposition, heavy demands are made on the dissolved oxygen content of shallow lakes. Eventually, the oxygen level drops and some fish and other life forms die.

The entire ecosystem of a lake can be altered by man. By removing the surrounding forest for lumber or to provide a building site or farm land, erosion into the lake is accelerated. Fertilizers, whether agricultural or those used by homeowners, can enter the lake either from runoff or leaching along with other chemicals that interfere with the intricate balance of living organisms. The construction of bulkheads to control erosion and filling behind them to enlarge individual properties can rob small fish and amphibians of their habitats. The indiscriminate construction of piers, docks and boathouses, can deprive all of the waterfront owners and the general public of a serene natural view and reduce the lake's surface. [See WAC 173-16-060(5), (8), (11), (12), (13)].

(8) **Rivers, Streams and Creeks**—Generally, rivers, streams and creeks can be defined as surface-water runoff flowing in a natural or modified channel. Runoff results either from excessive precipitation which cannot infiltrate the soil, or from ground water where the water table intersects the surface of the ground. Drawn by gravity to progressively lower levels and eventually to the sea, the surface runoff organizes into

a system of channels which drain a particular geographic area.

The drainage system serves as a transportation network for nature's leveling process, selectively eroding materials from the higher altitudes and transporting the materials to lower elevations where they are deposited. A portion of these materials eventually reaches the sea where they may form beaches, dunes or spits.

Typically, a river exhibits several distinct stages as it flows from the headwaters to the mouth. In the upper reaches where the gradient is steepest, the hydraulic action of the flowing water results in a net erosion of the stream bed and a V-shaped cross section, with the stream occupying all or most of the valley floor.

Proceeding downstream, the gradient decreases and the valley walls become gentler in slope. A point is eventually reached where erosion and deposition equalize and the action of the stream changes from vertical cutting to lateral meandering. As the lateral movement continues, a flood plain is formed, over which the river meanders and upon which materials are deposited during floods. Finally, when the river enters a body of standing water, the remaining sediment load is deposited.

Extensive human use is made of rivers, including transportation, recreation, waste and sewage dumping and for drinking water. Rivers are dammed for the production of electric power, diked for flood control and withdrawn for the irrigation of crops. Many of these activities directly affect the natural hydraulic functioning of the streams and rivers as well as the biology of the water courses. [See WAC 173-16-060 (17)].

(9) **Flood Plains**—A flood plain is a shoreland area which has been or is subject to flooding. It is a natural corridor for water which has accumulated from snow melt or from heavy rainfall in a short period. Flood plains are usually flat areas with rich soil because they have been formed by deposits from flood waters. As such they are attractive places for man to build and farm until the next flood passes across the plain. In certain areas, these plains can be "flood proofed" by diking or building levees along the adjacent river or stream, but always with provisions for tremendous amounts of water that will sooner or later be generated by weather conditions. Streamway modifications can be placed in such a way to cause channelization. Channelization tends to destroy the vital and fragile flood plain shoreline habitats and increase the velocity of waters in times of extreme flow. [See WAC 173-16-060(17)]. This may cause considerable damage downstream even in areas already given some flood protection. In unprotected flood plains, land-use regulations must be applied to provide an adequate open corridor within which the effects of bank erosion, channel shifts and increased runoff may be contained. Obviously, structures which must be built on a flood plain should be of a design to allow the passage of water and, wherever possible, permanent vegetation should be preserved to prevent erosion, retard runoff, and contribute to the natural beauty of the flood plain.

(10) **Puget Sound**—Puget Sound is a complex of interconnected inlets, bays and channels with tidal sea water entering from the west and freshwater streams entering at many points throughout the system. Most of what is known as Puget Sound was formed by glacial action that terminated near Tenino in Thurston County. The entire system, of which Puget Sound is actually a small portion, also includes the Strait of Georgia and the Strait of Juan de Fuca. The large complex may be divided into nine oceanographic areas which are interrelated: Strait of Juan de Fuca, Admiralty Inlet, Puget Sound Basin, Southern Puget Sound, Hood Canal, Possession Sound, Bellingham Bay, San Juan Archipelago, and Georgia Strait (from **Puget Sound and Adjacent Waters, Appendix XV, Plan Formulation**).

The economic development of the central Puget Sound Basin has been stimulated by the fact that the sound is one of the few areas in the world which provides several deepwater inland harbors. The use of Puget Sound waters by deep-draft vessels is on the increase due to its proximity to the developing Asian counties. This increased trade will attract more industry and more people which will put more use pressure on the Sound in the forms of recreation (sport fishing, boating and other water-related sports) and the requirements for increased food supply.

Puget Sound waters are rich in nutrients and support a wide variety of marine fish and shellfish species. An estimated 2,820 miles of stream are utilized by anadromous fish for spawning and rearing throughout the area. Some of these fish are chinook, coho, sockeye, pink and chum salmon, steelhead, searun cutthroat and Dolly Varden trout. All these fish spend a portion of their lives in the saltwaters of Puget Sound and the Pacific Ocean before returning to streams of origin to spawn. The juveniles of these fish spend varying amounts of time in the shore waters of the area before moving to sea to grow to maturity. Aquaculture or sea farming is now in the process of becoming reality in the Puget Sound complex. The mass production of seaweed, clams, geoducks, scallops, shrimp, oysters, small salmon, lobsters and other possibilities looms as an important new industry. Shoreline management is particularly crucial to the success of sea farming. Aquaculture on any scale can be compatible and coexist with maritime shipping and shoreland industrial activities only by careful planning and regulation.

The shoreline resources of Puget Sound include few beach areas which are not covered at high tide. Bluffs ranging from 10 to 500 feet in height rim nearly the entire extent of the Sound making access to beach and intertidal areas difficult. Because of the glacial-till composition of these bluffs, they are susceptible to fluvial and marine erosion and present constant slide hazards. Although Puget Sound is protected from the direct influence of Pacific Ocean weather, storm conditions can create very turbulent and sometimes destructive wave action. Without recognizing the tremendous energy contained in storm waves, development of shoreline resources can be hazardous and deleterious to the resource characteristics which make Puget Sound beaches attractive. [WAC 173-16-060(11), (12), (13)].

(11) **Pacific Ocean**—From Cape Flattery on the north to Cape Disappointment on the south, there are ap-

proximately 160 miles of beaches, rocky headlands, inlets and estuaries on Washington's Pacific Coast. The shoreline south of Cape Flattery to the Quinault River is generally characterized as being rugged and rocky, with high bluffs. The remaining shoreline south of the Quinault River is predominantly flat sandy beaches with low banks and dunes.

During the winter, Pacific currents set toward the north, while during summer months they set to the south. Associated with the summer currents is a general offshore movement of surface water, resulting in upwelling of water from lower depths. This upwelled water is cold, high in salinity, low in oxygen content and rich in nutrients. It is this latter characteristic which causes upwelled water to be extremely significant in biological terms, since it often triggers "blooms" of marine plant life.

Directions of wave action and littoral drift of sediments shift seasonally with Pacific Ocean storms. Although very little data are available on the net direction of littoral transport, the University of Washington has offshore data which indicate a northerly offshore flow. RCW 43.51.650 declares:

> "The beaches bounding the Pacific Ocean from the Straits of Juan de Fuca to Cape Disappointment at the mouth of the Columbia River constitute some of the last unspoiled seashore remaining in the United States. They provide the public with almost unlimited opportunities for recreational activities, like swimming, surfing and hiking; for outdoor sports, like hunting, fishing, clamming, and boating; for the observation of nature as it existed for hundreds of years before the arrival of white men and for relaxation away from the pressures and tensions of modern life. In past years, these recreational activities have been enjoyed by countless Washington citizens, as well as by tourists from other states and countries. The number of people wishing to participate in such recreational activities grow annually. This increasing public pressure makes it necessary that the state dedicate the use of the ocean beaches to public recreation and to provide certain recreational and sanitary facilities. Nonrecreational use of the beach must be strictly limited. Even recreational uses must be regulated in order that Washington's unrivaled seashore may be saved for our children in much the same form as we know it today." (See Appendix Reference Nos. 30 and 31).

THE USE ACTIVITIES

(WAC 173-16-060)

This section contains guidelines for the local regulation of use activities proposed for shorelines. Each topic, representing a specific use or group of uses, is broadly defined and followed by several guidelines. These guidelines represent the criteria upon which judgments for proposed shoreline developments will be based until master programs are completed. In addition, these guidelines are intended to provide the basis for the development of that portion of the master program concerned with the regulation of such uses.

In addition to application of the guidelines in this section, the local government should identify the type or types of natural systems (as described in WAC 173-16-050) within which a use is proposed and should impose regulations on those developments and uses which would tend to affect adversely the natural characteristics needed to preserve the integrity of the system. Examples would include but would not be limited to proposed uses that would threaten the character of fragile dune areas, reduce water tables in marshes, impede water flow in estuaries, or threaten the stability of spits and bars.

These guidelines have been prepared in recognition of the flexibility needed to carry out effective local planning of shorelines. Therefore, the interpretation and application of the guidelines may vary relative to different local conditions. Exceptions to specific provisions of these guidelines may occur where local circumstances justify such departure. Any departure from these guidelines must, however, be compatible with the intent of the act as enunciated in RCW 90.58.020.

It should be noted that there are several guidelines for certain activities which are not explicitly defined in the shoreline act as developments for which substantial development permits are not required (for example, the suggestion that a buffer of permanent vegetation be maintained along water bodies in agriculture areas). While such activities generally cannot be regulated through the permit system, it is intended that they be dealt with in the comprehensive master program in a manner consistent with policy and intent of the Shoreline Act. To effectively provide for the management of the shorelines of the state, master programs should plan for and foster all reasonable and appropriate uses as provided in RCW 90.58.020.

Finally, most of the guidelines are intentionally written in general terms to allow some latitude for local government to expand and elaborate on them as local conditions warrant. The guidelines are adopted state regulations, however, and must be complied with both in permit application review and in master program development.

Agricultural Practices

(WAC 173-16-060(1))

Agricultural practices are those methods used in vegetation and soil management, such as tilling of soil, control of weeds, control of plant diseases and insect pests, soil maintenance and fertilization. Many of these practices require the use of agricultural chemicals, most of which are water soluble and may wash into contiguous land or water areas causing significant alteration and damage to plant and animal habitats, especially those in the fragile shoreline areas. Also, large quantities of mineral and organic sediments enter water bodies through surface erosion when proper land management techniques are not utilized. Guidelines:

(a) Local governments should encourage the maintenance of a buffer of permanent vegetation between tilled areas and associated water bodies which will retard surface runoff and reduce siltation.

(b) Master programs should establish criteria for

the location of confined animal feeding operations, retention and storage ponds for feed lot wastes, and stock piles of manure solids in shorelines of the state so that water areas will not be polluted. Control guidelines prepared by the U.S. Environmental Protection Agency should be followed. (Also see Reference Nos. 3, 4, 5, 6, 7 and 8.)

(c) Local governments should encourage the use of erosion control measures, such as crop rotation, mulching, strip cropping and contour cultivation in conformance with guidelines and standards established by the Soil Conservation Service, U.S. Department of Agriculture.

Aquaculture

(WAC 173-16-060(2))

Aquaculture (popularly known as fish farming) is the culture or farming of food fish, shellfish, or other aquatic plants and animals. Potential locations for aquacultural enterprises are relatively restricted due to specific requirements for water quality, temperature, flows, oxygen content, and, in marine waters, salinity. The technology associated with present-day aquaculture is still in its formative stages and experimental. Guidelines for aquaculture should therefore recognize the necessity for some latitude in the development of this emerging economic water use as well as its potential impact on existing uses and natural systems. Guidelines:

(a) Aquacultural enterprises should be located in areas where the navigational access of upland owners and commercial traffic is not significantly restricted.

(b) Recognition should be given to the possible detrimental impact aquacultural development might have on the visual access of upland owners and on the general aesthetic quality of the shoreline area.

(c) As aquaculture technology expands with increasing knowledge and experience, emphasis should be placed on underwater structures which do not interfere with navigation or impair the aesthetic quality of Washington shorelines.

Forest Management Practices

(WAC 173-16-060(3))

Forest management practices are those methods used for the protection, production and harvesting of timber. Trees along a body of water provide shade which insulate the waters from detrimental temperature change and dissolved oxygen release. A stable water temperature and dissolved oxygen level provide a healthy environment for fish and other more delicate forms of aquatic life. Poor logging practices on shorelines alter this balance as well as result in slash and debris accumulation and may increase the suspended sediment load and the turbidity of the water. Guidelines:

(a) Seeding, mulching, matting and replanting should be accomplished where necessary to provide stability on areas of steep slope which have been logged. Replanted vegetation should be of a similar type and concentration as existing in the general vicinity of the logged area.

(b) Special attention should be directed in logging and thinning operations to prevent the accumulation of slash and other debris in contiguous waterways.

(c) Shoreline areas having scenic qualities, such as those providing a diversity of views, unique landscape contrasts, or landscape panoramas should be maintained as scenic views in timber harvesting areas. Timber harvesting practices, including road construction and debris removal, should be closely regulated so that the quality of the view and viewpoints in shoreline areas of the state are not degraded.

(d) Proper road and bridge design, location and construction and maintenance practices should be used to prevent development of roads and structures which would adversely affect shoreline resources.

(e) Timber harvesting practices in shorelines of the state should be conducted to maintain the state board of health standards for public water supplies. (See Reference No. 34).

(f) Logging should be avoided on shorelines with slopes of such grade that large sediment runoff will be precipitated, unless adequate restoration and erosion control can be expeditiously accomplished.

(g) Local governments should ensure that timber harvesting on shorelines of state-wide significance does not exceed the limitations established in RCW 90.58.150 except as provided in cases where selective logging is rendered ecologically detrimental or is inadequate for preparation of land for other uses.

(h) Logging within shoreline areas should be conducted to ensure the maintenance of buffer strips of ground vegetation, brush, alder and conifers to prevent temperature increases adverse to fish populations and erosion of stream banks.

Commercial Development

(WAC 173-16-060(4))

Commercial developments are those uses which are involved in wholesale and retail trade or business activities. Commercial developments range from small businesses within residences, to high-rise office buildings. Commercial developments are intensive users of space because of extensive floor areas and because of facilities, such as parking, necessary to service them. Guidelines:

(a) Although many commercial developments benefit by a shoreline location, priority should be

given to those commercial developments which are particularly dependent on their location and/or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state.

(b) New commercial developments on shorelines should be encouraged to locate in those areas where current commercial uses exist.

(c) An assessment should be made of the effect a commercial structure will have on a scenic view significant to a given area or enjoyed by a significant number of people.

(d) Parking facilities should be placed inland away from the immediate water's edge and recreational beaches.

Marinas

(WAC 173-16-060(5))

Marinas are facilities which provide boat launching, storage, supplies and services for small pleasure craft. There are two basic types of marinas: the open-type construction (floating breakwater and/or open-pile work) and solid-type construction (bulkhead and/or landfill). Depending upon the type of construction, marinas affect fish and shellfish habitats. Guidelines:

(a) In locating marinas, special plans should be made to protect the fish and shellfish resources that may be harmed by construction and operation of the facility.

(b) Marinas should be designed in a manner that will reduce damage to fish and shellfish resources and be aesthetically compatible with adjacent areas.

(c) Master programs should identify locations that are near high-use or potentially high-use areas for proposed marina sites. Local as well as regional "need" data should be considered as input in location selection.

(d) Special attention should be given to the design and development of operational procedures for fuel handling and storage in order to minimize accidental spillage and provide satisfactory means for handling those spills that do occur.

(e) Shallow-water embayments with poor flushing action should not be considered for overnight and long-term moorage facilities.

(f) The Washington state department of fisheries has prepared guidelines concerning the construction of marinas. These guidelines should be consulted in planning for marinas. (See Reference No. 16).

(g) State and local health agencies have standards and guidelines for the development of marinas which shall be consulted by local agencies. (See Reference No. 18).

Mining

(WAC 173-16-060(6))

Mining is the removal of naturally occurring materials from the earth for economic use. The removal of sand and gravel from shoreline areas of Washington usually results in erosion of land and silting of water. These operations can create silt and kill bottom-living animals. The removal of sand from marine beaches can deplete a limited resource which may not be restored through natural processes. Guidelines:

(a) When rock, sand, gravel and minerals are removed from shoreline areas, adequate protection against sediment and silt production should be provided.

(b) Excavations for the production of sand, gravel and minerals should be done in conformance with the Washington State Surface Mining Act. (See Reference No. 20).

(c) Local governments should strictly control or prohibit the removal of sand and gravel from marine beaches.

(d) When removal of sand and gravel from marine beaches is permitted by existing legislation, it should be taken from the least sensitive biophysical areas of the beach.

Outdoor Advertising, Signs and Billboards

(WAC 173-16-060(7))

Signs are publicly displayed boards whose purpose is to provide information, direction, or advertising. Signs may be pleasing or distracting, depending upon their design and location. A sign, in order to be effective, must attract attention; however, a message can be clear and distinct without being offensive. There are areas where signs are not desirable, but generally it is the design that is undesirable, not the sign itself. Guidelines:

(a) Off-premise outdoor advertising signs should be limited to areas of high-intensity land use, such as commercial and industrial areas.

(b) Master programs should establish size, height, density, and lighting limitations for signs.

(c) Vistas and viewpoints should not be degraded and visual access to the water from such vistas should not be impaired by the placement of signs.

(d) Outdoor advertising signs (where permitted under local regulations) should be located on the upland side of public transportation routes which parallel and are adjacent to rivers and water bodies (unless it can be demonstrated that views will not be substantially obstructed).

(e) When feasible, signs should be constructed against existing buildings to minimize visual obstructions of the shoreline and water bodies.

Residential Development

(WAC 173-16-060(8))

The following guidelines should be recognized in the development of any subdivision on the shorelines of the state. To the extent possible, planned unit developments (sometimes called cluster developments) should be encouraged within the shoreline area. Within planned unit developments, substantial portions of land are reserved as open space or recreational areas for the joint use of the occupants of the development. This land may be provided by allowing houses to be placed on lots smaller than the legal minimum size for normal subdivisions, as long as the total number of dwellings in the planned unit development does not exceed the total allowable in a regular subdivision. Guidelines:

(a) Subdivisions should be designed at a level of density of site coverage and of occupancy compatible with the physical capabilities of the shoreline and water.

(b) Subdivisions should be designed so as to adequately protect the water and shoreline aesthetic characteristics.

(c) Subdividers should be encouraged to provide public pedestrian access to the shorelines within the subdivision.

(d) Residential development over water should not be permitted.

(e) Floating homes are to be located as moorage slips approved in accordance with the guidelines dealing with marinas, piers, and docks. In planning for floating homes, local governments should ensure that waste disposal practices meet local and state health regulations, that the homes are not located over highly productive fish food areas, and that the homes are located to be compatible with the intent of the designated environments.

(f) Residential developers should be required to indicate how they plan to preserve shore vegetation and control erosion during construction.

(g) Sewage disposal facilities, as well as water supply facilities, must be provided in accordance with appropriate state and local health regulations. Storm drainage facilities should be separate, not combined with sewage disposal systems.

(h) Adequate water supplies should be available so that the ground water quality will not be endangered by overpumping.

Utilities

(WAC 173-16-060(9))

Utilities are services which produce and carry electric power, gas, sewage, communications and oil. At this time the most feasible methods of transmission are the lineal ones of pipes and wires. The installation of this apparatus necessarily disturbs the landscape but can usually be planned to have minimal visual and physical effect on the environment. Guidelines:

(a) Upon completion of installation/maintenance projects on shorelines, banks should be restored to pre-project configuration, replanted with native species and provided maintenance care until the newly planted vegetation is established.

(b) Whenever these facilities must be placed in a shoreline area, the location should be chosen so as not to obstruct or destroy scenic views. Whenever feasible, these facilities should be placed underground, or designed to do minimal damage to the aesthetic qualities of the shoreline area.

(c) To the extent feasible, local government should attempt to incorporate major transmission line rights of way on shorelines into their program for public access to and along water bodies.

(d) Utilities should be located to meet the needs of future populations in areas planned to accommodate this growth.

The Washington State Thermal Power Plant Siting Law (chapter RCW 80.50) regulates the location of electrical generating and distribution facilities. Under this law, the state preempts the certification and regulation of thermal power plant sites and thermal power plants. (See Reference No. 28).

Ports and Water-Related Industry

(WAC 173-16-060(10))

Ports are centers for water-borne traffic and as such have become gravitational points for industrial/manufacturing firms. Heavy industry may not specifically require a waterfront location, but is attracted to port areas because of the variety of transportation available. Guidelines:

(a) Water-dependent industries which require frontage on navigable water should be given priority over other industrial uses.

(b) Port facilities should be designed to permit viewing of harbor areas from viewpoints, waterfront restaurants and similar public facilities which would not interfere with port operations or endanger public health and safety.

(c) Sewage treatment, water reclamation, desalinization and power plants should be located where they do not interfere with and are compatible with recreational, residential or other public uses of the water and shorelands. Waste treatment ponds for water-related industry should occupy as little shoreline as possible.

(d) The cooperative use of docking, parking, cargo handling and storage facilities should be strongly encouraged in waterfront industrial areas.

(e) Land transportation and utility corridors serving ports and water-related industry should follow the guidelines provided under the sections dealing with utilities and road and railroad design and construction. Where feasible, transportation and utility corridors should be located upland to reduce pressures for the use of waterfront sites.

(f) Master program planning should be based on a recognition of the regional nature of port services. Prior to allocating shorelands for port uses, local governments should consider statewide needs and coordinate planning with other jurisdictions to avoid wasteful duplication of port services within port-service regions.

(g) Since industrial docks and piers are often longer and greater in bulk than recreational or residential piers, careful planning must be undertaken to reduce the adverse impact of such facilities on other water-dependent uses and shoreline resources. Because heavy industrial activities are associated with industrial piers and docks, the location of these facilities must be considered a major factor determining the environmental compatibility of such facilities.

Bulkheads

(WAC 173-16-060(11))

Bulkheads or seawalls are structures erected parallel to and near the high-water mark for the purpose of protecting adjacent uplands from the action of waves or currents. Bulkheads are constructed of steel, timber or concrete piling, and may be either of solid or open-piling construction. For ocean-exposed locations, bulkheads do not provide a long-lived permanent solution, because eventually a more substantial wall is required as the beach continues to recede and layer waves reach the structure.

While bulkheads and seawalls may protect the uplands, they do not protect the adjacent beaches, and in many cases are actually detrimental to the beaches by speeding up the erosion of the sand in front of the structures.

The following guidelines apply to the construction of bulkheads and seawalls designed to protect the immediate upland area. Proposals for landfill must comply with the guidelines for that specific activity. Guidelines:

(a) Bulkheads and seawalls should be located and constructed in such a manner which will not result in adverse effects on nearby beaches and will minimize alterations of the natural shoreline.

(b) Bulkheads and seawalls should be constructed in such a way as to minimize damage to fish and shellfish habitats. Open-piling construction is preferable in lieu of the solid type.

(c) Consider the effect of a proposed bulkhead on public access to publicly owned shorelines.

(d) Bulkheads and seawalls should be designed to blend in with the surroundings and not to detract from the aesthetic qualities of the shoreline.

(e) The construction of bulkheads should be permitted only where they provide protection to upland areas or facilities, not for the indirect purpose of creating land by filling behind the bulkhead. Landfill operations should satisfy the guidelines under WAC 173-16-060(14).

Breakwaters

(WAC 173-16-060(12))

Breakwaters are another protective structure usually built offshore to protect beaches, bluffs, dunes or harbor areas from wave action. However, because offshore breakwaters are costly to build, they are seldom constructed to protect the natural features alone, but are generally constructed for navigational purposes also. Breakwaters can be either rigid in construction or floating. The rigid breakwaters, which are usually constructed of riprap or rock, have both beneficial and detrimental effects on the shore. All breakwaters eliminate wave action and thus protect the shore immediately behind them. They also obstruct the free flow of sand along the coast and starve the downstream beaches. Floating breakwaters do not have the negative effect on sand movement, but cannot withstand extensive wave action and thus are impractical with present construction methods in many areas. Guidelines:

(a) Floating breakwaters are preferred to solid landfill types in order to maintain sand movement and fish habitat.

(b) Solid breakwaters should be constructed only where design modifications can eliminate potentially detrimental effects on the movement of sand and circulation of water.

(c) The restriction of the public use of the water surface as a result of breakwater construction must be recognized in the master program and must be considered in granting shoreline permits for their construction.

Jetties and Groins

(WAC 173-16-060(13))

Jetties and groins are structures designed to modify or control sand movement. A jetty is generally employed at inlets for the purpose of navigation improvements. When sand being transported along the coast by waves and currents arrives at an inlet, it flows inward on the flood tide to form an inner bar, and outward on ebb tide to form an outer bar. Both formations are harmful to navigation through the inlet.

A jetty is usually constructed of steel, concrete or rock. The type depends on foundation conditions and wave, climate and economic considerations. To be of maximum aid in maintaining the navigation channel, the jetty must be high enough to completely obstruct the sand stream. The adverse effect of a jetty is that sand is impounded at the updrift jetty and the supply of sand to the shore downdrift from the inlet is reduced, thus causing erosion.

Groins are barrier-type structures extending from the backshore seaward across the beach. The basic purpose of a groin is to interrupt the sand movement along a shore.

Groins can be constructed in many ways using timber, steel, concrete or rock, but can be classified

into basic physical categories as high or low, long or short, and permeable or impermeable.

Trapping of sand by a groin is done at the expense of the adjacent downdrift shore, unless the groin system is filled with sand to its entrapment capacity. Guidelines:

(a) Master programs must consider sand movement and the effect of proposed jetties or groins on that sand movement. Provisions can be made to compensate for the adverse effects of the structures either by artificially transporting sand to the downdrift side of an inlet with jetties, or by artificially feeding the beaches in case of groins.

(b) Special attention should be given to the effect these structures will have on wildlife propagation and movement, and to the design of these structures which will not detract from the aesthetic quality of the shoreline.

Landfill

(WAC 173-16-060(14))

Landfill is the creation of dry upland area by the filling or depositing of sand, soil or gravel into a wetland area. Landfills also occur to replace shoreland areas removed by wave action or the normal erosive processes of nature. However, most landfills destroy the natural character of land, create unnatural heavy erosion and silting problems and diminish the existing water surface. Guidelines:

(a) Shoreline fills or cuts should be designed and located so that significant damage to existing ecological values or natural resources, or alteration of local currents will not occur, creating a hazard to adjacent life, property, and natural resources systems.

(b) All perimeters of fills should be provided with vegetation, retaining walls, or other mechanisms for erosion prevention.

(c) Fill materials should be of such quality that it will not cause problems of water quality. Shoreline areas are not to be considered for sanitary landfills or the disposal of solid waste.

(d) Priority should be given to landfills for water-dependent uses and for public uses. In evaluating fill projects and in designating areas appropriate for fill, such factors as total water surface reduction, navigation restriction, impediment to water flow and circulation, reduction of water quality and destruction of habitat should be considered.

Solid Waste Disposal

(WAC 173-16-060(15))

Generally, all solid waste is a possible source of much nuisance. Rapid, safe and nuisance-free storage, collection, transportation and disposal are of vital concern to all persons and communities. If the disposal of solid waste material is not carefully planned and regulated, it can become not only a nuisance but a severe threat to the health and safety of human beings, livestock, wildlife and other biota. Guidelines:

(a) Local master programs and use regulations must be consistent with approved county or multicounty comprehensive solid waste management plans and regulations of jurisdictional health agencies.

(b) Local governments must regulate sanitary landfills and solid waste handling in accordance with regulations for solid waste handling when adopted by the department of ecology. New regulations restricting sanitary landfills within any water course and within flood plains of any water course have been proposed for adoption by the department.

Dredging

(WAC 173-16-060(16))

Dredging is the removal of earth from the bottom of a stream, river, lake, bay or other water body for the purposes of deepening a navigational channel or to obtain use of the bottom materials for landfill. A significant portion of all dredged materials are deposited either in the water or immediately adjacent to it, often resulting in problems of water quality. Guidelines:

(a) Local governments should control dredging to minimize damage to existing ecological values and natural resources of both the area to be dredged and the area for deposit of dredged materials.

(b) Local master programs must include long-range plans for the deposit and use of spoils on land. Spoil deposit sites in water areas should also be identified by local government in cooperation with the state departments of natural resources, game and fisheries. Depositing of dredge material in water areas should be allowed only for habitat improvement, to correct problems of material distribution affecting adversely fish and shellfish resources, or where the alternatives of depositing material on land is more detrimental to shoreline resources than depositing it in water areas.

(c) Dredging of bottom materials for the single purpose of obtaining fill material should be discouraged.

Shoreline Protection

(WAC 173-16-060(17))

Flood protection and streamway modifications are those activities occurring within the streamway and wetland areas which are designed to reduce overbank flow of high waters and stabilize eroding stream-

banks. Reduction of flood damage, bank stabilization to reduce sedimentation, and protection of property from erosion are normally achieved through watershed and flood plain management and by structural works. Such measures are often complementary to one another and several measures together may be necessary to achieve the desired end. Guidelines:

(a) Riprapping and other bank stabilization measures should be located, designed and constructed so as to avoid the need for channelization and to protect the natural character of the streamway.

(b) Where flood protection measures such as dikes are planned, they should be placed landword of the streamway, including associated swamps and marshes and other wetlands directly interrelated and interdependent with the stream proper.

(c) Flood protection measures which result in channelization should be avoided.

Road and Railroad Design and Construction

(WAC 173-16-060(18))

A road is a linear passageway, usually for motor vehicles, and a railroad is a surface linear passageway with tracks for train traffic. Their construction can limit access to shorelines, impair the visual qualities of water-oriented vistas, expose soils to erosion and retard the runoff of flood waters. Guidelines:

(a) Whenever feasible, major highways, freeways and railways should be located away from shorelands, except in port and heavy industrial areas, so that shoreland roads may be reserved for slow-moving recreational traffic.

(b) Roads located in wetland areas should be designed and maintained to prevent erosion and to permit a natural movement of ground water.

(c) All debris, overburden, and other waste materials from construction should be disposed of in such a way as to prevent their entry by erosion from drainage, high water, or other means into any water body.

(d) Road locations should be planned to fit the topography so that minimum alterations of natural conditions will be necessary.

(e) Scenic corridors with public roadways should have provision for safe pedestrian and other nonmotorized travel. Also, provision should be made for sufficient view points, rest areas and picnic areas in public shorelines.

(f) Extensive loops or spurs of old highways with high aesthetic quality should be kept in service as pleasure bypass routes, especially where main highways, paralleling the old highway, must carry large traffic volumes at high speeds.

(g) Since land-use and transportation facilities are so highly interrelated, the plans for each should be coordinated. The designation of potential high-use areas in master programs should be done after the environmental impact of the transportation facilities needed to serve those areas have been assessed.

Piers

(WAC 173-16-060(19))

A pier or dock is a structure built over or floating upon the water, used as a landing place for marine transport or for recreational purposes. While floating docks generally create less of a visual impact than those on piling, they constitute an impediment to boat traffic and shoreline trolling. Floating docks can also alter beach sand patterns in areas where tides and littoral drift are significant. On lakes, a proliferation of piers along the shore can have the effect of substantially reducing the usable water surface. Guidelines:

(a) The use of floating docks should be encouraged in those areas where scenic values are high and where conflicts with recreational boaters and fishermen will not be created.

(b) Open-pile piers should be encouraged where shore trolling is important, where there is significant littoral drift and where scenic values will not be impaired.

(c) Priority should be given to the use of community piers and docks in all new major waterfront subdivisions. In general, encouragement should be given to the cooperative use of piers and docks.

(d) Master programs should address the problem of the proliferation of single-purpose private piers and should establish criteria for their location, spacing, and length. The master programs should also delimit geographical areas where pile piers will have priority over floating docks.

(e) In providing for boat docking facilities in the master program, local governments should consider the capacity of the shoreline sites to absorb the impact of waste discharges from boats including gas and oil spillage.

Archeological Areas and Historic Sites

(WAC 173-16-060(20))

Archeological areas, ancient villages, military forts, old settlers homes, ghost towns, and trails were often located on shorelines because of the proximity of food resources and because water provided an important means of transportation. These sites are nonrenewable resources and many are in danger of being lost through present day changes in land use and urbanization. Because of their rarity and the educational link they provide to our past, these locations should be preserved. Guidelines:

(a) In preparing shoreline master programs, local governments should consult with professional

archeologists to identify areas containing potentially valuable archeological data, and to establish procedures for salvaging the data.

(b) Where possible, sites should be permanently preserved for scientific study and public observation. In areas known to contain archeological data, local governments should attach a special condition to a shoreline permit providing for a site inspection and evaluation by an archeologist to ensure that possible archeological data are properly salvaged. Such a condition might also require approval by local government before work can resume on the project following such an examination.

(c) Shoreline permits, in general, should contain special provisions which require developers to notify local governments if any possible archeological data are uncovered during excavations.

(d) The National Historic Preservation Act of 1966 and chapter 43.51 RCW provide for the protection, rehabilitation, restoration and reconstruction of districts, sites, buildings, structures and objects significant in American and Washington history, architecture, archeology or culture. The state legislation names the director of the Washington state parks and recreation commission as the person responsible for this program.

Recreation

(WAC 173-16-060(21))

Recreation is the refreshment of body and mind through forms of play, amusement or relaxation. Water-related recreation accounts for a very high proportion of all recreational activity in the Pacific Northwest. The recreational experience may be either an active one involving boating, swimming, fishing or hunting or the experience may be passive such as enjoying the natural beauty of a vista of a lake, river or saltwater area. Guidelines:

(a) Priority will be given to developments, other than single-family residences which are exempt from the permit requirements of the act, which provide recreational uses and other improvements facilitating public access to shorelines.

(b) Access to recreational locations such as fishing streams and hunting areas should be a combination of areas and linear access (parking areas and easements, for example) to prevent concentrations of use pressure at a few points.

(c) Master programs should encourage the linkage of shoreline parks and public access points through the use of linear access. Many types of connections can be used such as hiking paths, bicycle trails and/or scenic drives.

(d) Attention should be directed toward the effect the development of a recreational site will have on the environmental quality and natural resources of an area.

(e) Master programs should develop standards for the preservation and enhancement of scenic views and vistas.

(f) To avoid wasteful use of the limited supply of recreational shoreland, parking areas should be located inland away from the immediate edge of the water and recreational beaches. Access should be provided by walkways or other methods. Automobile traffic on beaches, dunes and fragile shoreland resources should be discouraged.

(g) Recreational developments should be of such variety as to satisfy the diversity of demands from groups in nearby population centers.

(h) The supply of recreation facilities should be directly proportional to the proximity of population and compatible with the environment designations.

(i) Facilities for intensive recreational activities should be provided where sewage disposal and vector control can be accomplished to meet public health standards without adversely altering the natural features attractive for recreational uses. (See Reference No. 35).

(j) In locating proposed recreational facilities such as playing fields and golf courses and other open areas which use large quantities of fertilizers and pesticides in their turf maintenance programs, provisions must be made to prevent these chemicals from entering water. If this type of facility is approved on a shoreline location, provision should be made for protection of water areas from drainage and surface runoff.

(k) State and local health agencies have broad regulations which apply to recreation facilities, recreation watercraft and ocean beaches which should be consulted by local governments in preparing use regulations and issuing permits. (See Reference Nos. 30, 31, 35, 36, 37).

VARIANCES AND CONDITIONAL USES

(WAC 173-16-070)

The act states that each local master program shall contain provisions covering conditional uses and variances. Any permit for a variance or a conditional use granted by the local government under approved master programs must be submitted to the department for approval or disapproval.

This provision of the act should be utilized in a manner which, while protecting the environment, will assure that a person will be able to utilize his property in a fair and equitable manner.

(1) **Conditional uses.** The objective of a conditional use provision is to provide more control and flexibility for implementing the regulations of the master program. With provisions to control undesirable effects, the scope of uses within each of the four environments can be expanded to include many uses.

Uses classified as conditional uses can be permitted only after consideration by the local government and by meeting such performance standards that

make the use compatible with other permitted uses within that area.

Conditional use permits will be granted only after the applicant can demonstrate all of the following:

(a) The use will cause no unreasonably adverse effects on the environment or other uses.

(b) The use will not interfere with public use of public shorelines.

(c) Design of the site will be compatible with the surroundings and the Master Program.

(d) The proposed use will not be contrary to the general intent of the master program.

(2) **Variances.** Variance deals with specific requirements of the master program and its objective is to grant relief when there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of the master program. The property owner must show that if he complies with the provisions he cannot make any reasonable use of his property. The fact that he might make a greater profit by using his property in a manner contrary to the intent of the program is not a sufficient reason for variance. A variance will be granted only after the applicant can demonstrate the following:

(a) The hardship which serves as basis for granting of variance is specifically related to the property of the applicant.

(b) The hardship results from the application of the requirements of the act and master program and not from, for example, deed restrictions or the applicant's own actions.

(c) The variance granted will be in harmony with the general purpose and intent of the master program.

(d) Public welfare and interest will be preserved; if more harm will be done to the area by granting the variance than would be done to the applicant by denying it, the variance will be denied.

GLOSSARY

(WAC 173-16-030)

DEFINITIONS. As used herein, the following words and phrases shall have the following meanings:

(1) **"Act"** means Shoreline Management Act of 1971, chapter 90.58 RCW.

(2) **"Department"** means state of Washington, department of ecology.

(3) **"Development"** means a use, consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to the act at any state of water level.

(4) **"Director"** means the director of the department of ecology.

(5) **"Extreme low tide"** means the lowest line on the land reached by a receding tide.

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

(7) **"Hearings board"** means the shorelines hearings board established by the act.

(8) **"Local government"** means any county, incorporated city, or town which contains within its boundaries any lands or waters subject to the Shoreline Act of 1971.

(9) **"Master program"** means the comprehensive use plan for a described area, and the use regulations, together with maps, diagrams, charts or other descriptive material and text, a statement of desired goals and standards developed in accordance with the policies enunciated in section 2 of the act.

(10) **"Ordinary high-water mark"** means the mark on all lakes, streams, and tidal waters, which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation, as that condition exists on the effective date of this chapter, or as it may naturally change thereafter: PROVIDED, That in any area where the ordinary high-water mark cannot be found, the ordinary high-water mark adjoining saltwater shall be the line of mean higher high tide and the ordinary high-water mark adjoining freshwater shall be the line of mean high water.

(11) **"Permit"** means that required by the act for substantial development on shorelines, to be issued by the local government entity having administrative jurisdiction and subject to review by the department of ecology and the attorney general.

(12) **"Shorelines"** means all of the water areas of the state, including reservoirs, and their associated wetlands, together with the lands underlying them, except:

(a) Shorelines of state-wide significance;

(b) Shorelines on segments of streams upstream of a point where the mean annual flow is 20 cubic feet per second or less, and the wetlands associated with such upstream segments; and

(c) Shorelines on lakes less than 20 acres in size and wetlands associated with such small lakes.

(13) **"Shorelines of state-wide significance"** means the following shorelines of the state:

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

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

(i) Nisqually Delta—from DeWolf Bight to Tatsolo Point;

(ii) Birch Bay—from Point Whitehorn to Birch Point;

(iii) Hood Canal—from Tala Point to Foulweather Bluff;

(iv) Skagit Bay and adjacent area—from Brown Point to Yokeko Point; and

(v) Padilla Bay—from March Point to William Point.

(c) Those areas of Puget Sound and the Strait of Juan de Fuca and adjacent saltwaters north to the Canadian line and lying seaward from the line of extreme low tide;

(d) Those lakes, whether natural, artificial or a combination thereof, with a surface acreage of 1,000 acres, or more, measured at the ordinary high-water mark;

(e) Those natural rivers or segments thereof, as follows:

(i) Any west of the crest of the Cascade range downstream of a point where the mean annual flow is measured at 1,000 cubic feet per second, or more;

(ii) Any east of the crest of the Cascade range downstream of a point where the annual flow is measured at 200 cubic feet per second, or more, or those portions of rivers east of the crest of the Cascade range downstream from the first 300 square miles of drainage area, whichever is longer;

(f) Those wetlands associated with (a) through (e) above.

(14) **"Shorelines of the state"** means the total of all "shorelines" and "shorelines of state-wide significance" within the state.

(15) **"State master program"** means the cumulative total of all master programs approved or adopted by the department of ecology.

(16) **"Substantial development"** means any development of which the total cost, or fair market value, exceeds $1,000, or any development which materially interferes with normal public use of the water or shorelines of the state except that the following shall not be considered substantial developments:

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

(b) Construction of the normal protective bulkhead, common to single-family residences;

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

(d) Construction of a barn or similar agricultural structure on wetlands;

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

(f) Construction on wetlands by an owner, lessee, or contract purchaser, of a single-family residence, for his own use or for the use of his family, which residence does not exceed a height of 35 feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof.

(17) **"Wetlands"** or **"Wetland areas"** means those lands extending landward for 200 feet in all directions, as measured on a horizontal plane from the ordinary high-water mark and all marshes, bogs, swamps, floodways, river deltas, and flood plains associated with the streams, lakes and tidal waters which are subject to the provisions of the act.

APPENDIX "A"

(WAC 173-16-200)

Agricultural Practices

1. Chapter 15.57 RCW, Washington Pesticide Act. Formulation, distribution and sale of agricultural pesticides.
2. Chapter 17.21 RCW, Washington Pesticide Application Act. Application equipment, licensing, records, handling of and enforcement.
3. Agricultural Extension Service, Washington State University, Pullman, June 1964, **Cattle Manure Handling and Disposal.**
4. Cooperative Extension Service, College of Agriculture, Washington State University, Pullman, October 1965, **Guideline for Sanitary Handling of Animal Manure.**
5. Cooperative Extension Service, College of Agriculture, Washington State University, Pullman, June 1969, **Guidelines for Handling Animal Wastes as Related to Water and Air Pollution Control.**
6. Cooperative Extension Service, College of Agriculture, Washington State University, Pullman, June 1971, **The Stockman's Role in Water Pollution Control.**
7. Eric B. Wilson, University of Idaho, A Pacific Northwest Cooperative Extension Publication, PNW Bulletin 53, January 1963, **Your Feedlot —Build It—Mechanize It.**
8. Cooperative Extension Service, College of Agriculture, Washington State University, Pullman, June 1971, **Livestock Waste Management Guidelines.**

Forest Management Practices

9. Chapter 76.04 RCW, Forest protection, fire and burning control, permits and enforcement.
10. Anonymous, Pacific Northwest Cooperative Extension Publication, March 1971, **Building Woodland Roads,** distributed by Washington State University Cooperative Extension Service, College of Agriculture.
11. State of Washington Departments of Fisheries, Game and Natural Resources, **Agreement,** related to management of projects affecting land and fisheries resources.
12. Pacific Northwest Pollution Control Council, Task Force Report, August 1971, **Log Storage and Rafting in Public Waters.**

Aquaculture

13. Chapter 75.16 RCW, Food fish and shellfish conservation and propagation.
14. Chapter 248.58 WAC, State Board of Health, Shellfish.

Archeological Areas and Historic Sites

15. RCW 43.51.750-820, Preservation of sites and funding requirements.

Bulkheads and Breakwaters

16. Washington State Department of Fisheries, Criteria governing the design of bulkheads, landfills and marinas.

Landfill

17. **Wilbour v. Gallagher** 77 Wn.2d 306, 462 P. 2d 232 (1969). See Bulkheads, this page.

Marinas

See Bulkheads, this page.

18. Chapter 248.148 WAC, Marinas (to be adopted).

Mining

19. RCW 43.51.685, Accreted lands, sale of sand and lease and removal permits.
20. Chapter 78.44 RCW, Surface Mining Act. Reclamation requirements, site inspection and permits.

Outdoor Advertising

21. Chapter 47.42 RCW, Highway Advertising Control Act. Sign locations, scenic areas and permits.

Residential Development

22. **Bach v. Sarich.** 74 Wn.2d 575, 445 P. 2d 648 (1968).
23. Washington State Department of Social and Health Services, Health Services Division, **Standards for Individual Sewage Waste Disposal Systems.**
24. U.S. Department of Agriculture, Soil Conservation Service, June 1967, **Know the Soil You Build On,** Bulletin No. 320.
25. U.S. Department of Agriculture, Soil Conservation Service, (September 1968) **Soil Conservation,** "Soil and Water Conservation in Suburbia" reprints available.
26. WAC 248.50.100 State Board of Health Regulation, Disposal of Human Excreta.
27. Chapter 248.96 WAC, State Board of Health Regulation, Individual Sewage Disposal (to be adopted).

Utilities

28. Chapter 80.50 RCW, Thermal Power Plants—Site Locations.
29. Ports and Water Related Industries, Washington Department of Natural Resources, Proposed Harbor Area Guidelines.

Pacific Ocean Beaches

30. RCW 79.16.160 Declared a Public Highway.
31. RCW 79.16.172 Declared a Public Recreation Area.

Environmental Impacts

32. Chapter 43.21C RCW, Washington State Environmental Policy Act of 1971 requires all branches of government to include in every recommendation or report on proposals for legislation and other major actions significantly affecting the environment, a detailed statement by the responsible official on the environmental impact of the proposed action.

Public Health, State Board of Health

33. WAC 248.50.140 Stagnant Water.
34. Chapter 248.54 WAC, Public Water Supplies.
35. Chapter 248.72 WAC, Camps and Parks.
36. Chapter 248.92 WAC, Public Sewage Disposal.
37. Chapter 248.98 WAC, Swimming Pools, Bathing Beaches and Wading Pools.