WASHINGTON SEA GRANT PROGRAM

LEGAL AND ECONOMIC STRATEGIES FOR SHORELINES MANAGEMENT

Workshop Proceedings

September 26, 1975

UNIVERSITY OF WASHINGTON

DIVISION OF MARINE RESOURCES
UNIVERSITY OF WASHINGTON 98195

Prepared under the
National Sea Grant Program

A WASHINGTON SEA GRANT REPORT

WSG-WO 75-3

LEGAL AND ECONOMIC STRATEGIES FOR SHORELINES MANAGEMENT

Workshop Proceedings

September 26, 1975
UNIVERSITY OF WASHINGTON

CHAIRMAN: *Robert F. Goodwin*

EDITORS: *Barbara J. Miller, Robert F. Goodwin*

Sponsored by COASTAL RESOURCES PROGRAM
Washington Sea Grant Marine Advisory
Program/Institute for Marine Studies

Published by Division of Marine Resources
University of Washington · Seattle 98195

F O R E W O R D

On September 26, 1975, the Coastal Resources Program conducted a workshop on legal and economic issues surrounding the development and administration of Washington State's Shoreline Management Program. The authority for this program is the state's Shoreline Management Act (RCW90.58), which places primary responsibility for its development and administration at the local (county and municipal) level. Even with assistance from the state's Department of Ecology, unevenness in staffing and expertise among planning departments of these jurisdictions have strained local government's ability to develop defensible and consistent master programs, the backbone of the state's Shoreline Management Program.

Management of the Coastal Zone presents unique legal and institutional problems to planners trained primarily in land-use planning. Recognition of such limitations in knowledge spawned the initial contacts between coastal zone management researchers at the University of Washington and planners from Puget Sound counties and municipalities during early 1975. This workshop is one consequence of those meetings.

These proceedings are designed to promulgate to a wider audience the papers and discussions contributed by the panelists and attendees.

A C K N O W L E D G M E N T S

Special thanks go to each of the panel members for the time and effort expended in participating in this workshop. Our thanks also to the attendees, whose input during the discussion and question period added substantially to the success of the workshop.

R E L A T E D P U B L I C A T I O N

COASTAL RESOURCE USE, Decisions on Puget Sound, by Robert L. Bish, Robert Warren, Louis F. Weschler, James A. Crutchfield, and Peter Harrison. 206pp. Published in cooperation with Washington Sea Grant Program by University of Washington Press, Seattle, WA 98105. $10.95

Support for the workshop and publication of these proceedings was provided by grant number 04-3-158-42 from the National Oceanic and Atomspheric Administration to the Washington Sea Grant Program.

Additional copies of these workshop proceedings may be obtained from the Washington Sea Grant Communications Program, Division of Marine Resources, University of Washington, Seattle, Washington 98195, for $1.50 each. Checks should be payable to University of Washington.

CONTENTS

C O A S T A L R E S O U R C E S P R O G R A M

Becoming fully operational in 1976, the Coastal Resources Program at the University of Washington is involved in research, education, and advisory services. In 1976 Professor Marc J. Hershman, Institute for Marine Studies and School of Law, University of Washington, assumed directorship of the program. He is editor of the Coastal Zone Management Journal and author of numerous articles on legal and institutional aspects of wetlands resource management, industrial development in the coastal zone, including deepwater ports, OCS oil and gas, and both federal and state coastal zone legislation. He was formerly Research Director, Sea Grant Legal Program, Louisiana State University.

Heading the Advisory and Information Services of the Program is Robert F. Goodwin, Coastal Management Specialist. Mr. Goodwin is a geographer, specializing in the urban shoreline. He has had several years' experience in environmental design and was formerly a consultant for the Washington Sea Grant Program. His role is one of bringing problems of coastal resource management in to congruence with academic resources of the University.

PREFACE

One of the modern poets--Frost or Cummings, I'm not sure which--said of his art, that poetry begins with a lump in the throat: an emotional response to some event or phenomenon about which he feels compelled to write. Perhaps legislation that addresses the degradation of some valued aesthetic resource similarly starts from a gut-level, emotional response to that phenomenon: outrage at ill-considered plans for development of an irreplaceable estuary; disgust at the tasteless proliferation of housing tracts in a pristine shoreline.

A groundswell of popular opinion, augmented by key court decisions; some previous legislative attempts to address the problem; an initiative campaign; hardening of positions on public versus private values, conservation versus development; and then the dialogue, the easing of obdurant stands, the necessary and fruitful compromises; and finally an Act emerges.

The Shorelines Management Act is not a poem; it is not any longer an emotional stance. It is, rather, an institutional device, a kit of parts together with instructions for their use to guide the development and conservation of our coastal resources. Further, it is an experiment formulated to test out some explicit hypotheses about societal values and methods to operationalize those values in a specific geographic context. And the setting is local, reflecting the continuous strand of autonomy, of self-determination that lies deep in this country's political history.

A brief glance at some of the Master Programs from around the state reveals the divergent interpretations of the instructions that come with the kit of parts.

These divergent responses to the general intent of the Act pose problems for the Department of Ecology; but remembering that the Act is an experiment, perhaps these divergencies can illuminate the virtues of one planning scheme over another, leading to refinements of this legislative experiment and the procedural devices for its implementation.

Changing societal values, economic turbulence, new technologies of marine transportation, discoveries of new resources and the societal needs for them--all these shifts in the total environment within which coastal resource management occurs impose on the managers the necessity of a dynamic response to these conditions. The evidence by which the success of the Shorelines Management Act's intent can be ascertained is not yet available. We are still in an interim period, pending approval and rationalization of the state's Master Programs. During this period, allocation of public and private resources, in an area where property rights are sometimes vague and subject to interpretation by the courts, creates a volatile political environment. Attempts to repeal Shorelines Management Act, or to modify procedures; challenges by property owners over more restrictive environmental designations and more stringent performance standards than existed previously; conflicts among agencies with categorical jurisdictions in the marine environment--these examples are illustrative of the conflicts surrounding the resource allocative process.

The need exists, then, for better definition of at least four issues:

First, the legal limitations on balancing allocations of coastal resources between the private and public sectors need sharper definition. Here the issue of "taking" is paramount.

Second, the changing interpretations of who holds what kinds of rights to specific resources requires our attention--beach access is a significant example.

Third, the institutional mechanism by which coastal resources are allocated--the Master Programs together with their means for implementation--needs to be assessed. Do Master Programs satisfy the test of economic efficiency and address questions of social equity? How might these issues be resolved?

Fourth, and finally, we can look at the changes in both legislation and procedures which are under consideration by the Department of Ecology, the Attorney General, and the legislature. These represent a response to the most obvious and pressing problems so far encountered in administering the Shorelines Management Act.

Looking at the composition of you, the audience, today, it is apparent that you represent a significant sample of the universe of actors in the shorelines management game. Regional, county, and local planners; state regulatory agencies; business and development interests; the energy industry; port planning officials; environmental groups; coastal resource researchers, teachers and students; building departments; assessors' offices; and individuals not-so-easily categorized, but who hold perceptions and express interest in shorelines management. On behalf of the Coastal Resources Program, the Washington Sea Grant Program and the Institute of Marine Studies, I welcome you to our first workshop. I hope you'll leave at the end of this day with clearer perceptions on some of the salient issues addressed by our panel of speakers.

Robert F. Goodwin
Coastal Management Specialist
Coastal Resources Program
University of Washington

ECONOMIC STRATEGIES FOR SHORELINE MANAGEMENT

*Alan Rabinowitz, Ph. D.**

Three questions of importance to local and state officials working on Shoreline Master Programs (under RCW 90.58 and Department of Ecology Guidelines, WAC 173-]6) constitute the framework for this paper:

1. How does Shoreline Management relate to the economics of community development?

2. What is involved in analyzing the economic impact of a Shoreline Management Program?

3. What economic criteria are applicable to lands that might be taken for public use?

As this paper is written, hundreds of locally approved Shoreline Management Programs are wending their way to Washington State's Department of Ecology for final review and approval, and it is obviously beyond the scope of this paper to comment on that process (but see note 1 for reference to some recent material concerning the program).

However, it is clear that we are in an interim period: a time to think about the economic implications of the drafts that have been forged through lengthy local deliberations over the past year; a time to compare Washington's experience with other states; and a time to contemplate the relation of a Shoreline Management Program to other forms of planning and zoning such as for industrial development, airports and harbors, and community development generally.

HOW DOES SHORELINE MANAGEMENT RELATE TO THE ECONOMICS OF COMMUNITY DEVELOPMENT?

For 200 years community development in the United States has been a partnership between government and private individuals and firms, and the Shoreline Management approach is just one more example of that process.

The formula for success in community development is to have just the right sense of what the community should be like after development is well along, to make sure that the right natural resources are developed and the proper number of jobs available, and to attract just the right people to live and work and play in the community.

Planning is merely the name for the consultative process by which the community establishes the goals and rules for the game of community

* *Professor, Department of Urban Planning, University of Washington*

development (and it can be noted that the City of Seattle, in planning its Shoreline Management Program, worked with 7 federal agencies, 7 state angencies, 6 region-wide agencies, at least 14 city departments and agencies, and innumerable citizen-based organizations and individuals).

Zoning, of which the adopted Shoreline Management Program becomes, to all intents and purposes, a part, is merely a tool for implementing community purposes.

The success of community development can be measured in what an economist might call the local investment climate. That climate is composed of at least three elements:

a. satisfaction, on the part of homeowners and other investors in property and local businesses, with the stability, prosperity, and livability of the local environment;

b. relative stability and adequacy of local revenues to finance local public services and facilities;

c. encouragement to industrialists and other producers of jobs for locating and maintaining their operations in the locality.

This concept of the local investment climate has been painted above with a very broad brush, in order to assist in the process of seeing that the local Shoreline Management Program is only part of many influences on the local economy. It can be said about community planning generally, and perhaps Shoreline Management Program planning as well, that too often too little attention is paid to the comprehensive long-term environment that gets created by a succession of small investments and decisions in both the public and private sectors.

Two comments need to be made at this point about the economic aspects of community development and shoreline management:

1. The local economy is shaped in large part by forces and decisions beyond the power of a local government to affect.

2. Local revenue and expenditure patterns are largely dominated by state laws that substantially reduce local discretion.

From these two comments it follows that each community must use what power it has, such as the designing of its own Shoreline Management Program, to maximize its ability to carry on a successful community development process and to create a viable local investment climate.

Each local community is a unique creation, with certain locational advantages, certain habits of mind created by historical forces, and certain opportunities for the future. Of the several kinds of land environments with which Shoreline Management Programs must deal (eg., urban, rural, conservancy, and natural), it is easy to see that not all communities

contain all such environments. Similarly, while any community is a mixture of economic usages, not all forms of economic activity are present in any one community. Of greater interest is the idea that many communities still have basic economic choices to make.

These basic economic choices, for those communities involved, appear to lead to three forms of development:

1. toward greater use by industry;

2. toward greater use as a recreation/vacation center;

3. toward greater densities of urban/residential uses.

Many of the controversies connected with coastal zone or shoreline management are concerned with the ultimate economic impact of allowing such development to take place. For example:

a. The Guemes Island and Port Susan controversies on Puget Sound*

b. The question for the Island of Martha's Vineyard off Massachusetts as to whether it should be opened up for summer use by the 20 million people within half a day's drive or retained as an area hard to reach and currently devoted to extremely low levels of development

c. The question in Seattle as to the appropriateness of high-rise residential developments anywhere in the city and especially along or overlooking shorelines.

Not all communities face such major irreversible choices; those that do rarely think of the total economic consequences, in terms of the three-part local investment climate described above, before they are forced to react and before they submit documents such as Shoreline Master Programs.

Most communities, however, are faced with a series of comparable choices on a much smaller scale. It is worth noting that most communities, as attested by analysis of land-use zoning ordinances over the past four or five decades, beg the question of how much development should take place in what part of town. The technique used to get out of making such a determination is to (a) overzone, placing far too much land in a given zone than the local economy could ever be expected to employ productively, or (b) leave land zoned for general use (or not zone it at all), relying on some market force at some future time to suggest how the land should be used. (Seattle is an example of the first condition, Pierce County of the second.)

---

* Peter Harrison, "The Application of Benefit-Cost Analysis to Problems of Local Industrial Development: Two Cases in the Puget Sound Region," 10 East Lakes Geographer 1-17 (May 1975), reprinted in Bish, et al, Coastal Resource Use: Decisions on Puget Sound, UW Press, 1975

In short, a clear perception of how the future community should function and how it should look is prescribed to assure a sound local investment climate. Based on those clear perceptions, after the community makes its basic economic development choices, investors can have confidence, and local officials can get on with the job of providing public services.

Nothing damages the local investment climate more than uncertainty. Uncertainty can be endemic, as with a community that cannot make up its mind about its future shape, or temporary, as has been the case in California (and to limited extent in Washington) as the laws concerning shoreline development and coastal zone management get tested, an uncertainty fostered by differing interpretations on similar situations within the same jurisdiction. Among the temporary effects of such uncertainty are:

> Lending institutions retire temporarily from the area.
>
> Delays in an inflationary period add to investors' costs.
>
> Some projects, both residential and industrial in nature, are abandoned.
>
> Conditions in the land market become unstable, and valuation of property for any purpose becomes exceptionally difficult. (Note 2)

The public economy is also subject to such turbulence:

> The investment sector in the national or regional income and product accounts, including building, is cut back, possibly augmenting deflationary pressures.
>
> Local property tax calculations by local governments, basing their budgets on assessments of private property, become subject to important changes. (Note 3)

Economic effects of the kind sketched out above are, at best, only short-term phenomena, and, at worst, only part of transitional interludes between ancient forms of less stringent controls and a future time when environmental controls are an accepted part of the investment cycle. The long-term view of the economic impact of shoreline management must take its place along with the analysis of the short-term effects during the period of conversion.

The consensus in articles discussing land-use controls in California, Oregon, Vermont, Maine, and other states with legislation similar to Washington's, is that the situation has been too variable and the time too short to allow anything but speculative concepts to be aired. The results that have been noted suggest confusion but not crisis, and disagreement but not disaster. This "interim period" in the history of Shoreline Management in Washington State is a good time for local officials to reconsider the economic assumptions of the programs they have submitted.

WHAT IS INVOLVED IN ANALYZING THE ECONOMIC IMPACT OF A SHORELINE MANAGEMENT PROGRAM?

Less attention than deserved has been given, in recent years, to the economic and social aspects of governmental programs and private projects. This statement applies, for instance, to highway, urban renewal, and industrial development programs in the broad field of community development as well as to energy, coastal zone, and forest-practice programs in less densely populated areas. Finding appropriate and adequate tools to evaluate regulatory programs is a major, and perhaps the most important, challenge to the whole field of public administration and planning.

A most promising method of accounting for the merits and disadvantages of a public decision is to deal as explicitly as possible with all the costs and benefits imaginable, even if many of the quantities cannot be estimated accurately and even if only the crudest of assumptions can be made as to peoples' preferences. So must it be with the economic impacts of coastal zone management. The important elements of this new method include:

a listing of all the types and individuals and groups affected;

a listing of all the costs and benefits, both those easily quantifiable in monetary and nonmonetary units, and those only sensed with some degree of priority;

an assumption that longer-term costs and benefits should be converted into present values (by discounting, where possible, using clearly identified, albeit arguable, rates of discount).

As a start in the direction of applying modern methods of cost-benefit analysis, however, the table below sketches out in a crude fashion, as befits an initial attempt, a few of the most easily identified actors and impacts in coastal zone controversies.

Economic Impacts of Shoreline Management

Those Affected	Costs	Benefits
Private Sector: For-profit firms Individual owners Not-for-profit groups Lending institutions	added costs of development from delays and extra requirements deflated values and loss of investment opportunity	added assurance of long-term investment values
Public Sector: Federal agencies State agencies Special districts Local general governments	cost of administration cost of "taking" loss of taxable values	direct control/ownership of important lands long-term enhancement of property-tax base
The Public Generally: Occupants of shorelands high-income groups low-income groups Non-occupants of shoreland high-income groups low-income groups	direct costs not borne by others higher costs for use of shorelands	"free ride" for costs put on others Greater access to shorelands Better design of areas and projects Non-degradation of the environment

"Impact analysis" generally and cost-benefit analysis specifically are in their infancy, and little agreement has as yet been reached about how far the analysis should extend to include different groups that are affected to some degree, however lightly.

As one example, researchers in California came up with the following list of categories of interest in coastal zone affairs and in the ways in which social equity is affected by shoreline management programs:*

I. Organized Groups
   A. Public Organizations
      1. Local (recreation, conservation, ad hoc, development)
      2. State Wide (recreation, conservation, ad hoc, development, historic)
   B. Local Property and Homeowners Associations
   C. Industry and Commerce Organizations
   D. Labor Organizations
   E. Professional Organizations
   F. Governmental Organizations
   G. Educational and Research Institutions
II. Unorganized Groups
   A. Beach Recreationalists
   B. Out-of-State Tourists
   C. Ethnic Groups

In addition to the problem of identifying those affected, there is the problem of measuring the impact of a local program, with disagreement as to the dollar costs or benefits where the impact can reasonably be expressed in such units, and even greater disagreement when the impact cannot be measured in dollars (for example, inconvenience, or inequity). A substantial literature is building up on these questions but is beyond the scope of this essay. (Note 4)

In recent practice, a form of cost-benefit analysis has been imbedded in the environmental impact statements that, formally or informally, have had to be written for adoption and approval of shoreline management programs. While it might appear that many of the questions which must be answered in environmental impact statements relate to ecological or sociological factors that do not seem to involve economic issues, it is the concept of the local investment climate, as discussed in the previous section, that brings all of the factors together in terms of a total impact on the local economy. In short, is this a good community to be in? If not, both its private and its public finances will suffer in the long run.

It is thus in the interests of the local community to use cost-benefit analysis as one of the more promising ways of spreading out, for all to see, the ultimate consequences of decisions concerning shoreline management in the context of community development. In the next section, we discuss some of the implications of choices that can be made about the extent of public land and the extent of public intervention in the matter

---

* Dickert, T. and J. Sorensen, "Social Equity in Coastal Planning," 1:2 Coastal Zone Management Journal 141-150 (Winter 1974)

of residential development as factors that might be considered in the community's cost-benefit analysis of its development programs.

WHAT ECONOMIC CRITERIA ARE APPLICABLE TO LANDS THAT MIGHT BE TAKEN FOR PUBLIC USE ?

We shall deal in this last section with the community's policies concerning land ownership and development, with special reference to public rights and ownership. Three areas are discussed below:

a. inverse condemnation of private property rights;

b. purposeful acquisition of private property rights;

c. techniques for the control of growth.

(a) Inverse condemnation of private property rights

Other speakers in this workshop will have dealt with the legal aspects on the point at which public regulations become confiscatory and hence compensable as a taking.

The point to be made here, however, is that the community's need for a consistent, comprehensive, and effective development program as the foundation for a sound and equitable local investment climate may make it desirable, in economic terms, to press for assistance from the state (if local powers are inadequate) to acquire the property that has been the subject of an inverse-condemnation suit.

(b) Purposeful acquisition of private property rights

In most communities, the local government is usually the largest landowner. Streets, parks, educational and cultural and administrative buildings, garbage and sewage disposal facilities, and other forms of public enterprise and responsibility surround private property and, indeed, give it its value.

The question then is how much further the long arm of the community should stretch toward greater public ownership of rights-of-way, easements, and lands themselves, the criterion being the public purpose as expressed in the overall development plan. Consider some of the definitions in Seattle's Draft Shoreline Master Program:

Public benefit
> An advantage or return, in monetary or nonmonetary terms, accruing to the public generally in health, welfare, public safety, and social gain including improvement of the city's economic base, from a given action.

Public access
> See also regulated Public Access and Visual Access
> Permission, liberty, or ability for the public to enter onto and see across public or private property in order to enjoy the shoreline and adjacent waters.

Regulated public access

See also Public access, Visual access

Provision by a private owner, by easement or other legal agreement, of substantial walkways, corridors, plazas, transient moorage, or other areas serving as a means of view and physical approach to public waters, and limited as to hours of availability, location and area.

Scenic values

Those visual qualities of an area that are attractive to viewers.

Visual access

Nonphysical access: the ability to see a location, site or area as part of a view.

In other words, there are public benefits that cannot be expressed in monetary terms, yet the impact on the local economy in terms of support for neighborhood property values may be extremely high. It might even be possible to calculate how property values will change if an access to a beach is lost or newly purchased, if a favorite view is preserved or lost behind a large new structure, or a new marina created.

It is one thing to adopt a sensibly brave program to preserve, at no cost to the community, such vistas and access points as now exist. It may be equally sensible but require more bravery on the part of public officials to articulate and undertake a program to pay out cash or forego revenues to purchase such easements or the necessary land to implement a long-range community plan. And there are many examples of private property rights that are leased to a community for a long term of years to accomplish such purposes, as well as easements given the community as part of the bargaining for the issuance of shoreline conditional use permits.

(c) Techniques for the control of growth

It is not easy for a community to stimulate economic growth, but an imaginative and carefully framed community development plan, with its coastal zone component, may help. The more contentious situation at the present time is the community that seeks to preserve its own life style, to minimize the need to play host to strangers, and to stretch its capacity to provide public facilities, roads, utilities, schools, and other benefits.

Underlying any Shoreline Management Program or community development plan are a set of assumptions about the future size and characteristics of the population. The question of which techniques to control growth will pass inspection by the courts is still unanswered: such famous cases as Petaluma and Ramapo and even Mount Laurel have not yet become firm guides (a useful summary of such cases is found in the Falk-Franklin study listed in the attached bibliography).

However, it can probably be said: (a) that the total amount of future new construction in a community can be somewhat limited even in the face

of real market pressure (as in Petaluma and Ramapo) so long as the overall development program is reasonable, unless (b) there is a clear pattern of economic or racial discrimination (as in Mount Laurel), but (c) programs to ration the amount of building in a community in a given year will probably require property-tax abatements for owners in areas where no permits are allowed temporarily (as in Ramapo). These are national patterns; Washington courts might rule differently in specific instances.

The situation appears to be one where trade-offs are permitted between economic and social needs, for instance, as well as between economic and environmental values. The real key, of course, is the validity of the overall community program to which reference has been made above, but there is another dimension to the concept of trade-offs that is worth mentioning here.

The other kind of trade-off is known by various names: TDR or Transferable Development Right systems, or windfall-and-wipeout schemes. The basic problem is that, given a limited amount of development that will be allowed in a community that did not have a strict set of controls in the past, some landowners will have windfall gains (if their property happens to be in the selected zone) and other landowners have their hopes of economic gain from development wiped out by the new regulations. The game is to arrange for the windfall group to compensate the wipeout group. Unfortunately, however good the idea and however persuasive the articles and books in which it has been presented, no experience with such systems has yet been documented, but it remains an idea to be contemplated for possible use in the Shoreline Management Programs being framed in Washington State. (Note 5)

The Shoreline Management Program in any community is a form of growth control, and the economic consequences of growth control are manifold, both directly in terms of development activities, indirectly in what they say about the quality of life foreseen for the community, and again indirectly in terms of legal settlements on the taking issue and in impositions of the public finances. Thus, if not already done in a given community, economic studies of the implications of the local Shoreline Management Program are necessary foundations for economic strategies to enable community development programs to succeed.

NOTES

1. For those interested in the current situation in Washington, reference may be made to a collection of materials that deal directly with that subject, including:

(a) A study by Kathy Groves Carssow, "Washington's Shorelines Management Policy, as Implemented through the Decisions of the Shorelines Hearings Board," Department of Urban Planning, University of Washington, June 1975.

(b) "Chronology of Events Relating to Washington State Shoreline Management, 1967-72", prepared by K.G. Carssow, University of Washington.

(c) Department of Ecology, State of Washington, "Status of Master Program for Cities and Counties," an inventory of Shorelines Master Programs as of April 9, 1975.

(d) Department of Ecology, State of Washington, "Final Guidelines, Shoreline Management Act of 1971, as of June 20, 1972"

2. For good discussions of the California situation, see Healy (1974) and the articles listed from the California Real Estate Magazine (Feb. 1975).

3. See "County Assessor and Real Estate Appraiser Shoreline Management Property Value Study," by Larry A. Jones, CSP 384-6, St. Martin's College, Internship Report to Shoreline Management Section, Washington Department of Ecology (Mr. D.G. Tucker), 1974.

4. A number of excellent studies of cost-benefit analysis and the problem of handling nonquantifiable factors are in print, but a useful start can be made by reading of Larry Cottrill, Intangible Benefits and Costs: Their Meaning and Treatment in Select Plan Evaluation Techniques, Master's Thesis, Department of Urban Planning, University of Washington, 1975.

5. Reference is made here to Hagman (1974), Marcus (1970), and the Burns/Council of Planning Librarians Biblio. #775.

SELECTED BIBLIOGRAPHY

Burns, H., 1974, "Development rights transfer-introduction and bibliography," Council of Planning LIbrarians Exchange Bibliography #775.

California Real Estate Magazine, February 1975: including the following:
Gillies, D., "An overview: California land use legislation"
Hagman, D.G. & D. Misczynski, "The quiet federalization of land use controls"
Pach, D.M., "The taking issue"
Johnson, M. Bruce, "Priacy on the coast"
Weaver, C.A., "The commission takeover".

Cottrill, Larry, 1975, "Intangible benefits and costs: their meaning and treatment in select plan evaluation techniques", Masters Thesis, Department of Urban Planning, University of Washington.

Crooks, Geoffrey, 1974, "The Washington Shoreline Management Act of 1971," 49 Washington Law Review 423.

Falk, David & Herbert Franklin, 1975, "Local growth management policy: A legal primer," The Potomac Institute, Washington D.C..

Hagman, Donald, "A new deal: Trading windfalls for wipeouts," Planning 9-13.

Healy, Robert G., 1974, "Saving California's coast: The coastal zone initiative and its aftermath," Coastal Zone Management Journal 1 (4): 365-394.

Marcus, Norman & M.W. Groves, eds., 1970, "The new zoning: Legal, administrative and economic concepts and techniques," Preager, N.Y.

Thomas, J.G., 1973, "Environmental legislation in California and its relationship to private real estate development." Appraisal Journal 504.

U.S. Interagency Land Acquisition Conference, 1973, "Uniform appraisal standards for federal land acquisitions," Supt. Docs., USGPO, Washington, D.C.

(and see the material on Washington State conditions in the Preface to this paper)

SHORELINES MANAGEMENT: LEGAL AND ECONOMIC STRATEGIES

Ralph W. Johnson and Sid Farey[*]

LEGAL STRATEGIES -- RECENT CASE LAW AND LEGISLATION

This outline is intended to give you a basic grasp of the law as it pertains to shoreline uses. The outline is divided into four major sections, the first of which sets forth the leading Washington cases defining the rights to use the water surface for recreation and navigation, to fill and build on the submerged lands, to walk on tidelands and dry sand areas. The second section briefly outlines the Shoreline Management Act (SMA) and its impact on prior case law. The third section discusses leading cases interpreting the SMA, while the final section notes recent legislative changes in the act.

PRE-SMA CASES

A. Introduction. Prior to the Shoreline Management Act the public and private rights in the surface and shores of a body of water often hinged on whether or not that body of water was navigable. The law is replete with definitions of navigability, but the one of importance here is whether or not, on the date of statehood, the water was usable by "customary modes of trade or travel on water" in its natural and ordinary condition. For a discussion of this "title navigability" test, see Johnson and Austin, Recreational Rights and Titles to Beds on Western Lakes and Streams, 7 Natural Resources J. 1, 8-33 (1967). The consequences of a finding of title navigability are two-fold: (1) there is a dominant public right of navigation in such waters; (2) the state holds title to lands below the high water mark (line of mean high tide) unless it has alienated it or it was patented by the U.S. prior to statehood. If, however, the body of water is non-navigable, the upland owners own the bed and thus, only the upland owners and their licensees may use the water's surface. Because of state access roads to many lakes and streams the public usually has a right of use, as licensees of the state.

B. Non-navigable waters. 1. Snively v. Jaber, 48 W.2d 815, 296 P .2d 1015 (1956). Plaintiff was a littoral subdivider on a non-navigable lake. Defendant owned a resort on the lake and rented boats to the public, some members of which trespassed on plaintiff's land and otherwise created a nuisance. Plaintiff sought an injunction prohibiting the renting of boats and the anchoring of defendant's rafts, etc., over that portion of the lake bottom, which plaintiff owned. The trial court enjoined boat rental for two years, reasoning that at the end of that time plaintiff's lots would be sold and that since there was no evidence that occupied land was interfered with, plaintiff should be sufficiently protected. The trial court refused to enjoin the use of that portion of the lake claimed by plaintiff. On appeal, the court sustained the

[*]*Respectively, Professor of Law, University of Washington, and Graduate Law Student.*

injunction against defendant's unreasonable exercise of his riparian rights. The court also stated that granting the littoral owner the exclusive use of that portion of the lake overlying his submerged lands would be inappropriate and instead held that "with respect to the boating, swimming, fishing and other similar rights of riparian properietors upon a non-navigable lake, these ... are owned in common, and that any proprietor or his licensee may use the entire surface of a lake so long as he does not unreasonably interfere with the exercise of similar rights by the other owners. For a general discussion of rights in lakes and streams see Johnson, "Riparian and Public Rights in Lakes and Streams", 35 Washington Law Review 580 (1960).

2. Botton v. State 69 W.2d 751, 420 P .2d 352 (1960) and Ames Lake Community Club v. State 69 W.2d 769, 420 P.2d 363 (1966). In each case the state, through the Department of Game, became a littoral owner on a small, non-navigable lake and opened public access to that lake. Members of the public abused the privilege and frequently trespassed on the land of other littoral owners and otherwise created a nuisance by their numbers and their activities. Based on the rule of reasonable common use announced in Snively, the court held the use made by the state's licensees to be unreasonable and enjoined public access until the state could provide a plan for the controlled operation of its property which would protect the rights of other littoral owners.

3. Bach v. Sarich 74 W. 2d 575 (1968). Defendant placed a fill in his portion of a non-navigable lake on submerged lands zoned "commercial general" by Seattle. Defendant argued that the zoning classification constituted a determination that general commercial uses of the lakebed, such as his apartment building, were "reasonable" uses, as that term was used in Snively. The court disagreed, holding that placing an apartment on fill was not a riparian use since an apartment is not a water-related activity. Nor did zoning render the use reasonable, since the city could not divest plaintiffs of their right to use the entire surface of the lake unless it paid just compensation. Defendant was ordered to cease construction and to remove its fill. See Johnson and Morry, "Filling and Building on Small Lakes"... 45 Washington Law Review 27 (1969) for a more detailed discussion of the issues involved in this case.

C. Navigable Waters. 1. Kemp v. Putnam 47 W.2d 530 (1955) Defendant interfered with public fishing on the Quillayute and Bogachiel rivers. Plaintiffs sought to enjoin such interference. The court held that the streams' seasonal capacity to float logs was sufficient to render them navigable and thus, that defendant could not interfere with the public right to fish below the high water mark. However, the court pointed out that the right to fish a navigable stream does not entitle one to trespass over privately held lands to reach the stream nor does it grant a license to trespass on the privately held banks of the stream while fishing.

2. Wilbour v. Gallagher 77 W. 2d 306 (1969) the "Lake Chelan decison." Defendant owned lands lying between the high and low water marks of navigable Lake Chelan. Other littoral owners objected when defendant began to fill this land, thus drastically

reducing their access to the lake. The court ordered defendant to remove his fill as an interference with the public rights of navigation and recreation in navigable waters.

D. Tidelands. 1. A Washington Attorney General's advisory opinion, 1970 A60 No. 27, indicates that the public may have a recreational easement in the area between high and low tide on ocean beaches. This conclusion is reached by interpretation of Washington Constitution Art. XVii Section 1 and the Seashore Conservation Act (RCW 43.51.650 et seq, see also RCW 79.16.170 et seq.)

E. Dry Sand Area. 1. State ex rel. Thornton v. Hay 462 P.2d 671 (1969). An Oregon case holding that by long-standing custom the public has a recreational easement in the dry sand area (above high water) of Oregon ocean beaches.

2. 1970 AGO No. 27 indicates that the reasoning of Hay applies with equal force to the dry sand area of Washington's ocean beaches, except for those within the Quinault Indian Reservation.

F. Implied Dedication. 1. Gion v. Santa Cruz 465 P.2d 50 (1970). A property owner's acquiescence to public use for the prescriptive period maybe implied under two circumstances: first, if the idea that the use is by license (revocable permission) is negated; or second, open and continuous use by the public is shown. Undereither circumstance an implied dedication of the land in question to public use will result. Implied dedication focuses on the intent of the land owner; thus the purpose behind showing long-term public use is to raise a presumption of the owner's knowledge of the use and his acquiescence to it.

In Gion long-standing public use was shown to imply the dedication of a beach area. The court also stated that in order to generate an implied dedication the public must treat the area in question in the same manner as any other piece of public property. A weighty factor in the case was the municipality's maintenanceof the area. For a brief comparison of implied dedication and the custom doctrine, see "California Needs Beaches - Maybe Yours'" 7 San Diego Law Review 605 (1970).

2. City of Spokane v. Catholic Bishop of Spokane 33 W.2d 496 (1949). While this case does not involve shoreline activity, it does illustrate the Washington view of dedication, whether express or implied. In order for a dedication to become irrevocably binding there must be an offer (which may be implied by acquiescence) and an acceptance (either by continuing public use, express official acceptance, acceptance implied by public maintenance). The case also illustrates the confusion in this area by noting that most Washington cases of prescriptive easement contain an element of implied dedication as well.

G. Prescription. Group Harbor Commercial Co. v. McCulloch 113 W. 203 (1921) While implied dedication focuses on the land-owner, prescription (adverse possession) focuses on the acts and intent of one challenging the owner. McCulloch involved an individual who obtained title to tidelands by placing fishing gear, pilings, etc., on the land and driving away others whom he considered to be trespassers. Most

adverse possession cases contain the key words "actual, open, notorious, exclusive, continuous and hostile". Briefly, these words mean that the occupancy of the land must be such that it should put the owner on notice about the adverse claim.

THE SHORELINE MANAGEMENT ACT

A. The Statutory Framework (see 49 Washington Law Review 423 (1974)).

1. While the Department of Ecology is responsible for the preparation of guidelines to aid local government in the development of master program, the focus of the act is on the local level. Local governments develop master plans in the planning stage and implement these plans through the substantial development permit system.

2. Master programs developed by local jurisdictions form the backbone of the act. DOE guidelines require that master plans be developed with consideration of four major use classifications, natural, conservancy, rural and urban. Once effective, the master programs constitute use regulations for the various shorelines of the state.

3. The substantial development permit requirement is the major regulatory tool under the act. Subject to specific exceptions, any activity within the area subject to the act which exceeds $1000 in total cost or fair market value [and which has an impact on the use of the waters or creates value] requires a permit which is issued subject to the criteria of the DOE guidelines (prior to master program approval) or the master program (after DOE approval). The permit process takes a minimum of 83 days.

4. Rulings on the issuing of permits may be appealed to the Shorelines Hearing Board by the Attorney General (AG) and DOE (within 45 days) or by "any person aggrieved" (within 30 days) of DOE or the AG certifies that such person has valid reasons. Board review is subject to the administrative Procedure Act.

B. The Impact of the SMA on Prior Case Law

1. The SMA supplants Wilbour so far as fills, etc., in navigable waters are concerned. RCW Section 90.58.270 expressly grants state consent to the impairment of public rights in navigable waters caused by the retention, maintenance, etc., of such fills, docks or developments placed in navigable waters prior to December 4, 1969.

2. The SMA does not affect the rules applicable to non-navigable lakes which are set forth in Snively and Bach.

3. The SMA does not affect common law dedication or prescription unless the new use conflicts with the master program. (Note: adverse possession does not run against a municipality.)

CASES UNDER THE SMA

A. Eastlake Community Council v. Roanoke Associates, 82 W. 2d 475 (1973). This case was essentially decided under the State Environmental Policy Act (SEPA), since the action in question took place prior to the effective date of SMA. The case held that failure to issue and evaluate an environmental impact statement prior to renewing a building permit was fatal to continued construction of an over-the-water condominium. Assuming that SMA necessarily incorporates the SEPA requirements for impact statements, the result would be the same under either act.

B. Ballard Elks Lodge No. 827 v. Department of Ecology, 84 W.2d 551 (1974). For purposes of judicial review the findings of the Shoreline Hearings Board are considered quasi-judicial and thus subject to the "clearly erroneous" test. The great weight given to SHB decisions necessarily detracts from the amount of power wielded by local government.

C. Juanita Bay Valley Community Association v. City of Kirkland 9 W.App. 59 (1971). This case involved a challenge to the issuance of a grading permit. Such permits were previously available as a matter of right and the defendant city therefore reasoned that the environmental impact statement required under SEPA was not necessary. The court disagreed, holding that the SEPA requirements are mandatory and thus transform a ministerial duty into a discretionary one by introducing environmental considerations to the process. The case also illustrates the power of DOE to delineate the geographic limits of the act through its rule-making function. DOE designation (or non-designation) of an area as "associated wetlands" is conclusive unless arbitrary and capricious or an abuse of discretion.

D. Merkel v. Port of Brownsville 9 W.App. 844 (1973). A project consisting of marina expansion and the development of incidental services involved both uplands beyond the reach of SMA (but subject to SEPA) and tidelands subject to SMA. The court held that such a project should be treated as an intergrated whole rather than in a piece-meal fashion. Thus, even though uplands development was authorized under SEPA, actual clearing was enjoined pending issuance of a substantial development permit for the shore area.

RECENT LEGISLATIVE CHANGES

A. Substitute Senate Bill 2443. (Ch. 182, Laws of 1975, E.1)

1. The bill amends the definition of associated wetlands to explicitly include flood plains, but limits the management width of such flood plains to 200'.

2. The exemption from the substantial development permit requirement which previously was granted only to barns and other designated structures was extended to agricultural practices and irrigation works generally.

3. The bill clarifies the application of the Washington Administrative Procedure Act to regulations promulgated under SMA. The bill clearly states that WAPA applies to DOE regulations only.

THE "TAKING" ISSUE--AN OVERVIEW

*Harold H. Green**

There are so many ramifications of the "taking" issue that it is difficult to know just what it is. Consider these caveats;

> The degree to which the Government may interfere with the enjoyment of private property by exercise of its police power without having to pay compensation is not a simple question.
> Union Oil Co. of California v. Morton (9th Circ. 1975)

> There is no set formula to determine where regulation ends and taking begins. Goldblatt v. Hempstead (U.S. 1962)

> The judicial calculus involved (in taking decisions) is described in a variety of unilluminating ways.
> Van Alstyne, Southern California Law Review.

So far, the courts have dealt with individual cases and specific aspects of the "taking" issue. Broad terms and definitions are needed and should be forthcoming from the legislative branch. (During the discussion period, this was a debatable point among panelists, not all agreeing that it should be left to the legislature. The general feeling was that it should not be left to the courts, however, on a case by case basis. It was also pointed out that some of the ambiguity of the taking issue probably stems from insufficient groundwork on the part of prosecutors and expert witnesses in failing to prove such things as diminution of property values.) Some significant issues emerging from law include:

- the importance of changing circumstances in a complex world;
- increasing knowledge, particularly pertaining to the environment;
- the emerging concept of the interrelationship of property interests;
- the application of the diminishing value theory;
- determination of whether regulation is aimed at creating a public benefit or preventing a public harm;
- the role of the public trust doctrine in the "taking" issue.

HISTORICAL PERSPECTIVE

American law is based on English common law. Chapter 39 of the Magna Carta reads: "No freeman shall be arrested, or detained in prison, or deprived of his freehold, or in any way molested; and we will not set forth against him nor send against him, unless by the lawful judgment of his peers and by the law of the land." (Emphases added)

* *Attorney, MacDonald, Hoague and Bayless, Seattle.*

Nevertheless, there have been many stringent regulations both in England and pre-Constitutional America on the uses of land without any thought of compensation.

Prior to 1922, in order to prove under common law that a "taking" had occurred, it had to be shown that the property was either acquired by government or destroyed. If neither of these conditions occurred, there was no question of requiring compensation.

Examples:

(1) Magna Carta regulations required people to build party walls, replace thatched roofs with stone roofs, keep pigs out of the streets, and a number of other restrictions on citizens' use of their property. But there was no question that the King's exercise of power amounted to a "taking," as these regulations promoted the public welfare.

(2) In 1580 Queen Elizabeth promulgated a land use regulation in London prohibiting all construction within three miles of the city, whose population had grown at an alarming rate. This growth caused problems in providing adequate roads and public services, and further increased the danger of the spread of plague. Again, though the landowners were prohibited from using their property to build upon, there was no question of infringement on property rights.

(3) Shortly after Queen Elizabeth's land use regulation, Parliament adopted a large-lot zoning ordinance, not too different from some we have in this country, limiting construction to one building per four-acre lot. Again, no problem of "taking" under the doctrine of the Magna Carta emerged.

In sum, according to English law, as long as regulations were designed to create a public benefit, or to prevent a public harm, and there was no actual moving onto the land by government, or any physical destruction of the property, there was no question of compensation.*

The colonists brought many of these concepts to America; and there are many instances in colonial times of land use regulations that, today we would no doubt consider "takings." The Virginia House of Burgessess, for example, adopted an ordinance stating that certain farmers had to grow so much corn, or their tobacco crops would be confiscated--the idea being that, if free market conditions were left on their own, everybody would grow the more profitable tobacco--everybody would smoke and nobody would eat!

Neither the original American Constitution nor many proposed amendments contained a compensation clause. Finally, the Federalists directed James Madison to draw up a Bill of Rights (which became the first 10 Amendments to the Constitution) in which he included the clause that men

* The exceptions were government seizure and use of land due to exigencies of wartime without compensation.

cannot be deprived of their property for public uses without their own consent or that of their representatives. But even there, the legislature, as representative of the people, could take property. In a later draft he added the phrase "...nor shall private property be taken for public use without just compensation." (5th Amendment)

The Bill of Rights was adopted by Congess and ratified by the states with very little discussion, so there is a dearth of knowledge as to exactly what the framers of that phrase intended.

> Is it possible that the just compensation clause was incorporated into the Fifth Amendment solely because it was one of a series of rights discussed by Blackstone (an early commenter on English common law) even though the draftsmen of the Fifth Amendment had no particular grievance with specific takings of property?" *

PRE-HOLMESIAN VIEW OF THE TAKING ISSUE

(1) Mugler v. Kansas (123 U.S. 623, 1887). Mr. Mugler had built a brewery in Kansas, and was doing a thriving business when the state of Kansas passed a prohibiton law against the manufacture and sale of all alcoholic beverages. His property became virtually worthless. In finding for the state of Kansas, the U.S. Supreme Court decided that regulation pursuant to exercise of the police power does not constitute a "taking" where there is no physical invasion by government, even though that regulation renders the property worthless. The Court's decision invoked the "doctrine of implied obligation," whereby property cannot be used for purposes injurious to the public welfare. Because of the Kansas prohibition act, a lawful business was turned, virtually overnight, into a "public nuisance." The fact that it could be abated without compensation was based on its being a nuisance.

(2) In Hadacheck v. Sebastian (239 U.W. 394, 1915), a broader interpretation was handed down than in the Mugler case. Mr. Hadacheck had operated a successful brickyard for many years before finding the city of Los Angeles expanding around his property. The City, by then encompassing about 108 square miles, passed an ordinance prohibiting brickyards in a three-square-mile downtown area, which included Hadacheck's property. He continued to operate the yard and was jailed. He sued, and his case wound up in the U.S. Supreme Court. There, the court said that while he was entitled to remove the high grade of clay from his property, he could no longer make bricks there. Since hauling the clay elsewhere for manufacture was prohibitively expensive, his property, like Mugler's was rendered virtually worthless. The court found that, since he was not prohibited totally from use of his property, the ordinance did not constitute a "taking," but was a perfectly legitimate exercise of the police power. This was a high water mark in police power cases. The court stated: "It is to be remembered that we are dealing with one of the most essential powers of government, one that is the least limitable." So in a Constitution which consists of limitations of governmental power, apparently the power that can be least limited is the police power. The portion of the Constitution that purports to limit the police power is the "taking" clause. The Supreme Court also stated in this case that private

* Council on Environmental Quality, The Taking Issue, Washington D.C., 1974, p.103

interests that at one time were lawful must not get in the way of progress--in this case community growth: that if they do, they must yield to the good of the community. In the court's findings, no mention was made of the "nuisance" issue; a once lawful business was now considered a harm to the public, and therefore the ordinance was a proper exercise of police power.

In sum, the pre-Holmesian Supreme Court concept of the "taking" clause held that if government came onto property and acquired it, or destroyed it by permanent flooding or tearing down construction, and if that property was not a public nuisance, then the owner would receive compensation.

THE HOLMES DECISION

Pennsylvania Coal Co. v. Mahon (260 U.S. 393, 1922), by the late 1800s, Pennsylvania Coal Co. had mined coal for about 200 years. Retaining the right to mine coal, the company began selling its rights to the surface lands to the public. But the deeds carried a waiver by the land buyers of any subsequent damages, at any time in the future, due to the mining operations.

In 1921 the Pennsylvania legislature passed the Kohler Act, which said that mine companies could mine all the coal they wished, as long as these operations did not cause a problem of land subsidence. This was in response to a problem that had already begun throughout the mining regions of the state, where advanced technology allowed much faster removal of coal and a consequent settling of surface lands. The companies were further directed to notify landowners if their properties were endangered. Mahon, who had bought a house on such a piece of land, was notified by the company that he had 15 days to move before his home fell into a hole. He brought suit, which went to the U.S. Supreme Court.

This case was a watershed for the majority decision written by Mr. Justice Oliver Wendell Holmes. In finding for Pennsylvania Coal, Holmes left two tests for the "taking" issue:

First, his "Balancing Test" states, "The general rule at least is, that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking." Public interest, in this case the mining of coal, accomplished by regulation must be balanced against the harm done to the property owner by that regulation, in this case, the loss of his property. He also said the Balancing Test was one of degree, to be decided on a case by case basis.

Second, the "Diminishing Value Test" states, "One fact for consideration in determining such limits is the extent of diminution. When it reaches a certain magnitude, in most if not all cases, there must be an exercise of eminent domain and compensation to sustain the act." If a regulation substantially diminishes the value of property, even though the police powers are otherwise quite reasonable, it constitutes a taking.

The majority opinion did not mention either Mugler or Hadacheck, the two leading cases on the "taking" issue up to that time. Even though it was admitted that the regulation destroyed previously existing property rights, the real question was whether those property rights were causing a public harm.

Holmes looked at the case as the problem of one house--Mahon's--when in fact his was only one of many houses succumbing to land settling all through the region. This has relevance to many of today's cases, especially those involving estuaries, where one property owner may be allowed to fill his portion of the estuary but another may be prohibited from filling. In fact, it is a regional problem requiring a regional solution.

The Pennsylvania Coal decision put a different interpretation on "progress" from that found in the Hadacheck case. In this case, progress consisted of extracting natural resources from the ground, and private interests such as Mahon's must get out of the way of progress.

Holmes also enunciated his opinion that "the legislature is entitled to the greatest weight"--an issue of contemporary importance in today's environmental litigation, where legislative findings have such authority. Unfortunately, however, having enunciated it, Holmes gave very little weight to the Pennsylvania legislature's Kohler Act.

The Holmes decision generally left it up to the states and lower courts to wrestle with the problem, and case law is rife with contradictory findings on the same basic issues.

POST-PENNSYLVANIA COAL DECISIONS

Even the U.S. Supreme Court has contradicted itself: "...The zoning ordinance is a constitutional exercise of the police power..." (Euclid v. Ambler Realty Co., 272 U.S. 363, 1926). "...Loss to private property owner outweighs value to the public and zoning classification is held unconstitutional." (Nectow v. Cambridge, 277 U.S. 183, 1928).

A pertinent part of Ambler, not found quoted in any environmental decisions but of interest to planners, includes: "Building zoning laws are of modern origin; they began in this country about 25 years ago. A hundred years ago urban life was fairly simple, but with the increases in urban population there is a continual requirement for restrictions on the uses of private lands in urban communities...For while the meaning of Constitutional guarantees never wavers, the scope of their applications must expand or contract to meet the new and different conditions which are constantly coming within the field of their operations. In a changing world, it is impossible that it should be otherwise."

Miller v. Schoene, (276 W.W. 272, 1928) concerned the Virginia Cedar Rust Act requiring the destruction of diseased ornamental cedar trees in order to protect apple trees, apples being an important economic commodity. The court held that this was not a "taking" to create a public benefit, but was a reasonable regulation to prevent public harm and a valid exercise of police power, therefore not a compensable taking. The Court relied heavily on Mugler and Hadacheck, but made no mention of Pennsylvania Coal.

In the case of debatable questions concerning the public interest and the reasonableness of the regulation, the legislature rather than the courts should decide.

Here, too, cases with similar basic issues have resulted in contradictory findings again pointing up the need for definitions and guidelines to serve governments and the judiciary.

A. Beach and Bay Preservation. Spiegle v. Beach Haven (46 N.J. 479, 218 A.2d 129, 1966). The court upheld a borough regulation requiring beach property owners to put down boardwalks, both for beach access and to help prevent erosion of sand dunes. The regulation also prohibited construction oceanward of an established building line. The court found the regulation a reasonable exercise of police power, both in the negative aspect of prohibiting building beyond a certain line and in the affirmative requirement of boardwalks. Here (not only) was there no compensation paid to the property owners, but they incurred a financial obligation to the public welfare. The court commented on the latter that it was really nothing more than good husbandry with respect to what property owners should do for themselves.

Goldblatt v. Hempstead (369 U.S. 590, 1962). The town of Hempstead, having exhausted other means, passed an ordinance prohibiting the operation of a gravel pit owned by Goldblatt. As with the Hadacheck case, the pit was in the center of town and, after 40 years' operation had become a 20-acre lake, 25 feet deep, around which the town had expanded.

In its decision the court said: "...concededly the ordinance completely prohibits a beneficial use; an existing use to which the property had previously been devoted. However, such a characterization does not tell us whether or not the ordinance is unconstitutional. It is an oft-repeated truism that every regulation necessarily speaks as a prohibition. If this ordinance is otherwise the valid exercise of the town's police power the fact that it deprives the property of its most beneficial use does not render it unconstitutional"--again citing Mugler and Hadacheck. A passing reference to Pennsylvania Coal was made by the court in stating that in some other case the ordinance might be so onerous as to constitute a taking.

This case is important for the Court's reiteration of a three-pronged test for reasonableness of police power: (1) the public interest must require the interference of the regulation; (2) the means must be reasonably necessary for the accomplishment of the purpose; and (3) the means must not be unduly oppressive upon individuals.

Candlestick Properties, Inc. v. San Francisco Bay Conservation and Development Comm. (11 Cal. App. 3.d 557, 89 Cal. Rptr. 897, 1970). Candlestick Properties wished to dredge and fill lands it owned on the Bay but was enjoined from doing so in a case notable for the court's first real reliance on legislative findings in coming to an opinion. The court was faced with conflicting policies: the state's legislature had created a reclamation district on the Bay, stating that an emergency existed in reclaiming the Bay. A contractory policy was embodied in another statute which called for preservation of the present shorelines of the Bay. Candlestick Properties claimed it had a legal right to fill under the reclamation statute, but the court held that the preservation statute was more general in scope and would prevail over the reclamation statute. The court focused on the extensive statement of the

California legislature on the harm that would be done to San Francisco Bay if piecemeal fill operations were allowed. The balance swung toward the public interest in this case, based on the detailed legislative findings, which the Pennsylvania legislature did not include in the Kohler Act.

An important notion arising from the Candlestick Properties cases was that of cumulative impact. If this company only were allowed to fill its small area of the Bay, there would probably be no great harm done; but if others were free to do the same, there would in time be grievous damage to the Bay, and therefore to the public interest.

Unlike the "single house" view in the Holmes decision in Pennsylvania Coal, the appellate court in this case. focused on the regional impact of incremental fill operations in San Francisco Bay.

In finding that the Act establishing the BCDC was a reasonable exercise of the police power, the actions of the Commission could not constitute a "taking." This decision differs from Hadacheck in that the third prong of the three-pronged test--is the regulation too onerous upon the property owner?--need not be applied.

B. Wetlands Protection. Two cases, one in New Jersey and the other in Massachusetts, both involved flood plain regulations where ordinances required that flood plains or marshlands be preserved in their natural state. The New Jersey court (Morris County Land Improvement Co. v. Parsippany-Troy Hills Township, 40 N.J. 539, 193 A.2d 232, 1963) applied the Holmes Balancing Test and found that keeping the land in its natural state simply went too far and that constituted a "taking." Most of the land in question was owned by Wildlife Properties, a noncommercial entity interested in maintaining a wildlife preserve. The court stated that aesthetic considerations can be coupled with other matters of public interest, such as avoidance of flooding, to substantiate a regulation.

In Turnpike Realty v. Town of Dedham (284 N.E. 2d 891, 1972) the Massachusetts court also applied the Holmes Balancing Test, stated that the flood plains regulation was reasonable and did not constitute a taking, since the public harm being prevented (avoidance of flooding) outweighed the harm to the property owner.

Maine and Maryland courts also came to opposite views in wetlands preservation decisions. In State v. Johnson (265 A.2d 711, Maine 1970) the court upheld the state's Wetlands Act as a statute for public purpose. It stated that the preservation of wetlands was not just a local concern, but was of regional benefit to all citizens of the state. Therefore, all citizens of the state should participate in the economic solution to preserve such wetlands. Disallowing the wetlands owner to do anything with his land placed a disproportionate economic hardship on him as an individual.

The opposite view was taken in Potomac Sand & Gravel Co. v. Governor of Maryland (226 MD. 358, 298 A. 2d 241, 1972; cert den. 409 U.S. 1040, 34 L.Ed. 2d 490, 93 S. Ct. 525, 1972). Here the courts also upheld a statute prohibiting any dredging or filling of wetlands as a regional concern, but held that the economic loss, by way of reducing his property value, must be borne by the individual owner.

A case very important to Washington State is Just v. Marinette County (56 Wis. 2d 7, 201, N.W. 2d 761, 1972). Wisconsin enacted a navigable waters protection act, very similar in structure to Washington's SMA. Local jurisdictions were required to enact ordinances to inventory and regulate their shorelines, consistent with the provisions of the state statute.

Mr. Just, who owned marshland designated a conservancy district by the local county, proceeded to fill without applying for a permit. Several important issues arise from this case:

First, the court enunciated that a regulation (such as that governing filling of navigable waters) designed to create a public benefit is a "taking"; one designed to prevent a public harm is a reasonable exercise of police powers. This distinction is a debatable one among lawyers!

Second, the court enunciated, for perhaps the first time in a wetlands case, the relation of the "public trust doctrine" to the "taking" issue. It stated that lakes and rivers in their natural state are unpolluted, but that they are now becoming polluted. The state is the public trustee of these lakes, streams and wetlands, and as such has an affirmative duty not only to protect them from becoming polluted, but to restore them to their natural condition. Therefore, the regulation in question is not only permissible but is required by the public trust doctrine.

Third, the case recognized the notion of the interrelationship of property mentioned by Professor Sax in Taking, Private Property and Public Rights. When you regulate one individual, you confer a benefit on others; when you fail to regulate an individual, you benefit him but impose restrictions on others. In the Holmes decision, had the Kohler Act been upheld, the Pennsylvania Coal Company would have been restricted and a benefit would have accrued to Mahon and others. As it was, the company went unregulated, and therefore Mahon and other property owners sustained a substantial loss.

This notion of the interrelationship of property has important implications for planners and legislators who deal with the "taking" issue as it relates to Shorelines Management.

Finally, the court in the Just case placed a different interpretation on the diminution of value concept, enunciated by Holmes. Holmes did not define a reference point from which to determine the diminished value: Is the reference value the value of the property in its present state?, or its value after it has been converted? In Just the value of the property would accrue to him only after it was converted (in this case filled). The court held that the value to be addressed was its present and potential value in an unconverted state. In comparison with the public purposes under the public trust doctrine and the degree of public harm avoided, the diminution of value was not judged to constitute a taking:

"Value based upon changing the character of the land at the expense of harm to the public rights is not an essential factor, nor controlling."

Two recent East Coast cases also have implications for Washington's SMA. In Sibson v. State (336 A. 2d 239, 5 ELR 20300, N.H., 1975), the court upheld the denial of a permit to fill marshlands, its reasonings similar to those of the Just court.

In Brecciaroli v. Connecticut Commissioner of Environmental Protection (5 ELR 20319, Conn., 1975) the court upheld the state's Tidal Wetlands Act as a reasonable regulation, not a constitutional "taking." As in Candlestick Properties, the court relied heavily on legislative findings that were very detailed and comprehensive. In this instance the findings detailed the interrelationship of the habitats of fish and wildlife, which provide sources of nutrients, and the economic welfare of society. Legislative findings seem to be very significant in the balance in favor of regulation as opposed to "taking."

THE "TAKING" ISSUE IN WASHINGTON STATE

The "taking" issue in Washington broadly follows U.S. Supreme Court decisions in the cases cited, using the Balancing Test and placing heavy reliance upon the Diminishing Value Theory.

The Courts have relied on the broader Holmesian interpretation of Diminishing Value, rather than the narrow contruction in Just. It is the market value of the property that forms the reference for determining diminished value. If the diminution is onerous, a taking has occurred. Aesthetic considerations alone cannot substantiate the police power, but when coupled with other considerations they are appropriate exercises of that police power (as in Morris County Improvement Company).

The three-pronged test from Goldblatt is followed in determining the reasonableness of police power.

CASE LAW

A notable recent case in Washington State, currently on appeal to the State Supreme Court, is Hayes v. Yount (Snohomish County Case No 123108, 1975). It is believed to be the first finding by a lower court in this state that an action by the Shorelines Hearing Board in denying a substantial development permit does constitute a "taking" rather than being a reasonable regulation. The property owner wished to fill a portion of a freshwater slough (Ebey Slough) that runs into Puget Sound, in an area of the Snohomish River wetlands where substantial fill had already taken place. In reviewing the SHB ruling, the court stated that the value of the Hayes property had been reduced essentially to zero by denial of the permit, but that it would have substantial market value should the fill be allowed. It also stated that filling this one small area would have no lasting effect on the slough as a whole. The case is now before the State Supreme Court.

Several of the salient issues already referred to are involved, including the "single house" vs. cumulative impact notion. Were all like property owners permitted to fill, a substantial, cumulative impact would occur. The question arises, then: Should fill be permitted until the irreversible harm is about to occur? On the fact of it, such a policy would not be prudent.

Again, considering the Diminution of Value test: Should the court rather have considered the present or potential value of the property in its existing state, as in the Just case?

In Ballard Elks, the Superior Court declared that the judgment of the local administrative agency responsible for shorelines permit issuance had been arbitrary and capricious. The Shorelines Hearing Board had reinstated the permit denied by the City of Seattle. A question arises as to how far can the courts substitute their judgment for that of the experts responsible for administering the SMA.

Of importance in the Hayes v. Yount and in future cases brought before the courts in this state: How is diminution of value to be interpreted? Are we to have regional solutions, and are we to look at cumulative effects? There may emerge from these issues an important distinction in interpreting the State Constitution: It states that "there shall be no taking or damaging of property without just compensation". The "eminent domain" doctrine is embodied in the Ninth Amendment, not in the "due process" clause, as in the U.S. Constitution. To date the State Supreme Court has not made much distinction between "taking" and "damaging." The question is whether the Court in the future will give more weight to the word "damaging" in deciding shorelines cases.

OTHER CASES TO BE NOTED

Union Oil Co. of California v. Morton, 512 F.2d 743, 5 ELR 20218 (9th Cir. 1975)

Rykar Industrial Co. v. Gill, 4 ELR 20226 (Supr. Ct. Conn. 1975)

In re Application of Estate of Ovide de St. Aubin, New York State Dept. of Environmental Conservation, (4 ELR 30001 1974)

State v. Blue Creek Coal, Inc., 4 ELR 20760 (Ohio 1974)

Mines of Maryland v. George's Creek Coal and Land Co., 4 ELR 20822 (Ct. App. Md. 1974)

THE TAKING ISSUE: A REJOINDER

*Charles R. Blumenfeld**

The law with respect to shorelines management is in a state of flux: we simply don't know which way the courts will go on the "taking" issue. Hayes v. Yount will be an important case in this regard.

The real key in this whole issue of "taking" and regulation obviously is where one draws the line between the reasonable exercise of police power and a taking without compensation.

A restriction that would prohibit a person from using his property for any purpose--forcing it to just lie fallow--would clearly be a "taking." On the other hand, zoning regulations that attempt to define uses in particular areas--setbacks and other aspects of density--are within the police power if used reasonably.

There is nothing in the Shorelines Management Act that, on its face, renders it unconstitutional. In other words, there is nothing in its regulations so onerous as to be construed a "taking."

It is important in looking at some of the cases, especially those involving wetlands, to note that in all cases before state courts there is nothing in the record on appeal to indicate that there has been such a diminution of value as to constitute a "taking."

There are five basic types of regulations one can look at in trying to evaluate some of the problems that may arise:

(1) The filling problem. A lot of key shorelines cases involve the filling of tidelands or wetlands. An interesting point to note in this state is that there is no provision in the Shorelines Management Act for a public trust doctrine; it is debatable whether such a doctrine survives in Washington State. This point will no doubt be an issue in cases involving filling.

(2) Shoreland development. Early in this century the state sold much of the shorelands and tidelands in its ownership for private development. In hindsight, we can talk about how wise or unwise that decision was. This will bear on the question of the reasonableness of present state regulation that restricts development of tidelands sold originally for that purpose.

(3) Public access. The Act provides for public access on public property only. Some local governments have enacted provisions requiring public access on private property, and there one gets into the dedication of private property by government for use by the public. This will undoubtedly raise the question of reasonableness and taking.

* *Attorney, Bogle and Gates, Seattle, Washington*

(4) Height and bulk requirements. Many such requirements have been justified for public health, safety, and welfare, which is what police power is based on; air and light are held essential to public welfare. The real question arises when height and bulk restrictions are imposed for purely aesthetic reasons. The courts in this state have not really addressed this question. For example, the SMA stipulates that there shall be no structure more than 35 feet in height built on the shorelines, where a substantial number of residential views are obstructed. However, if a local government imposes the 35-foot height limitation where there is not substantial obstruction of nearby views, has that local government gone beyond the statute? And further, can it demonstrate that this is a reasonable protection of public health and welfare? The issue would no doubt arise as to whether the restriction is so onerous as to constitute a "taking."

(5) Use restrictions. If a person could, by regulation, use his property only for certain purposes, (e.g. moorages) and demonstrates that he could not make economic use of it by those purposes, there arises the diminishing value test.

I personally believe that the Shorelines Management Act can be implemented by local governments, carrying out all its policies, including protection of wetlands and the encouragement of water-dependent commercial and industrial activities, without approaching the "taking" issue, if they carry out the Act with reasonable use of police power.

(During the panel session, it was noted that the SMA encourages legitimate trade-offs in shorelines uses. Priority of uses stresses water-related, but the Act also says, "other developments that encourage public access to the water." So if a nonwater-dependent development were designed so that it also encourages public access to the shoreline, that could be considered a trade-off. This is a condition that local governments could incorporate in the permit process. Trade-offs are a legitimate and historical zoning tool, if used with "reasonableness."

It was suggested that Master Programs should have as a goal outright purchase of prime recreational land and shorelines, rather than trying to define "just compensation" and going through litigation. Regulation is only interim and can change as exigencies require. If a community wants control of certain lands, it will have to have clear title to them.)

THE SHORELINES MANAGMENT ACT: THE MASTER PROGRAM AND BEYOND

*Robert V. Jensen**

HOW THE ACT OPERATES

The Shorelines Management Act operates at two levels: the permit system regulating substantial developments in the shorelines, and the policy provisions of the Act. The permit system relies on the Master Programs, which operate in a manner similar to a zoning ordinance, specifying the appropriate uses in segments of the shorelines.

Examining the legislative findings in the statute, which have had important implications in court cases, we read:

> 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. (RCW 90.58.20)

While others may disagree, the policy section of the Act, as reflected in the Hamma-Hamma case, indicates that the Act is designed to conserve the natural resources of the state and is, therefore, a conservation statute, allowing for reasonable uses of the shoreline compatible with that policy.

Special provisions are laid down for Shorelines of Statewide Significance.

> 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

**Assistant Attorney General, Washington State Department of Ecology.*

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. (RCW 90.58.020)

There is probably the doctrine of public trust embedded in the policy section of the Act. In State v. Dexter the court upheld the Forest Practices Act against the arguments that: (1)it violated the "due process" clause of the constitution and, (2)that it represented an unconstitutional "taking." The judge, in his opinion, cited Sax:

> Edmund Burke once said that a great unwritten compact exists between the dead, the living, and the unborn. We leave to the unborn a colossal financial debt, perhaps inescapable, but incurred, nonetheless, in our time and for our immediate benefits. Such an unwritten compact requires that we leave to the unborn something more than debts and depleted natural resources. Surely, where natural resources can be utilized and at the same time perpetuated for further generations, what has been called "constitutional morality" requires that we do so. (Sax, Joseph. Taking, Private Property and Public Rights, 81 Yale L.J. 149, 158, 159 1971).

Addressed in the policy section, too, is the public right of navigation. Stemming from Wilbur v. Gallagher, the act seeks to limit over-the-water construction; but question remains concerning the relationship between the public right of navigation embodied in the act to limit such construction and the state's constitutional provisions for harborlines. In the case of conflict, the constitution would control and it is therefore likely that the Act could not prohibit uses appropriate to those harborlines. The Public Trust doctrine suggests that the public's right of navigation can be limited only where there is a commensurate public benefit. In Wisconsin, parks have been permitted in waters of the state, since public benefits clearly accrue.

The policy section of the Act in limiting over-the-water construction to water-dependent uses is consistent with these doctrines, and where the natural character of the shorelines is to be altered, those uses that have public benefits are preferred. Nonwater-dependent uses--hotels, offices, etc.--will probably violate the public trust doctrine. This issue will have to be addressed by the State Supreme Court next.

SHORELINES INVENTORIES

Development of local Master Programs was preceded by shorelines inventories. The degree to which these data were used in Master Program development varied, but Snohomish County, as an example, cited littoral drift and beach-feed process in their policy protecting "feeder bluffs." Such firmly based policies are more easily defended against attacks on the Master Programs.

MASTER PROGRAMS

The development of Master Programs requires citizen participation. Where there has been a good representation by all sectors--environmental and conservation groups, commercial and industrial interests--the programs have generally been good ones. Of the 224 received by the Department of Ecology to date, 108 have been approved.

Elements: The Snohomish County plan, which has been approved, goes into finer detail in planning for future needs than is specified in the SMA. They added an agricultural element to those required by the Act. The policy in this section reads in part, "to protect prime agricultural lands from incompatible patterns of development."

Environments: The DOE umbrella land use categories--urban, rural, natural, and conservancy--are perhaps too broad; (Snohomish County, for example, added a low-density suburban category in its Master Program.) but the DOE intended them to be broad enough to allow local communities flexibility in defining priorities in their own master programs.

To provide for some flexibility in interpreting the Master Programs, the SMA incorporates the variance and conditional use procedures. The precise distinction between these terms is specified neither in the Statute, nor in the Guidelines. As in zoning, once the hard decisions have been made, the variance and conditional use procedures can be utilized to deal with specific uses in the shorelines; but to ensure that statewide consistency with the Act is achieved, the Department of Ecology has review authority. The permit appeal provisions, of course, apply to variances and conditional uses in the same way as in normal permit applications. The DOE is redesigning its current regulations so that applications for conditional uses or variances run concurrently with the shoreline permit application.

Manpower: One of the biggest problems in putting together Master Programs and in reviewing them is lack of manpower, both at the local level and in the DOE. If a locality does not get its Master Plan in to the DOE for review before the deadline, legislatively established and subsequently extended, then the DOE is, by statute, bound to design one for the locality. DOE has taken a lenient position in this regard since, in most cases, good reasons exist for the delays in development of many of the jurisdictions' Master Programs. But since funding for the planning phase of the SMA is dependent upon timely conformance with the federal Coastal Zone Management Act, and final approval of the state's Coastal Zone Plan is expected at year's end, it is essential that the Master Programs be approved rapidly; otherwise that source of funds could be threatened. The Master Program does not have to be in ordinance form before submitting it to the DOE. But in all fairness, local zoning ordinances should be dovetailed with the SMA policies so that property owners and potential buyers will know exactly to what uses they may put their land. It is also important for localities to include zoning of uplands contiguous to the shorelines, to forestall possilbe future court cases. Unfortunately, the DOE has not addressed this question, so localities are on their own to work out these zoning matters. Kitsap County is developing a document for citizens,

comparing existing zoning with the permitted uses and environmental designations of their shoreline Master Program.

In order to avoid losing public support for the intent of the Act, DOE is approving some programs with reservations and requests to update and amend certain provisions that are troublesome. The Master Program is viewed, therefore, as a dynamic document, subject to changing conditions. This review and updating process is provided for in the statute.

ENFORCEMENT OF THE SMA

Problems of enforcement center on shortage of manpower and tools. Large projects are being monitored, but the DOE cannot cover all small and individual projects. However, if too many violations occur, it will cause disrespect for the Act. DOE is seeking funds through the Office of Coastal Zone Management to supplement limited enforcement manpower.

Neither cease-and-desist regulations nor civil penalties are currently available to combat violations of the SMA, though the DOE is trying to get such state and local regulations approved. These provisions are available for dealing with air and water pollution control violations. Presently, SMA violaters can only be sued, the project abated, and/or damages recovered. There is money for attorney fees available to citizens who bring natural resource damage actions against these violators.

HOW WELL IS THE ACT WORKING?

The citizenry is supporting the Act; an initiative to repeal it has not gained enough support to be put on the November ballot. It is in the interests of the people to protect the environment, and they are realizing this. It is also in the interests of developers to support it, since, without such a statute the uncertainty that resulted from Wilbur v. Gallagher would again obtain.

The appeals process has worked well. Of 3000 permits processed, only 200 were appealed. Most were from private citizens and most were resolved by the Shorelines Hearing Board at informal prehearing conferences.

Assessing the effects of the Act requires measuring the invisible: what projects of dubious quality have not been undertaken because of the Act's requirements? But there have been tasteful developments attributable to the Act: for example, the Mercer Slough Light Industrial Park, in Bellevue, which is compatible with its environmental setting.

FLOODPLAIN DEFINITIONS

A recent amendment to the Shorelines Management Act redefines floodplains for management purposes:

> ...those lands extending landward two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all marshes, bogs, swamps, floodways, river deltas and floodplains associated with the streams, lakes and tidal

waters which are subject to the provisions of this chapter, the same to be determined by the Department of Ecology; PROVIDED, that any county or city may determine that portion of a one-hundred-year-flood plain to be included in its master program as long as such portion includes, as a minimum, the floodway and the adjacent land extending landward two hundred feet therefrom;

"Floodway" means those portions of the area or a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually; said floodway being identified, under normal conditions, by changes in surface soil conditions. The floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state.

Thus, local jurisdictions have an option in the designation of flood plains, but should they elect to abandon the 100-year definition, substantial documentation would be required. Further guidelines can be expected from DOE on this subject.

However, under the Federal Flood Insurance Act, floodplain planning, using the 100-year floodplain, is required as a condition for federal flood insurance. This definition, then, can be expected to prevail among local jurisdictions.

DREDGE AND FILL IN NAVIGABLE WATERS

Following the Florida Calloway decision, the Corps of Engineers has developed "interim final" guidelines. A one-stop permit process combines the requirements of both the Federal Water Pollution Control Act Ammendments (Section 404) and the Rivers and Harbors Act (Section 10). The latter authority enables any involved state agency to review Corps permits and to halt the proposed project if they object.

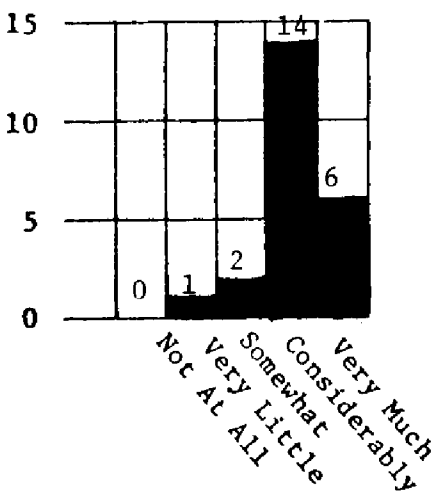
The guidelines, however, are ambiguous as to which state agencies have final jurisdiction over the permit system, and it seems that the Corps has exempted itself from the permit process, even though it does most of the dredging and filling in the State of Washington. An agreement between DOE and the Corps requires a substantial development permit under SMA for disposition of dredged spoil on banks of rivers in the state. If neither the Corps nor its contractor needs a permit under the federal system, and no state permit is required, there is valid ground for objection to adopting these proposed Guidelines.

Questionnaire: Summary of Responses

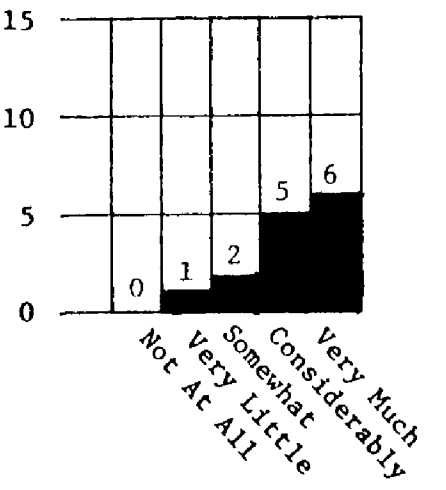
Were the program elements relevant to your professional needs?

1. Case law and legislation (Johnson)?

Group A: Planners

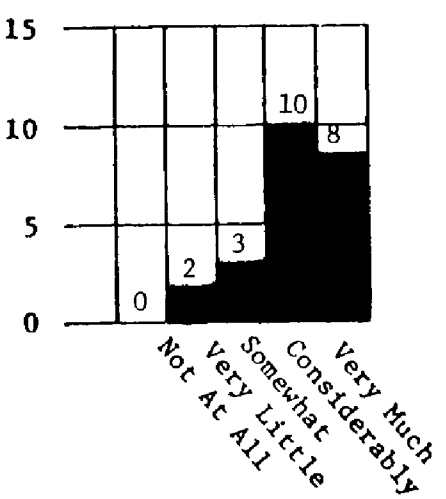


Group B: Non-Planners

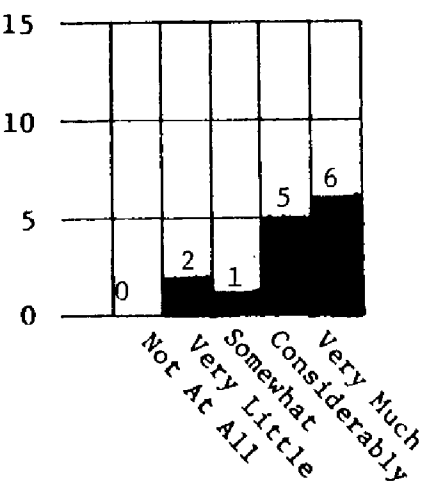


2. The Taking Issue (Green, Blumenfeld)?

Group A

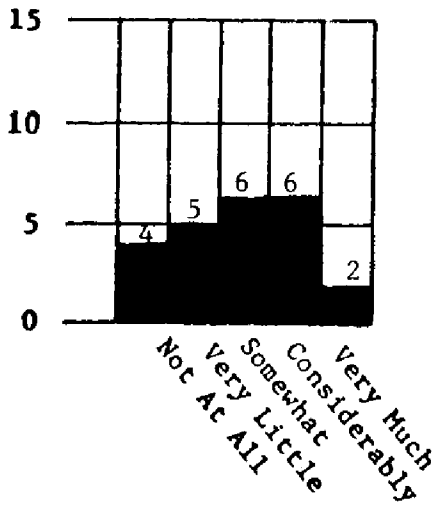


Group B

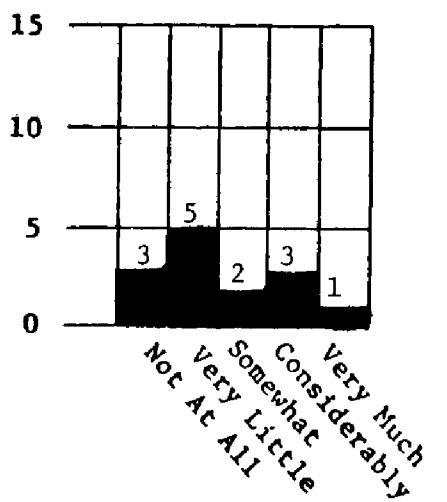


3. Economic Strategies (Rabinowitz)?

Group A

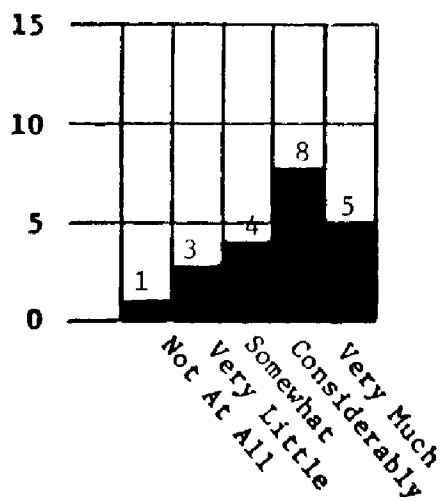


Group B

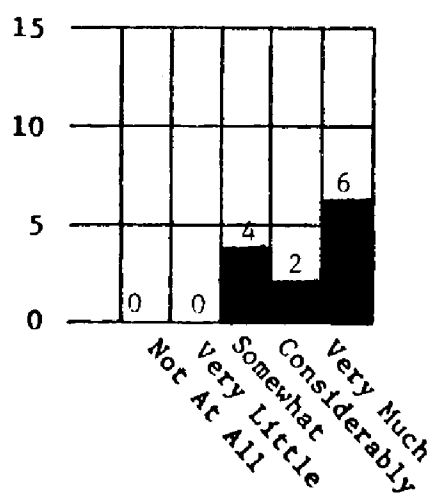


4. DOE and the future of SMA (Jensen)?

Group A



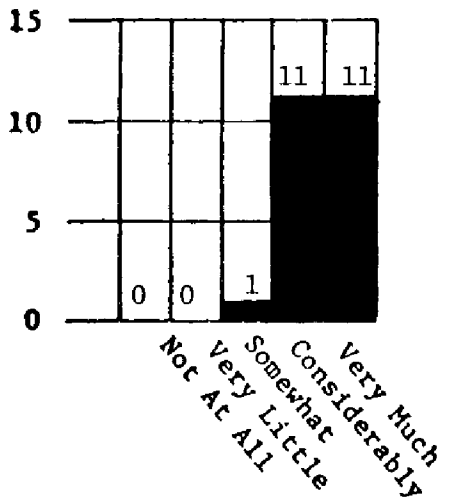
Group B



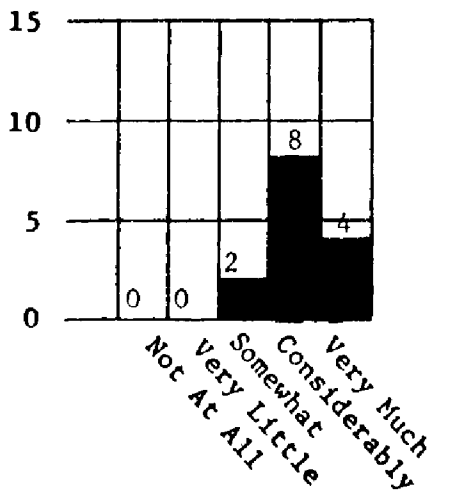
Has your knowledge of these issues been increased by the program elements?

1. Case law and legislation (Johnson)?

Group A

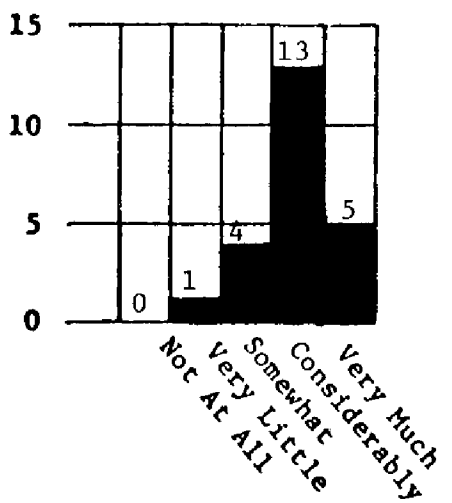


Group B

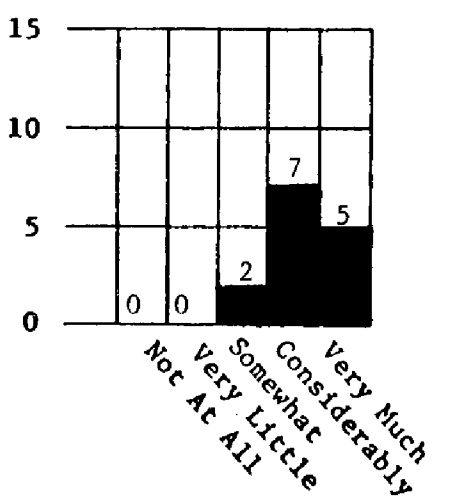


2. The Taking Issue (Green, Blumenfeld)?

Group A

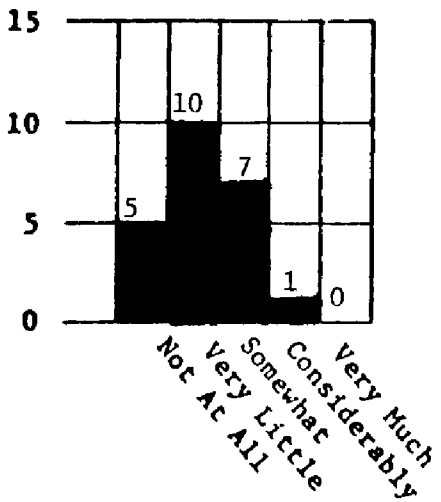


Group B

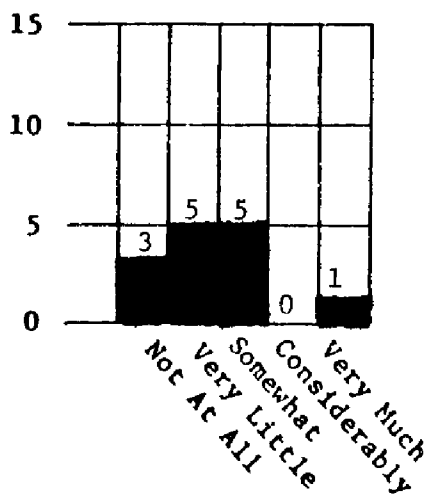


3. Economic Strategies (Rabinowitz)?

Group A

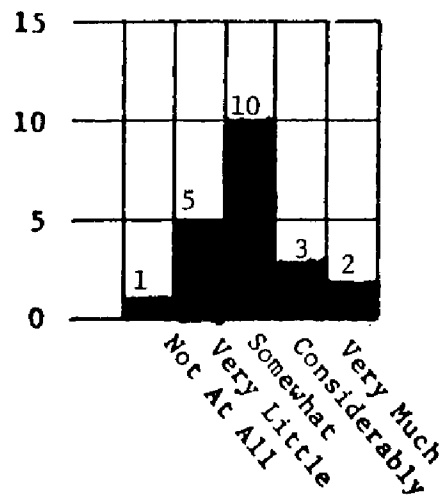


Group B

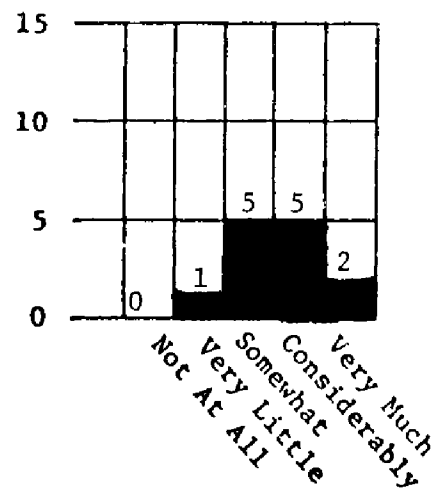


4. DOE and the future of SMA (Jensen)?

Group A



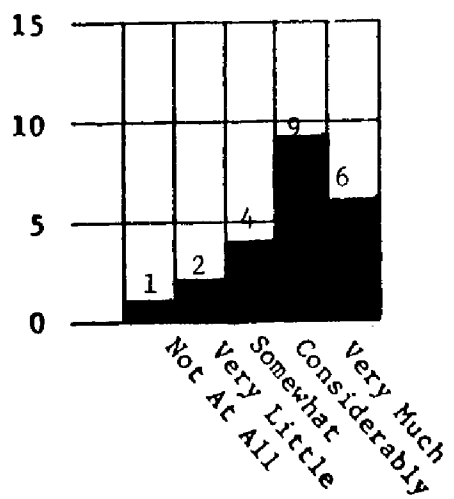
Group B



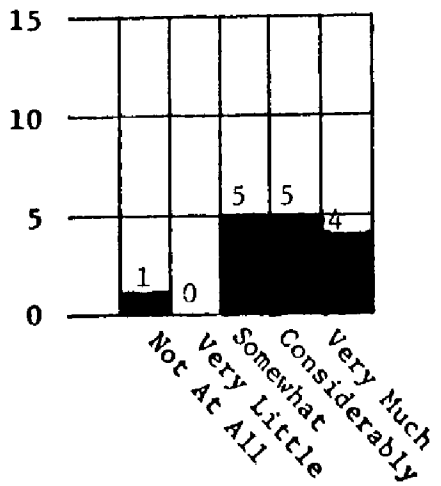
Is this knowledge applicable to your own or your department's role in shorelines management?

1. Case law and legislation (Johnson)?

Group A

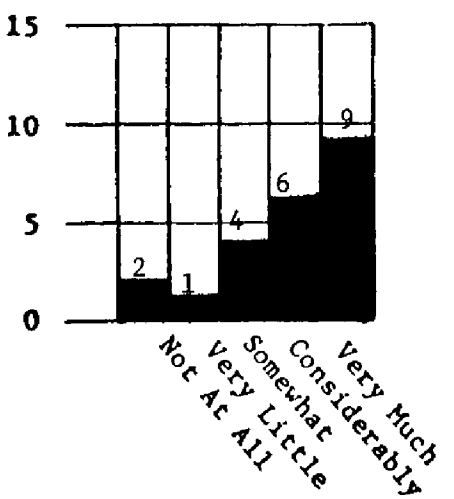


Group B

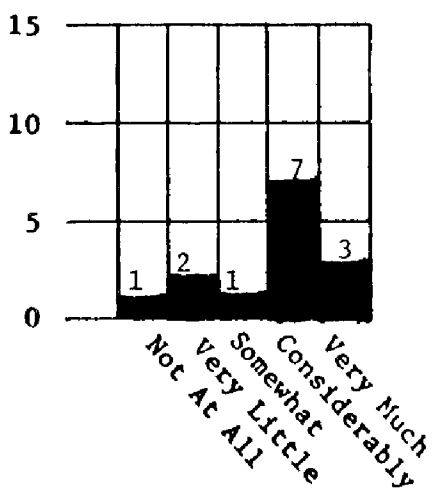


2. The Taking Issue (Green, Blumenfeld)?

Group A

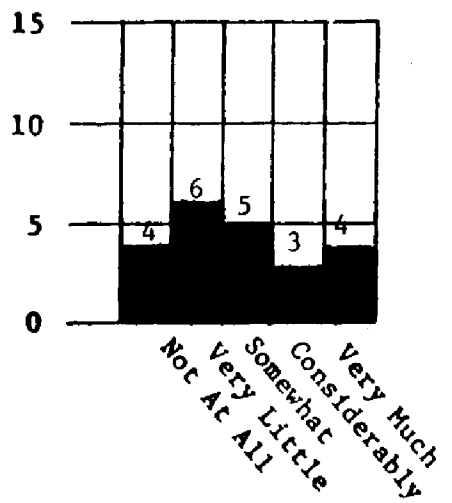


Group B

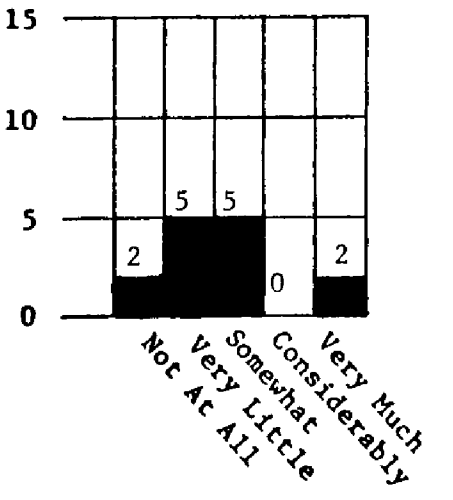


3. Economic Strategies (Rabinowitz)?

Group A

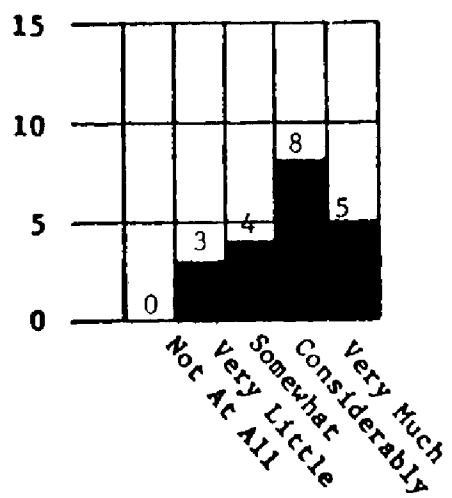


Group B

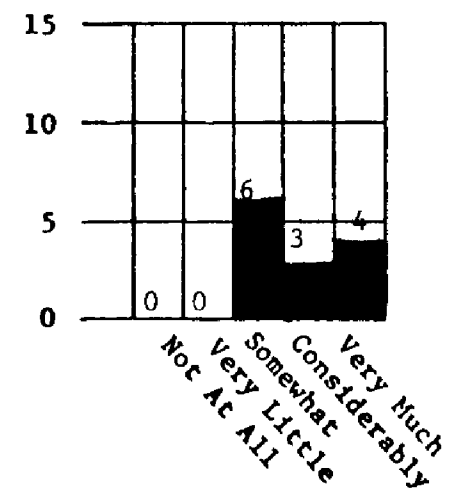


4. DOE and the future of SMA (Jensen)?

Group A



Group B



LIST OF RANKED TOPICS FOR FUTURE WORKSHOPS

RANK TOPIC

1. Comparison of techniques for implementing Master Programs at local level; e.g. zoning, performance standards etc.

2. Federal Coastal Zone Management Act: local implications

3. Assessment practices and Shorelines Management.

4. Guidelines for specific marine activities siting and design; e.g. marnias, docks, etc.

5. One-stop permit processing; Environmental Coordination Procedures Act (ECPA) local applications.

6. Port facilities planning.

7. Energy facilities planning; state, local relations.

8. Aquaculture practices and siting.

Other Topics Mentioned:

a. Relationship between SEPA and SMA.

b. Legal issues concerning conditions imposed on permit approvals.

c. Implications of sec. 404, FWPCA of 1972, on inadequacies of SMA.

d. Role of natural systems--biological, geohydraulic--in assessing shoreline uses, management decisions.

e. Techniques for public education efforts in shorelines management.

f. Marine resource information systems.

g. SHB decisions; analysis and implications. *(1)*

h. Consistency among Master Programs on use activities. *(1)*

i. Public access; strategies for success.

j. Shoreline development; criteria and examples of imagination and esthetically successful cases.

---

(1) A law student of the University of Washington is engaged in a study of these issues. Papers forthcoming, 1976.

APPENDIX B

NAME	AFFILIATION AND ADDRESS
Roger Almskaar	Whatcom County Planning Office Courthouse Bellingham, WA 98225
Jan Alene Arntz	City of Seattle Dept. of Bldgs., Env. Section 503 Municipal Bldg. Seattle, WA 98104
Tom Aumock	Jefferson County Shorelines Management Comm. P.O. Box 92 Hadlock, WA 98339
Robert Bachstein	City of Tacoma 705 So. 9th St., Suite 105 Tacoma, Washington 98402
William Barker	City of Tacoma Room 345, County/City Building Tacoma, Washington 98402
Jeff Bauman	City of Kirkland Dept. Community Development 210 Main St. Kirkland, WA 98105
David Baylor	Economic Development Council of Puget Sound 1218 Third Ave., 1900 Seattle Tower Seattle, WA 98109
Roberta L. Benson	University of Washington Office of Business & Finance 270 Ad. Bldg., AG-40 Seattle, WA 98105
Ralph Beswick	Department of Natural Resources Public Lands Building Olympia, WA 98504
Margaret Blackburn	King County Land Use Management Division West 217 King Co. Courthouse Seattle, WA 98104

Joel Blackwell	Grays Harbor County Planning Dept. P.O. Box 390 Montesano, Washington 98563
Mike Bonoff	City of Seattle 306 Cherry St. Seattle, Washington 98104
Don E. Bowers	City of Chehalis P.O. Box 871 Chehalis, Washington 98532
Dave Cheal	House Judiciary Committee House of Representatives House Office Bldg., Room 227 Olympia, Washington 98504
Keith Christian	Port of Seattle Planning & Research Dept. P.O. Box 1209 Seattle, Washington 98111
Dennis Clarke	Town of Steilacoom P.O. Box M Steilacoom, Washington 98388
Ann M. Clifton	Thurston County Assessor's Office Thurston County Courthouse 11th & Capitol Way Olympia, Washington 98501
Roy L. Compton	Island County Assessor's Office P.O. Box 670 Coupeville, Washington 98239
Tony Cook	Senate Research Center Legislative Building Olympia, Washington 98504
Glen Crandal	Department of Ecology Olympia, Washington 98504
Gary Crutchfield	City of Tukwila 6230 Southcenter Blvd. Tukwila, Washington 98188
David Cunningham	Jefferson County County Courthouse Port Townsend, Washington 98368

Eric Davidson	Thurston Regional Planning Council 3rd Floor, Courthouse Annex Olympia, Washington 98501
Sarah Deatherage	Dept. of Community Services Cowlitz County 305 Church St. Kelso, Washington 98626
Betsy Detroit	Municipal League 5406 S.W. Beach Dr. Terr. Seattle, Washington 98116
Maureen J. Dightman	Municipal Research & Services Center Caller No. C5373 4719 Brooklyn Ave., N.E. Seattle, Washington 98105
Richard DuBey	University of Washington JB-20 Seattle, Washington 98105
James F. Dunn	Washington State University Cooperative Extension Box 45 South Bend, Washington 98586
Alyn C. Duxbury	Division of Marine Resources University of Washington HG-30 Seattle, Washington 98105
Polly Dyer	Institute for Environmental Studies University of Washington FR-40 Seattle, Washington 98105
Gabrielle Elliott	University of Washington JB-20 Seattle, Washington 98105
Bob Ellison	Seattle First National Bank Space Planning Department 1110 3rd Ave. Seattle, Washington 98104
Ernie Englander	University of Washington FS-15 Seattle, Washington 98105

Rick Erickson	Pacific County P.O. Box 66 South Bend, Washington 98586
Duane Estes	City of Bellevue Planning Dept. P.O. Box 1768 Bellevue, Washington 98009
Jim Falk	Dept. of Community Services Cowlitz County 305 Church St. Kelso, Washington 98626
Sid Farcy	University of Washington JB-20 Seattle, Washington 98105
John L. Farra	City of Aberdeen 200 E. Market Aberdeen, Washington 98520
Jim Feldman	University of Washington HA-35 Seattle, Washington 98105
Tom Fitzpatrick	King County Land Use Management Division West 217 King County Courthouse Seattle, Washington 98104
Guy O. Foss Jr.	Peoples Bank Trust Dept. Peoples Bank Building Seattle, Washington 98171
William Freeman	Director of WEC 3234 N.W. Market Seattle, Washington 98107
Lucille Fuller	Institute of Governmental Research University of Washington JM-10 Seattle, Washington 98105
Ted Gacek	Seattle Department of Buildings 503 Municipal Building Seattle, Washington 98104

Jeff Gibbs	University of Washington JB-20 Seattle, Washington 98105
Tom Gillick	Department of Natural Resources Marine Land Management Division Public Lands Building Olympia, Washington 98504
Pete Granger	Division of Marine Resources % Bellingham Vocational-Technical Institute 3028 Lindberg Ave. Bellingham, Washington 98225
William H. Gray	Washington State University Cooperative Extension Service Courthouse Bellingham, Washington 98225
Larry Greig	Seattle First National Bank Space Planning Department 1110 3rd Ave. Seattle, Washington 98104
Gerry Grissom	Burlington Northern Industrial Development Lobby 3 Central Building Seattle, Washington 98104
Richard M. Grout	San Juan County Planning Dept. Box 947 Friday Harbor, Washington 98250
Donald J. Hale	Snohomish County Prosecutors Office 2nd Floor Courthouse Everett, Washington 98201
Dwight Hamai	City of Tacoma Planning Department 930 Tacoma Ave. So., Room 335 Tacoma, Washington 98406
William Hammons	Puget Power 620 Grady Way Renton, Washington 98055
Steve Harvey	Skagit County Planning Dept. 120 W. Kincaid Mount Vernon, Washington 98273

Jan Hedges	Department of Community Services Cowlitz County 305 Church St. Kelso, Washington 98626
Robert F. Hintz	Environmental Management Division City of Seattle 306 Cherry St. Seattle, Washington 98104
Kenneth Hirst	House Committee on Ecology Room 224 House Office Buildings Olympia, Washington 98504
Don L. Hogaboam	City of Tacoma Room 345, County/City Building Tacoma, Washington 98402
Rosemary Horwood	Department of Community Development 306 Cherry St. Seattle, Washington 98104
Thomas Howard	Kramer, Chin and Mayo 1917 First Ave. Seattle, Washington 98101
Curt Johnson	Town of Steilacoom P.O. Box M Steilacoom, Washington 98388
John Keegan	King County Prosecutors Office W 558 King County Courthouse Seattle, Washington 98104
Bruce Keithly	Attorney-at-Law P.O. Box 981 Everett, Washington 98206
Kenneth Kimura	Pacific County P.O. Box 66 South Bend, Washington 98586
Anita Klapper	2019 Fairview E. Seattle, Washington 98102

Margaret C. Lane	City of Normandy Park 240 S.W. 200 Normandy Park, Washington 98166
Chris Lockwood	Association of Washington Cities 4719 Brooklyn Ave., N.E. Seattle, Washington 98105
Richard Lowry	Snohomish County Prosecutors Office 2nd Floor Courthouse Everett, Washington 98201
Steve Lundin	House Local Government Committee House Office Building, Room 202 Olympia, Washington 98504
Leonard Madsen	Island County Planning Department P.O. Box 698 Coupeville, Washington 98239
Doug Magoon	Department of Natural Resources Division of Marine Land Management Public Lands Building Olympia, Washington 98506
Paul Majkut	Kitsap County Prosecutors Office 614 Division St. Kitsap County Courthouse Port Orchard, Washington 98366
Gilbert Mandeville	Mandeville & Berge 500 Union St. Seattle, Washington 98101
Curt Marshall	University of Washington HA-35 Seattle, Washington 98105
Celeste Martin	University of Washington Institute of Governmental Research JM-10 Seattle, Washington 98105
Joe McGoran	Department of Ecology Olympia, Washington 98504
Virgil I. McNabb	Western Oil and Gas Association 500 Wall St. Seattle, Washington 98121

Katie Mills	City of Tacoma Planning Dept. 930 Tacoma Ave. So., Room 335 Tacoma, Washington 98406
Stephen B. Moore	Portland District Corps of Engineers P.O. Box 2946 Attn: Environmental Resources Branch Portland, Oregon 97208
Donald R. Morgan	University of Washington 17020½ 65th Pl. W. Edmonds, Washington 98020
Donald R. Myers	Clallam County P.O. Box 430 Port Angeles, Washington 98362
Stewart Neel	Puget Sound Power and Light Bellevue, Washington 98009
Thomas Nesbitt	University of Washington 9404 42nd Ave., N.E. Seattle, Washington 98115
Donald Norman	Kuendall Terminals P.O. Box 477 Renton, Washington 98055
Phillip Norton	Fred Bassette and Company 2027 5th Ave. Seattle, Washington 98121
Carol Ovens	Division of Marine Resources University of Washington HG-30 Seattle, Washington 98105
John Perry	Columbia River Estuary Study Task Force P.O. Box 175 Astoria, Oregon 97103
Thommas E. Pouttu	Pierce County Assessors Office 5601 6th Ave. Tacoma, Washington 98406
R. Leighton Pratt	Department of Ecology Olympia, Washington 98504

J.E. Richey	Jefferson County Shorelines Management Advisory Committee 572 E. Marrowstone Rd. Nordland, Washington 98358
Mike Ruby	City of Seattle 306 Cherry St. Seattle, Washington 98104
Michael W. Rundlett	Washington State Dept. of Ecology Olympia, Washington 98504
Fred N. Satterstrom	City of Tukwila Planning Dept. 6230 Southcenter Blvd. Tukwila, Washington 98188
Carol Schmidt	Institute for Environmental Studies University of Washington FR-40 Seattle, Washington 98105
Saskia Schott	Oceanographic Institute of Washington 312 First Ave. N. Seattle, Washington 98109
Stanley Schultz	Western Environmental Trade Association 711 White Henry Stuart Bldg. Seattle, Washington 98101
Betty Sellers	City of Bellevue Planning Department P.O. Box 1768 Bellevue, Washington 98009
Robert Shaw	Snohomish County Assessors Office 3000 Rockefeller Ave. Everett, Washington 98201
Brian Shetterly	Mason Regional Planning P.O. Box 400 Shelton, Washington 98584
Donald S. Skone	Yakima County Planning Department Room 417, County Courthouse Yakima, Washington 98901
Janeen Smith	City of Seattle 306 Cherry St. Seattle, Washington 98104
Mike Smith	City of Tacoma Planning Dept. 930 Tacoma Ave. So., Room 335 Tacoma, Washington 98406

Byron Sneva	Don Koll Northwest 2723 152nd Ave., N.E. Redmond, Washington 98052
John Soderberg	Chamber of Commerce Plaza 600 Building Seattle, Washington 98101
Lee Sonneson	City of Washougal 1016 "C" St. Washougal, Washington 98671
Bob Stevens	Department of Ecology Olympia, Washington 98504
Robert Stokes	University of Washington Institute of Marine Studies HA-35 Seattle, Washington 98105
Bob Suggs	Bellingham Vocational-Technical Inst. 3028 Lindberg Ave. Bellingham, Washington 98225
Kenneth Sweeney	Clallam County Planning Dept. 127 E. 1st St. Port Angeles, Washington 98362
Dick Todhunter	Department of Ecology Olympia, Washington 98504
Donald Topping	Kitsap County Planning Department 614 Division St. Port Orchard, Washington 98366
Gerald Troy	Burlington Northern Law Dept. 350 Central Bldg. Seattle, Washington 98104
Rae Tufts	University of Washington 3405 E. John Seattle, Washington 98112
Bill Turnbull	NOAA 17103 N.E. 86th Court Redmond, Washington 98052
Charles Walters	National Marine Fisheries Service P.O. Box 4332, 811 N.E. Oregon St. Portland, Oregon 97208

Land L. Washburn	City of Seattle Office of Policy Planning 306 Cherry St. Seattle, Washington 98104
Steve Welch	KCTS/9 4045 Brooklyn Ave.,N.E. Seattle, Washington 98195
Ron Westley	Washington State Dept. of Fisheries Shellfish Lab Brinnon, Washington 98320
John Wickizer	Island County Planning Department P.O. Box 698 Coupeville, Washington 98239
Fred Winningham	Department of Natural Resources Division of Marine Land Management Public Lands Building Olympia, Washington 98506
Gary Worthington	House Natural Resources Committee 223 House Office Building Olympia, Washington 98504
W.G. Zeman	Burlington Northern, Inc. 810 3rd Ave. Seattle, Washington 98104
Judith M. Zuberbuhler	Foster, Pepper & Riviera 4400 Sea-First Building Seattle, Washington 98154