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1970 SEACOAST MANAGEMENT BILL: BACKGROUND AND ANALYSIS

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The coastal management bill discussed in this paper is an antecedent of the Shorelines Protection Act (Initiative 43) and Substitute House Bill 584 (Chapter 286 of the Laws of 1971, First Extra Session) appearing on Washington ballots in the November 1971 election.

1970 Seacoast Management Bill:
Background and Analysis

During the 1970 special session of the Washington Legislature, a seacoast management act was presented, debated, and altered. Although this bill failed to clear both houses of the legislature, similar bills have been presented to the 1971 regular session. Because a background of the dispute about the 1970 Seacoast Management Act may be of value to future policy makers, this paper will analyze the major events leading to that dispute.

The 1970 bill was the idea of the Washington Environmental Council. The Council presented its idea to the Governor who included it in his priority environmental package for the 1970 legislature.

Initially the intent of the act was to set guidelines for the development of the ocean beaches only. Later, but before the bill was presented to the legislature, the shores of Puget Sound and Hood Canal were added. It was expected that these additions would create difficulties for the passage of the bill, but such was not the case. Instead, most viewed the additions as logical area extensions, noting that any bill which did not include these other areas would not be functional.

Despite its failure, the 1970 coastal management bill brought to the fore a number of problems for the state. The initial problem stems from the need for basic legislation to cover the development of coastal areas and is evidenced by a number of controversies which have arisen over developments in Puget Sound, e.g., Guemes Island, Port Susan Bay, Alderbrook, Anderson Cove, as well as possible locations of nuclear power sites. These controversies have raged between local officials, generally pro-industry, and conservationists and

neighboring property owners. At stake are substantial sums of money and the future of Washington's saltwater beaches. There is a need to create a way to balance these interests.

One of the most controversial provisions in the 1970 bill centered around the present mechanisms of county decision-making on issues with area, regional, and at times, statewide impacts. The bill called for the state to set planning and zoning guidelines with which counties would have to comply. It also called for state control of zoning for 1,000 feet from the line of vegetation. Local officials opposed this provision because they viewed it as the introduction of state zoning.

Another event which illustrates the acute need for coastal management legislation is the Lake Chelan Case, heard before the state supreme court as Wilbour v. Gallagher. The effect of this case has been a freeze on state issued permits for filling or building on navigable waters. The court indicated that these activities could continue on a basis regulated by the state, but until regulatory legislation is passed, such building will be at a standstill.

This paper will treat several issues related to coastal management, and will include: (1) analyses of several past controversies over coastal land use; (2) an analysis of the Lake Chelan Case and its impacts, along with a brief discussion of Hughes v. Washington (a case decided by the Washington State Supreme Court and reversed by the U.S. Supreme Court) and Thornton v. Hay, a recent Oregon case; (3) a history of the 1970 Seacoast Management Act with brief commentary on why it failed to pass; and (4) an analysis of HB 58 and EHB 58 (the bill which was ultimately accepted by the State House of Representatives).

THE NEED FOR COASTAL MANAGEMENT

Present System

Former Secretary of the Interior, Walter Hickel, has said that environmental concern does not have to become a "dog-eat-dog struggle between industry and conservation." Yet, such a struggle seems to be happening in the State of Washington.

Planning and zoning in this State are done at the local level--"local" referring to the counties and the cities within them. Babcock, in his book The Zoning Game, noted, "the planner recognized that each time he makes decisions on the location of commercial areas he is conferring benefits on some and denying them to others." Babcock was referring to the financial benefits to be derived in increased property value from the zoning of land for industrial uses. Traditionally, setting an industrial location has been viewed by county officials as a boon with regard to increased tax base and employment. More recently, however, conservationists and neighboring property owners have opposed industrial location as having a negative impact and imposing high costs with few long run benefits. These groups have become more vocal in opposing such locations.

The Constitution of the State of Washington provides: "Any county, city, town or township may make and enforce, within its limits, all local police, sanitary and other regulations as are not in conflict with general laws." Provision for city planning commissions is found in R.C.W. 35.63.060. That act also encourages joint planning by empowering cities to combine their planning functions.

Counties, however, are the important factor to deal with in matters of coastal zoning. Much of the state's coastline is in unincorporated areas and

therefore under county control. Counties have been encourged to join and form regional planning bodies, but at present no such joint bodies are functioning in Washington. The Puget Sound Governmental Council is an advisory body only.

State provisions for county planning and zoning call for the formation of planning commissions. These commissions are in charge of appointing staff to aid in carrying out their functions. The commission is the body in charge of developing and presenting a comprehensive plan and zoning regulations for the unincorporated areas. These plans the commission may have the planning staff prepare, or, which is more often the case, it may hire an independent study group to prepare them. The planning commission is responsible for holding hearings on the plan and at a later date for holding hearings on requests for changes in the plan. The planning commission then sends its recommendations to the board of county commissioners, an elective body, which then approves or disapproves the recommendations.

The above, in essence, is the process for change in county comprehensive plan and zoning regulations. Recent controversies have involved such a procedure. Guemes Island, Port Susan, and Anderson Cove were all planned and zoned for uses other than those proposed by developers who either purchased or took options on these properties. They subsequently applied to planning commissions in the respective counties for changes in the comprehensive plan.

Such applications have been referred to as dangling a carrot on a stick before a rabbit. The industry (I am limiting my references to industry, but the same principles apply to other types of large-scale permits, e.g., apartments, housing developments, marinas, power plants) notes potential increases in the tax base and the economic advantages to an area. In the case of Guemes Island after the public hearings (which the state supreme court later ruled to be in violation

of due process of law), the county planning commission voted to change the comprehensive plan which had been adopted only a few months before after almost 6 years in preparation.

In the Port Susan case the county planning staff prepared a comprehensive report in which they determined that the location of an oil refinery at the proposed site was not advantageous. The planning commission ignored the recommendations of these professional planners, and the county commissioners followed suit. Indeed, some county commissioners came out in favor of the refinery before the public hearings. This case is before the state supreme court for decision, again largely on due process arguments.

Part of the problem stems from non-professional bodies making planning decisions for coastal areas. There are no requirements for the composition of local planning commissions. Moreover, the sole requirement for the conduct of planning and zoning meetings is that 10 days notice must be given before a hearing can be held. Once the planning commission has made its decision, the matter goes before the county commissioners; however, they are under no obligation to hold a hearing so long as they agree with the planning commissioners.

In the Guemes Island Case, the state supreme court noted:

> A de novo look at this record, we think, shows not only that the board of county commissioners rezoned the aluminum company's optioned property without affording the fair and dispassionate hearing contemplated by the zoning statutes, but that they spot zoned the area for the particular benefit of a particular applicant and against the public interst ...
>
> (Case of Smith v. Nelson, at 733.)

The present process results in problems of equity for environmentalists and neighboring property and it also causes difficulties for industry. The cost of

fighting such battles is prohibitive to the average individual. In the Port Susan case alone, the neighboring property owners have expended $25,000 in attorney's fees and also much of their own time and effort in research on the case. Although industry has been able to enter the arena with a well-financed and well-prepared campaign, one of its major desires--quick action--has been frustrated. In the Port Susan case, Atlantic Richfield announced its plans in 1967. The legal battle which ensued has not yet been resolved, and the company has decided to locate elsewhere. In the Guemes Island case, the company revealed its plans during the summer of 1966; the state supreme court did not decide the issue until the spring of 1969.

Thus, the present system works to the disadvantage of both sides. The cost in time and/or money is prohibitive for all interested parties. Decisions made by a local body look out for local concerns may not always be in the general interest when the decisions have regional or state-wide impacts. Action is needed at a more professional level with better financing and more research before decisions are made about locations of activities in coastal areas.

Lake Chelan and Other Pertinent Cases

The Lake Chelan Case (Wilbour v. Gallagher) presents the legislature with a definite and immediate need for some form of state coastal zoning control. This case involved a suit by two property owners, representing themselves, residents of the city of Chelan, and other property owners similarly situated; the suit sought to have a trailer court fill in Lake Chelan abated. In 1927, a permit gave the Chelan Electric Co. the right to raise the level of the lake each summer from 1,079 to 1,100 feet. A grant in perpetuity had been made at that time giving the public "... the right of access ... over the lands included within the boundaries of those portions of the vacated streets and alleys ... to Lake Chelan,

at all stages of waters ...." (Case at 309).

The dispute arose after Mr. and Mrs. Gallagher filled their property to a level 5 feet above the 1,100-foot level. By filling their property, they prevented its annual submergence. The court noted that part of the fill covered vacated streets and alleyways. The court also noted that prior to the filling, the Gallaghers' property, when under water, had been used by the public for recreational purposes.

rested its decision on the fact that the " ... fills made by the defendants constituted an obstruction to navigation." The court further noted: "There was no private ownership of the land under Lake Chelan in its natural state, and no right to obstruct navigation." The court then stated the essence of its decision:

> When the circumstance of an artificial raising of navigable waters to a temporary higher level is synthesized with the law dealing with navigable waters having a naturally fluctuating level, the logically resulting rule for the protection of the public interest is that, where the waters of a navigable body are peridoically raised and lowered by artificial means, the artificial fluctuation with the rights of the public being the same in both situations, i.e., the public has the right to go where the navigable waters go, even though the navigable waters lie over privately owned lands.
>
> (Case at 316)

The court, in footnote number 13 to its opinion, noted the absence of state and county intervention in the issue. The court appeared to be calling for the state legislature to establish guidelines for fills on navigable waters.

Commentators have disagreed on the meaning of this decision. Professor Corker, in his article Thou Shall Not Fill Public Waters Without Public Permission - Washington's Lake Chelan Decision, argues that the decision applies to all

navigable waters, thus including the shores of the ocean and the Sound at high tide. On the other hand, Edward Rauscher, a Seattle attorney, in his rejoinder to Professor Corker, The Lake Chelan Case - Another View, argues that the Chelan case is both unique and narrow, "... involving (1) an artificial raising of a lake (2) without the customary acquisition of the fee in the land being flooded, and for which the flowage right ran to a power company and not to the public at large." To this end, requests for a rehearing of the case were made to the state supreme court but were denied.

At present, Professor Corker's interpretation of the case seems to prevail. After the decision in December 1969, the Governor froze permits for shoreland developments requiring filling. Currently, about 50 to 100 permits are being held up, and the freeze applies alike to public and private developments. The case was interpreted by the Governor's office as making navigable water fills illegal unless and until the state legislature enacts enabling legislation. The Governor's attitude is seen as one of the major aids to the acceptance of a coastal management act.

The case of Oregon ex rel. Thornton V. Hay, along with the Lake Chelan Case, had an impact on the bill which the Washington Environmental Council presented. The Thornton decision was handed down by the Oregon Supreme Court on December 19, 1969, just 2 weeks after the Chelan decision. The case involved an attempt by certain individuals to build a fence and make other property improvements on a beach area "between the sixteen-foot elevation contour line and ordinary high tide of the Pacific Ocean." The court said, " ... the state has an equitable right to protect the public in the enjoyment of [an easement for recreation purposes] by causing the removal of fences and other obstacles." The court based its ruling on the historic use of the beaches by the public.

As in the Chelan case, the Thornton case seems to limit development of coastal areas. The State of Oregon has legislation which regulated development of its ocean shores, O.R.S. § 390.605. The Washington Environmental Council feels that the reasoning of this Oregon case applies to Washington as well and, in the absence of any legislation, would aid in any freeze on shore and tideland development.

Hughes v. Washington was appealed to the U.S. Supreme Court. It was decided in 1967, 2 years earlier than the two previously discussed decisions, but it still has a definite impact on coastal development. The case involved a claim by a Mrs. Hughes to certain "accreted" lands ("land gradually deposited by the ocean on adjoining upland property") (389 U.S. at 291). The State of Washington claimed that, under article 17 of the Washington State Constitution, it owned these lands. The state supreme court agreed, but the U.S. Supreme Court reversed, holding that questions as to ownership of accreted land are governed by federal, and not state, law because the upland had been conveyed by the United States prior to statehood for Washington. The U.S. Supreme Court then held that, under federal law, the grantee of land bounded by a body of navigable water acquires a right to any natural and gradual accretion formed along the shore. Thus, Mrs. Hughes, as the owner of upland conveyed prior to statehood, and not the State of Washington was ruled to be the legal owner of the accreted land in dispute.

The Hughes decision thus took all accretions on upland conveyed by the United States prior to statehood out of state ownership and placed title from the line of mean high tide upward in the hands of the upland property owner. Removal of such property from public ownership points out a further need for guidelines to control development in order to preserve the public interest in coastal lands.

HISTORY OF 1970 SEACOAST MANAGEMENT BILL

The idea for the 1970 seacoast management bill emerged from the Ocean Beaches Committee of the Washington Environmental Council. They in turn had taken the idea from the recent Oregon legislation. The idea presented to the Governor and at its inception included only the ocean beaches. The Governor, however, wanted Hood Canal, a point 12 miles south of the original termination point, included in the measure. Correspondence continued between the Council and the Governor's office; several drafts of the bill were exchanged.

In September 1969, a symposium was held at which the Governor called upon Republican leadership in the legislature to set priorities. The Seacoast Management Act was one of the top four in the environmental package. At that time, Puget Sound was not covered by the bill. In December, the Environmental Council debated dropping the issue as a result of the two court decisions which would control coastal development. Such a course was not followed, however, because it appeared neither practical nor responsible in the long-run. After further discussion, it was decided to include the Strait of Juan de Fuca and Puget Sound. At the time this was seen as sounding a death knell for the legislation, but little opposition was voiced on the extension.

The final draft of the Environmental Council bill was presented in the House as Bill 58 and in the Senate as Bill 6. The sponsors of the bill were all experienced legislators, but there is some question as to whether all of them knew and agreed with the content of the legislation presented. One of the sponsors, Representative Julin, noted that since there was no interim study of the issue, the Natural Resources Committee (activated to study the environmental area) was swamped at the session. However, the committee did hold a number of hearings on the issue during the session.

At this point, land developers were opposed to the measure. It was felt that they did not realize the full impact of the Lake Chelan decision. Representative Julin felt that the Natural Resources Committee members were in the same position. He is the only lawyer on the committee and may have been aware of the implications of the case before the rest of the committee.

Committee opposition arose over a general objection to the bill raised by the Washington Environmental Council. Many people felt that the bill was ambiguous and poorly drafted and that an issue of such importance should not be shoved hastily through a special session of the legislature. Representative Hawley noted that most of the committee agreed with the state coastal management but wanted more study on the matter, especially with regard to local zoning powers. Representative Julin listed four major problems: (1) the problem of state zoning to which the local governments objected, (2) the problem of which agency would manage and administer the legislation, (3) the fear of the big ports that outside competitive business could favor one port at the expense of others, and (4) the general opposition of developers to more controls than were existing.

When the impact of the Chelan decision was realized, there was a move to get some legislation on the floor. Representative Julin was put in charge of the subcommittee for drafting a new bill. This he did, after working out an agreement between the Washington Environmental Council, the Department of Natural Resources, the Governor's office, and House leaders. The bill was presented the day after his appointment, but by that time objections had arisen. Debate took place on the floor, and a number of amendments were presented, discussed, and voted upon.

The bill that passed the House and was sent to the Senate was labeled by the Washington Environmental Council as a "giveaway bill." The Council immediately went to work to defeat the bill in the Senate. This they accomplished, according

to John Miller, attorney and Environmental Council lobbyist, by a coalition of their friends, those against the bill, and those who oppose progressive issues.

The bill was presented by Senator Grieve to regulate high-rise apartments in King County. Objections were raised and a ruling was called for on the procedural legality of this action. Apparently this objection was successful, but Representative Julin found another way to get the bill onto the Senate floor. He brought it back to the House, appended it to another bill, passed it through the House again, and sent it back to the Senate floor. There the bill died in the closing minutes of the session: time ran out before the legislators could get back to it.

This coastal management bill was seen as a step in the right direction by the Governor. Environmentalists, however, felt that no bill at all was better than this one. Court cases had set the law in their favor; time was on their side. Mr. Miller noted that it is much easier to kill a bill than to pass one, and this was the strategy of the Washington Environmental Council.

During the interim before the 1971 legislative session, a number of groups were studying the issue. The Environmental Council drafted legislation and sent it to other groups for review. This time they pushed for legislation which included lakes and rivers as well as the coast and Puget Sound. They tried to answer the state zoning problem by asking for control of only 500 feet of upland and this at the discretion of the department in charge.

In addition to the drafts of the Governor's office and the Washington Environmental Council, bills were also prepared by the House Natural Resources Committee, Senator Grieve's subcommittee, an ad hoc committee made up of port districts, land developers, forest products and industrial users, and the Association of Washington Counties.

Senator Hawley noted that for political reasons the bill framed by the House Natural Resources Subcommittee is the one most likely to be reported out of committee.

SEACOAST MANAGEMENT ACT

For an analysis of the bill, I will begin with a breakdown of House Bill 58 (Senate Bill 6), the original bill drawn up by the Washington Environmental Council. I will then point out the differences between this bill and EHB 58, the one which ultimately passed the House of Representatives in 1970.

Section one of HB 58 sets forth a declaration of policy for the State of Washington. This section notes that the seacoast is a valuable resource and calls for coordinated planning. It further notes " ... the seacoast is impressed with a public interest; that the seacoast be preserved, protected and where possible restored so that its value as a public resource is not impaired; and that the seacoast be managed so as to plan for and to foster all reasonable and appropriate uses." The section then enumerates a number of possible uses and adds that in cases of conflict "the uses to be preferred shall be those that are consistent with the control of pollution and the prevention of irreparable damage to the ecology and environment of the seacoast."

EHB 58 notes that there will be increased use and development of the tidal beaches and that many of these beaches are already in private ownership. It calls for control of construction on both private and public beaches. It also calls for coordinated planning, but further notes that the state must recognize and protect private property rights. It does not mention restoration of the seacoast--called for in HB 58--and tones down the language setting out state policies.

The Washington Environmental Council offered a compromise between two bills.

They agreed to most of the EHB 58 wording but additionally called for restoration of the coastal areas where possible.

Section two of HB 58 calls for the Department of Environmental Quality to set quidelines and land use regulations for the coast. This section is comparable to section four of EHB 58 which calls for administration of the act by "the public agency otherwise holding, managing and administering such public beaches." EHB 58 gives control over beaches privately held to the Department of Environmental Quality, except that "... the area between the ordinary high water mark and the inner harbor line shall be administered by the public agency administering the abutting harbor area." This change was made in the act because, at present, several agencies have extensive holdings on the Sound and coastal areas. There was some confusion over duplication of effort; moreover, the landowning state agencies objected to control of their property by another state agency.

The Washington Environmental Council and other environmentalists were not happy about this change, for it put control of development back into the hands of the departments that they wished to see relieved of this power.

Section three of HB 58 defines terms used in the act. "Seacoast", the most controversial of these definitions, was defined in part (c) of this section as including "the areas extending inland of the line of vegetation for a distance of at least one thousand feet ...". This definition angered the local government officials who saw it as an attempt to enact state zoning. They objected to the distance of 1,000 feet as covering too great an area and putting too much power into the hands of Olympia. EHB 58 does not mention the 1,000 foot designation, and thus that bill appears to apply only to the beaches proper. The Washington Environmental Council called for a compromise, defining uplands as "so much of that portion of the uplands within one thousand feet of and adjacent to seacoast

tidal beaches as is necessary to accomplish the policy of this act."

EHB 58 contains other definitions which differ from those in HB 58. It mentions a review board and states that it "... shall mean a board consisting of five members: the Governor, or his duly appointed representative; the commissioner of public lands, or his duly appointed representative; one member who shall be appointed by the director of commerce and economic development; one member who shall be appointed by the interagency committee of outdoor recreation; and for the purpose of establishing seacoast tidal beach guidelines, a representative chosen by the Association of Washington Counties, and for all other purposes, a representative chosen by the public agency directly involved ...".

The Washington Environmental Council was not in favor of this proposal because they felt it left open the possibility for one department to have two representatives on the board at one time. This they felt might be unfair. Originally, the Council called for a three-man appeals board (section 23, part 10 of the act) composed of the commissioner of public lands, the chairman of the oceanographic commission, the director of parks and recreation. As a compromise, the Environmental Council subsequently proposed a 20-man review board to be known as the Seacoast Planning Commission. The Commission members would be appointed by the Governor and would serve at his pleasure. It would consist of 10 citizen members and of representatives from the cities, the port districts, the Governor, the commissioner of public lands, the director of parks and recreation, and the oceanographic commission. It was believed that this board representation would enable all parties to receive fair hearings.

Section four of HB 58 is identical to section 3 of EHB 58. The section delineates the geographic area included within the durisdiction of the act. This area covers the coast from the "Columbia River Northward to Cape Flattery and

from Cape Flattery to Point Wilson, and ... the seacoast surrounding and included within the Puget Sound Basin ...". Initially there was a fear that problems would arise out of the inclusion of Puget Sound, but such was not the case.

Section five sets the time limit for the adoption of guidelines by the Department of Environmental Quality as 24 months after effective date of the act and then enumerates what the guidelines shall contain. Suggested information for the guidelines to take into account includes population projections, coastal currents, optimum allocation of ocean resources, means of combining uses so that they are complementary, standards for "perserving, protecting, and where possible restoring the seacoast as a natural environmental system," and setting maps. The section calls for this information to be the result of a cooperative effort among governments and to be kept in data banks. It also allows for changes in the guidelines.

Requirements comparable to those found in section 5 of HB 58 are found in several sections of EHB 58. Section 7 states that the department may assist groups in obtaining information and in developing plans and calls for cooperation of state agencies and officials. This section also allows for the modification of guidelines as necessary. Section 20 of EHB 58 concerns uplands and calls for a study of these areas, particularly as they relate to beach areas. It calls for consultation among the agencies during this study and requires presentation of the information gathered to the legislature within 1 year of the effective date of the seacoast guidelines.

Section six of HB 58 sets the rules for adoption of the guidelines. R.C.W. ch. 34.04 is to be the guide for their adoption, and hearings for the proposed guidelines are to be held in Olympia. A system for giving notice of the hearings also was set up.

Section 6 of EHB 58 sets the time limit for the adoption of the guidelines at 1 1/2 years, 6 months less time than required by section 5 of HB 58. The EHB section also calls for hearings but requires that they be held in the county seats of counties in which there are coastal areas. It requires that the hearings be held before the guidelines are drawn up, not afterward as in HB 58. It then states that the guidelines are to become effective only after approval by a review board and by the state legislature.

Section seven of HB 58 is one of the most controversial sections of the bill. This section states, "comprehensive plans and zoning ordinances of local governments shall comply with the guidelines adopted by the department [Department of Environmental Quality] pursuant to this act." Local governments are given 12 months in which to comply with the guidelines (4 months to comply with amended guidelines). Should a local government fail to comply, the department would have authority to set the zoning for the affected area until the local unit did comply.

Local government officials viewed this section as a license for the state to move in and set up state zoning, and their fear of such zoning was magnified when associated with the department's request for authority extending back 1,000 feet from the beach.

Section 7 of EHB 58 gives the appropriate public agencies 1 1/2 years to adopt regulations for seacoast and tidal beaches. The act states "such planning and regulations shall be reasonably consistent with the guidelines adopted by the department and approved as provided in this act." Section 8 of EHB 58 states that if a local entity fails to comply within 1 1/2 years, the department shall submit the plans to the review board. The state would still have the potential right to intervene but a further protection of local interests was

offered. In the area between "the ordinary high water mark and the inner harbor line," construction would be allowed where it already exists or where the property is already leased.

Section eight of HB 58 establishes the procedure for approval of a local government plan affecting the seacoast. A local government submits its plan or ordinance to the Department of Environmental Quality. The department has 60 days for review. Should the department not approve the plan, it is required to submit in writing to the local entity the reasons for its rejection along with recommendations for changes which would bring the plan into conformity with the guidelines. The local government then has 60 days to resubmit the plan, and the department has 30 days to review a revised plan. If the plan is accepted, it takes effect immediately.

In EHB 58, section 8, public agencies, after formulation of regulations in conformance with the act, are required to submit their plans to the department. There is no time requirement for submission, nor is there a requirement for the department to answer. As in HB 58, should the department reject the proposals, it must submit in writing its reasons for doing so. The public agency then has 60 days to resubmit the proposal to the department.

If, as is called for in section 8 of EHB 58, the matter is submitted to the review board for non-compliance, or if any other matter is submitted to the review board, section 19 of EHB 58 declares that the department director shall submit a history of the issue along with his proposal for dealing with the issue. The review board is in turn required to submit its decision in writing.

Sections nine and ten of HB 58 have no comparable sections in EHB 58. Section 9 relates to variances and conditional uses, stating that they shall be treated as amendments to the zoning ordinances. Section 10 states that planning

and zoning regulations adopted pursuant to the act shall be administered pursuant to R.C.W. chs. 36.70 or 35A.63.

Section eleven of HB 58 bestows jurisdiction on the superior court of Thurston County or on the superior court of the county in which the disputed area is located. The attorney general, on request of the department, or the prosecuting or municipal attorney, at the request of a local government, has the power to bring an action to enforce the provisions of the act. A private citizen can request the attorney general to take action and, if refused, can bring suit in the name of the state. Should he succeed, attorney's fees will be awarded.

EHB 58, section 9, is similar to HB 58, section 11. It omits guidelines delegating authority to bring suit, but allows any state department to request they attorney general to file suit, instead of just the Department of Environmental Quality.

Section twelve of HB 58 concerns violations of the act. It states that any person who violates the act shall be subject to paying for damages and for the cost of restoration. Those who may sue in such actions include the department, through the attorney general; local governments, through their legal officers; and private citizens. The court has the authority to compel the violator to restore the damaged area or set up some other mechanism for doing so. Section 10 of EHB 58 is substantially the same.

Section thirteen of HB 58 makes a violation of the act a misdemeanor punishable by a fine of $100 minimum and $2,500 maximum, or imprisonment for 90 days, or both. If the defendant over a 5-year period violates the act three or more times, the fine increases to a minimum of $1,000 and a maximum of $10,000. EHB 58, section 11, is identical to this section.

Section fourteen of HB 58 states that violators of the act shall also be

subject to a civil penality. The department is given the authority to assess the fine under R.C.W. ch. 34.04. The maximum fine is $1,500, but, should the party violate the act more than twice within a 5-year period, the fine could reach a maximum of $5,000. Each day the violation continues is considered a separate offense.

Section fifteen of HB 58 calls for the establishment of councils to aid in the coordination and dissemination of information and activities. The councils were to be composed of members from various agencies, local governments, and the general public. They were to serve without pay, except expenses, and private members would get $25 per diem.

EHB 58 calls for a review board instead of the councils. Meetings of the board are set as necessary, and section 18 provides for compensation of $25 per day to non-state employees and per diem allowances to state employees on the board.

Section sixteen of HB 58 and section 12 of EHB 58 in identical language give the department the authority to enter into contracts and to receive funds for the purpose of administering the act.

Section seventeen of HB 58 gives the department the power to acquire title "or any lessor interest in real property." It can do this by "purchase, gift, exchange, or condemnation." All titles are taken in the name of the state and are to be administered by an appropriate state agency. There is no comparable section in the bill which passed the House. This may reflect hesitancy to confer the power to condemn.

Section eighteen of HB 58 calls for a review by all appropriate state agencies of administration, contracts, and plans which affect the seacoast. It calls for all agencies to work together implementing the act and for special

attention to be given to certain activities, among which are "timber harvesting, road construction, water impoundments and diversions, dredging and similar activities." This section also protects the rights of those already holding state lands.

Section 13 of EHB 58 is comparable. This section calls for coordination in plans affecting "adjacent lands" and notes that particular attention should be given to pollution control. It does not mention state lands which are already under private control.

Section nineteen of HB 58 controls the lease or sale of coastal property by the state and its agencies. Any such action must be approved by the Department of Environmental Quality as being in accord with the guidelines. There is no similar section in EHB 58.

Section twenty of HB 58 and section 14 of EHB 58 are substantially the same. They both place the department in the position of being the official representative of the State of Washington vis-a-vis all other governments and their agencies in the field of coastal management. EHB 58 adds the requirement that the department keep all other Washington State agencies informed of its activities.

Section twenty-one of HB 58 regulates "easements, rights-of-way, and similar interests in public lands subject to this act." Any rights which have not been exercised will be under the control of the guidelines set pursuant to the act.

Section 24 of EHB 58 goes into more detail on the matter of public and private rights. It states that the act will not prejudice any existing rights except that they must comply with the provisions of this act. Rights granted under several special statutory provisions are explicitly protected.

Section twenty-two of HB 58 says that the department "shall" reimburse 75% of the costs incurred by local governments in preparing their plans in accordance with the act. Section 15 of EHB 58 replaces the "shall" with "may." The subcommittee that drafted EHB 58 determined that any such reimbursements should be optional, not mandatory. Both bills stipulate that these funds may be treated as matching funds for federal programs.

Section twenty-three of HB 58 sets guidelines for obtaining a permit to undertake activity in areas covered by the act. Neither construction of a permanent nature nor activities such as filling, dredging or removing vegetation can take place without a permit. Permits granted before the effective date of the act remained in force. Applications must be given to the department and the applicant has to prove that he is authorized to undertake the proposed activity. Copies of the application must be sent to all adjacent property owners, the department, all concerned local governments, and state or federal agencies which would be concerned or which have adjoining property. This must be done within 5 days of the application. Interested parties then have 29 days in which to file objections. If none arise and the proposal fits the guidelines, the department, after 30 and before 45 days have elapsed, must act on the application.

If, however, an objection is filed, or the department so determines, a hearing will be held from 45 to 60 days after the application was made. All those who filed objections will receive written notice of the hearing. After the hearing, the department has 15 days to act on the request. Any application which is granted must be consistent with the act; be in the interest of public health, safety and welfare; or be a case of hardship. A property owner may resubmit a denied permit after 60 days have passed; also, a conditional grant of approval may be given if the applicant promises to amend plans in certain ways

in order to bring them into conformity with the act. If a person wishes to appeal a decision, an appeals board is set up composed of "the commissioner of public lands, the chairman of the oceanographic commission, and the director of parks and recreation."

Section 5 of EHB 58 refers to the granting of permits. This section was seen as a major compromise section. It was felt that development would be frozen until permanent guidelines were set in HB 58; therefore, section 5 of EHB 58 sets the procedure for granting temporary permits. These permits were to be granted by the administering agency and only for certain activities, e.g. "to protect real or personal property". The act also permits "construction that the public agency determines will be in conformance with both the probable and alternative public planning and regulations for the area consistent with the policy declared in section 1 unless it finds that such construction may cause substantial irreparable damage to the seacoast tidal beaches, in which case the granting of a permit shall be discretionary." Environmentalists objected strongly to this section, for they felt that the wording left too much discretionary power and that too much construction would be allowed in the beach areas. This section was viewed as one of the major "giveaway" sections of the new bill.

The procedure for obtaining permits was the same as in HB 58 and the applicant was was required to give notice to those concerned. Should those concerned feel aggrieved for any reason, he was free to request a hearing before the board within 30 days after the application was made. Appeals were taken directly to a superior court. This review board was composed of five rather than three members: the governor, commissioner of pulbic lands, an appointee of the department of commerce and economic development, a member appointed by the interagency committee on outdoor recreation, and a member of the public agency involved.

Section twenty-four of HB 58 and section 16 of EHB 58 are identical. They clear up procedural matters, declaring that the bill "shall be liberally construed."

Section twenty-five of HB 58 and section 21 of EHB 58 are also identical and deal with procedural matters. They provide that if any section of this act is declared invalid the remainder of the act will not fail.

Section twenty-six of HB 58 makes provision for carrying out the act should the Department of Environmental Quality not be created. The powers are to be vested in the agency of the Governor's choice and he is authorized by executive order to set the procedures for transfer of functions when the new department is created.

Section twenty-seven of HB 58 is an administrative section. It declares that the act neither expands nor diminishes state power over water resources nor does it exceed existing state law except where necessary to carry out the act.

Section twenty-eight of HB 58 recites the urgency of the act.

Section twenty-nine of HB 58 and section 25 of EHB 58 are the same. They give the exact title of the act and declare that the act shall be a part of R.C.W. ti. 43.

Two sections of EHB 58 are completely new. Section 17 gives members of the review board the power to appoint their chairman, and section 26 provides for an appropriation of $100,000 from the general fund to carry out the act.

To summarize, the two bills do have some differences. EHB 58 modified some of the politically objectionable features of HB 58 in an effort to pass the bill.

1. EHB 58 did not include the HB 58 section which raised the cry from local governments that the state was moving into zoning and that too much power would thus be transferred to Olympia.

2. EHB 58 enlarged the review board proposed in HB 58 and allowed an agency which is party to a controversy to have a member on the board.
3. EHB 58 allowed state agencies which already controlled some state property to continue to control that property.
4. EHB 58 softened the statements of policy as compared to HB 58.
5. EHB 58 provided a system of interim permits so that developments could continue during the period when the guidelines were being formulated.

Most of the other changes were just to clarity the wording of the bill. Both bills were administrative in nature and general in application, yet both incurred the wrath of various interest groups.

CONCLUSIONS

One of the largest hurdles faced by a coastal management act is the large number of diverse groups lobbying for specific clauses which each sees as being in its best interest. Fractionalization of this sort, particularly when lines have been drawn in opposing corners, makes any sort of compromise difficult. The 1971 Legislature, however, still must face the problem of coastal management. Hopefully the rumors and scare campaigns which generated confusion and ultimately defeat of any bill in the 1970 session will be replaced by more careful analysis and discussion of the implications of various aspects of a coastal management act in the 1971 session. The material presented in this analysis attempts to make a contribution toward that end by providing background information on the 1970 seacoast management bill.

SELECTED BIBLIOGRAPHY

Articles

Babcock, The Zoning Game, University of Wisconsin Press (1966)

Corker, Thou Shalt Not Fill Public Waters Without Public Permission - Washington's Lake Chelan Decision, 45 WASH. L. REV. 65 (1970)

Morrell, Seacoast Management Act: A Legislative History, (1970) (available from the Washington Environmental Council, letter form, 8 pp.)

Rauscher, The Lake Chelan Case - Another View, 45 WASH. L. REV. 523 (1970)

Spenser, Political Organizations for the Puget Sound Region: Some Alternatives, Possibilities, and Problems (1969) (Dept. of Political Science, University of Washington, September 15, 1969, 40 pp.)

Legislation

HB 58, 1970 Wash. Ex. Sess.

EHB 58, 1970 Wash. Ex. Sess.

CAL. GOVT. CODE §§ 66600-66659 (West Supp. 1970) (San Francisco Bay Conservation and Development Commission)

ORE. REV. STAT. §§ 390.605-390.990 (1969) (Ocean Shores; State Recreation Areas)

Judicial Opinions

Hughes v. State, 67 Wn. 2d 799 (1967)

Hughes v. Washington, 389 U.S. 290 (1967)

Oregon ex rel. Thornton v. Hay, 462 p.2d 671 (Or. 1969)

Smith v. Nelson, 76 Wash. Dec. 2d 729 (1969)

Wilbour v. Gallagher (The Lake Chelan Case), 77 Wash. Dec. 2d 307 (1969)

Newspapers

The Argus

The Daily Olympian

The Seattle Post-Intelligencer

The Seattle Times

Interviews

Dwight S. Hawley, State Representative and member, House Natural Resources Committee

Axel Julin, State Representative and member, House Natural Resources Committee

John Miller, lobbyist for the Washington Environmental Council

Dorothy Morrell, Chairman, Ocean Beaches Committee, Washington Environmental Council