

SHORELINE PUBLIC ACCESS HANDBOOK

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INTRODUCTION

As the Northwest becomes more and more crowded and developed, the demand for scarce resources begins to outweigh the supply. Such is the case for public shoreline access and recreation sites. These kinds of opportunities are becoming more and more in short supply as demand increases for shoreline access. Shoreline resources are highly prized and much in demand for public access and recreation. They must be carefully allocated, developed and protected in order to satisfy the needs and desires of the people.

It is clear from legislation passed in Washington State that public use of and access to shorelines is a high priority, war-

ranteeing shoreline preservation and enhancement. The degree to which general public access should supplant private use is sometimes argued; but, for the most part, the expression of public interest



Photo 1, Shorelines are popular recreational resources.

is clear in the body of laws effecting shoreline use. In Washington State the principal state law is the Shoreline Management Act.

The information in this book should help site planners, local officials and others in carrying out priorities for shoreline public access. The book is intended to be most helpful for those who must fit public access elements into otherwise private developments. This activity is usually done by conditioning development permits which are issued under the purview of the Shoreline Management Act.

Washington has operated a permit system for development on

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

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

The first part provides background for making a judgement about whether or not public access should be a factor in issuing permits for development on the shoreline. This information should help shoreline permit administrators make decisions which will stand up in court. The second part provides design specific information for shoreline planners, permit administrators, park planners and others who deal with the design of sites and facilities for public access to shorelines. Design information is provided that is applicable to both salt and fresh water sites. Part III of this book offers more specific administrative guidance, including recommended master program provisions, permit conditions and easement documents.

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

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

PREFACE

Shoreline public access is the legal physical ability of the general public to reach and touch the water's edge and/or the ability to have an unobstructed view of the water and the shoreline from upland locations. A principal goal of the Shoreline Management Act is to protect and enhance public access to the State's shorelines, and master programs are intended to give priority to public access and recreational uses of the shoreline. Many master program provisions do encourage or require that public access is provided. However, most local jurisdictions have no specifications on the size, design and location of access sites. In addition, there are usually no requirements or guidelines for recording permit conditions.

To achieve an effective permit process for public access, local governments should adopt master program provisions which are clear and explicit. A local government should also pursue a rigorous development permit process that assures that opportunities for public access are not overlooked. It is also beneficial to permanently record the public access as an easement on the land plat or against the deed to assure that the condition will have longevity.

Experience with the Shoreline Management Act shows that master program provisions and the resulting permit conditions, by themselves, are not sufficient to meet the public access goals of the Shoreline Management Act.

Jurisdictions that have had the most success with shoreline public access have gone beyond the bare bones Shoreline Master Program requirements. In some instances enthusiastic dedicated personnel have made the difference between a successful public access program and a failed program. Sometimes an enlightened citizenry has taken a leadership role in promoting public access. But, the common thread of successful programs is the comprehensive plan for public access. Normally such a plan is prepared by the jurisdiction's planning department. However, in some instances, the preparation of a public access plan can be done by volunteer citizens with the local shoreline administrators overseeing the process. Most of

the access plans are integrated with comprehensive park and recreation plans as well.

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

Shoreline administrators should also consider design factors which make the access sites attractive public resources. Due to design deficiencies, some public access sites are too small, there is little or no separation of public and private space, or they are aesthetically unattractive. Good design allows the public to feel confident that space is public, not private. Items such as the size of the space, relationship to adjacent private property, public use features (street furniture, landscaping, etc.) and signing are each important in identifying and affirming the public's right of access.

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

PART I

SETTING THE STAGE FOR PUBLIC ACCESS

THE COMPREHENSIVE SHORELINE ACCESS PLAN

The single most important element in a successful public access program is the comprehensive access plan. Each local jurisdiction is encouraged to develop such a plan. Preferably, the access plan should be a component of a comprehensive shoreline plan which addresses land use, transportation, parking, recreation, etc. Short of that, a single purpose access plan is highly desirable. Key elements of the access plan should be included as master program provisions or the entire plan can be incorporated by reference. Most desirably, the master program should contain explicit requirements based on the access plan.

The public access plan may just be a policy document establishing the framework for determining permit conditions or it may be a comprehensive action plan such as a waterfront "enhancement" plan wherein the public access objectives are achieved through a combination of private permit conditions and public acquisition and development.

The comprehensive access plan serves as the foundation for determining access requirements on specific projects. Access plans are normally prepared by a jurisdiction's professional planning staff (or by consultants) but, successful plans can be prepared by volunteers when staff is limited or when a broad base of citizen support is needed. What better way is there to gain citizen support than to recruit citizens to work on the plan? With the existence of a comprehensive access plan, permit review will be greatly facilitated. Permit administrators will be able to document whether or not a proposed project meets the adopted access plan and refer to the plan's provisions in discussions of proposals.

At minimum a comprehensive access plan should contain the

following elements (each element should be considered in the context of what exists now and what is planned (or projected) for the future:

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

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

Flowing from the goal statement(s) would be standards for implementation. These might include (samples given in " "):

- a) setback requirements: *"All structures will be set back a minimum of 50 feet from the ordinary high water mark."*
- b) public easement dedications: *"An easement of not less than 20 feet in width parallel to the shoreline will be dedicated for public access and use."*
- c) pathway requirements: *"An asphaltic concrete surfaced pathway of not less than 8 feet in width will be constructed for public use within the public easement."*
- d) landscaping requirements: *"The public access easement area shall be landscaped with native plant materials to*

achieve as near a natural appearing shoreline area as possible."

The public access plan also needs to be explicit about long term maintenance and repair policy. If the public access facilities are to be maintained in serviceable condition by project developers, that fact needs to be said in the plan and appropriate conditions attached to permits. If the local jurisdiction is to assume maintenance responsibilities, that fact needs to be stated and the jurisdiction needs to have a plan for raising the necessary funds.

The plan could be developed in phases, with a conceptual plan and general goals coming first, supplemented by more detail as time is available. Local citizen involvement is highly recommended.

LAND USE REGULATION IN WASHINGTON STATE

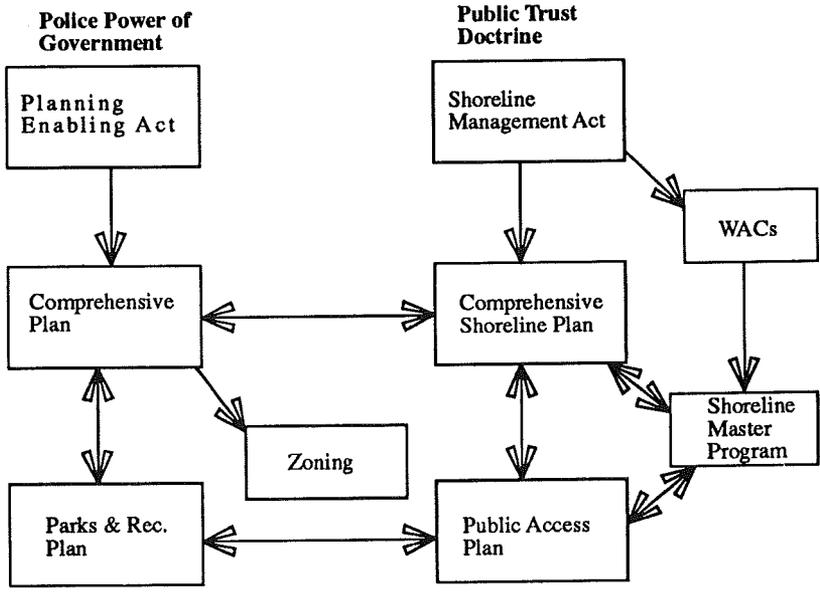
Controls over land use in Washington State are derived from two different constitutional bases of law. On one hand are the local zoning authorities given to cities and counties through the Planning Enabling Act. This authority is based on the constitutional police powers of government to protect the general health and welfare of the citizens.

The other legal basis is the Shoreline Management Act (SMA) which derives its authority from the Public Trust Doctrine, a concept adapted into our laws from English Common Law. The SMA and the public trust doctrine deal with rights held in common by the government for all the citizens. The SMA articulates the public trust doctrine, defines its scope and assures that private development does not unduly infringe on the rights of all the citizens.

The Planning Enabling Act provides authority for local governments to prepare "comprehensive land use plans" and adopt zoning for implementation. The SMA provides for the preparation of Master Programs which are prepared in accordance with WACs (Washington Administrative Code regulations) adopted by the state. The master programs are in turn adopted by the state as WACs and provide the means to protect the

public interest while allowing controlled development. Many jurisdictions are now preparing comprehensive shoreline plans under the SMA and integrating them into the comprehensive plans provided under the Planning Enabling Act.

The following diagram illustrates this two-source basis for land use laws:



What does this mean to shoreline administrators? Primarily it means that the SMA exists under broader authority than other local government land use controls (zoning) and that it is less concerned with regulation to protect public health and safety than it is with protecting public rights that already exist.

Specifically the SMA, particularly in providing for shoreline public access, is not forging or expanding any new rights for the public, it is merely concerned with protecting those rights that the public already has. The SMA does not take rights from a landowner, because his use of his property is already subject to those rights. The rights clearly existed in the law prior to the SMA under the public trust doctrine. The SMA simply serves as a mechanism for defining what those rights are and providing a reasonable means for regulating development to protect those rights.

DETERMINING THE PUBLIC INTEREST

There are a number of state laws that pertain to public use and access to shorelines in Washington State. Of primary importance to shoreline site planners is the Shoreline Management Act, RCW 90.58, which sets the policy for shoreline development and public access. The shoreline act states that *"...The public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible..."* (RCW 90.58.020).

Over the years of administering the Shoreline Act a substantial body of case law (discussed under relevant sections of this handbook), primarily State Shorelines Hearings Board cases, has evolved to verify and clarify public access policies. These cases are cited in various places throughout this book.

The Act establishes a system for the issuance of permits for developments along most shorelines within the state (streams below 20 cfs mean annual flow and lakes below 20 surface acres are not included). The Shoreline Act sets policies at two levels, one for "shorelines of the state" and the other for "shoreline of state-wide significance." Explicit priorities are given in the Act for shorelines of statewide significance which include increasing public access and increasing recreational opportunities. In addition statements are provided in the Act about preferred uses on shorelines of the state. Where the type of shoreline makes a difference the differences are highlighted where necessary throughout this handbook.

In addition to the Shoreline Act, public use of shorelines is further affected by laws pertaining to navigation, public street end vacation, and ownership of tidelands/bedlands and shorelines. The local shoreline permit administrator needs be familiar with these other laws as well as the Shoreline Management Act because a proposed development may be affected by them.

Navigability

Perhaps the earliest notion of public use of waters and shorelines was the concept of navigability. The original test of navigability was whether or not the waters were used for

commerce. Many Washington streams and lakes are considered navigable due to historical use for commercial activities, such as floating logs. In contemporary times, courts have given consideration to recreational use of waters which has expanded the scope of navigability to include recreational as well as commercial uses.



Photo 2, Navigation includes recreational uses.

Whether or not a particular stream or lake is navigable by these tests may be moot in many circumstances. On a non-navigable water body, the riparian owners have a common right to use the water's surface. If the state, and

therefore the public, is one of these riparian owners there exists a common public right to the use of the non-navigable waters. This is a typical situation on many small lakes, where the Department of Wildlife has acquired public fishing accesses and, in so doing, provided the public a right of common use with the other riparian owners of the lakes.

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

There are other legal concepts by which the public may have some rights to a shoreline or the use of the shoreline even though it may be privately owned. These are, 1) the public trust doctrine, 2) the doctrine of prescription and 3) the doctrine of custom. While the basis for each of these differs somewhat, each provides for a public interest in what are otherwise privately owned lands.

The Public Trust Doctrine

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

A recent United States Supreme Court decision, *Phillips Petroleum et al v. Mississippi*, 1988, ruled that the traditional basis of navigability as the determinate of public use is not the full intent

of law. Citing briefs prepared by the original

thirteen states and eleven other states, the justices opined public rights extend “to all lands under waters subject to the ebb and flow of the tides, regardless of navigability in fact.” This decision in essence affirms that “public trust” applies to wetland areas as well as open water.



Photo 3, There is often confusion about ownership of tidelands and what rights of use the public may have.

There has been some case law in Washington State pertaining to the public trust doctrine. In *Orion v. The State of Washington*, 1987, the state Supreme Court determined “the public trust doctrine ‘resembles a covenant running with the land (or

lake or marsh or shore) for the benefit of the public and the land's dependent wildlife.”

Orion dealt primarily with protecting an ecosystem and did not address aspects of public recreational use of the shoreline. But in *Caminiti v. Boyle*, 1987, the Supreme Court of Washington did rule that the public trust extended to recreational use of the waters. It did not address use of the tidelands or bedlands which are occasionally covered by those waters however.

Normally, real property ownership includes the right to exclude strangers from the premises. However, if the above described public trust interest applies, ownership of tidelands or bedlands would not include the right to exclude strangers. To date, there have been no court cases in this state that deal with this particular point.

Except for the above described limited cases, there is a dearth of case law about the applicability of the public trust doctrine to public access and recreational use of the shoreline. However, the Shoreline Management Act and the body of related case law provides an expression of public policy which, arguably, articulates the public trust doctrine for the shoreline area. Following this same logic, master programs, prepared under the Act, codify the public trust interest. Moreover, the preparation and adoption of a local comprehensive access plan further defines the public interest established by the public trust doctrine.

The Doctrine of Custom

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

- (1) the area has been used by the public for as long as people can remember;
- (2) the use has continued without interruption;
- (3) the use has been peaceable and acquiesced to;
- (4) the use is reasonable;
- (5) the use is certain and definable;

- (6) though established by consent, the use is compulsory in its operation; and
- (7) the use is consistent with other customs and laws.



The Washington State Attorney General opined that this doctrine applies to the outer coast, and that the public has a right to use the wet and dry sand portions of the beach to the line of permanent vegetation. This written opinion has stood for over 15 years without challenge. Although it has not been applied to inland waters, it is possible that there are a number of instances where the seven criteria could be met.

Photo 4, The public has a right to use the wet and dry sand portions of the Pacific Coast beaches in Washington State according to the State Attorney General.

Prescription

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

Land Ownership

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

The situation began with statehood in 1889. Under the United States Constitution new states are granted the same rights as

the original thirteen. The right to assert ownership over tidelands and bedlands of waters which are either navigable or effected by the ebb and flow of the tides was one of these. This means that upon entry to the Union, Washington State asserted ownership to all the tidelands and bedlands of such waters.

Since the State Constitution does not recognize any special rights for riparian owners on marine waters, the state decided to sell tidelands to the riparian owners so they would have access to the water without crossing the public tidelands. The practice of selling tidelands to the upland owners was continued until 1979 when it was stopped by the legislature. Approximately 60% of the state's tidelands were sold. [Author's note: The question exists as to whether the state, in selling the tidelands, could relinquish its public trust responsibilities especially in light of recent court cases cited above.]

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

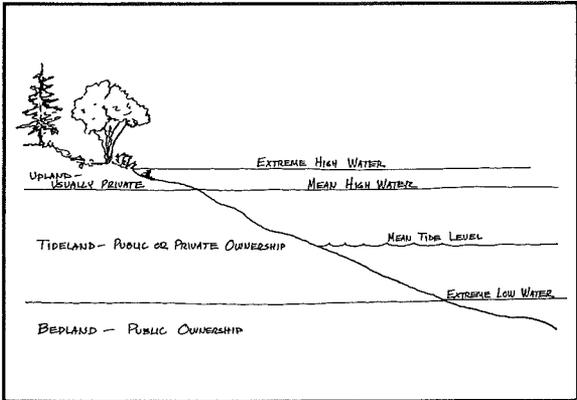


Figure 1, Diagram of typical tideland ownership.
Source: Washington Dept. of Natural Resources

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

2) Privately owned uplands with privately owned tidelands, but the tidelands and uplands are separate ownerships. This exists where an upland owner has sold his tidelands to another, such as an oyster company or when the upland owner chose not to purchase the tidelands from the state and they were sold to someone else.

- 3) Publicly owned uplands with privately owned tidelands. This may exist where the upland owner is the federal government and the uplands were part of the public domain which was never settled, but the tidelands were conveyed to the state at statehood and the state sold the tidelands. This situation may also exist where a public agency has purchased the uplands from a private owner without acquiring the tidelands.
- 4) Privately owned uplands with publicly owned tidelands. This is the most common problem situation and exists because the tidelands were never purchased from the state. In some of these instances the upland owner may think he (she) owns the tidelands when in fact they do not.

Another complicating factor is that the ownership line may be either the mean high water line or the Government Survey meander line. Ownership lines established after statehood (Nov. 11, 1889) are based on mean high water. Ownership lines for lands that were patented prior to statehood were established by meander line. If the ownership is based on the latter, and about 60% of Puget Sound is, the location of the property line may be substantially different than the current mean high tide line. Generally the government meander line attempted to follow the shoreline at the time of survey (late 1800s). Erosion and accretion over the years may have changed the relationship significantly and straight survey lines could not closely follow the actual shoreline in the first place. [Author's note: It can also be argued that since government surveys were attempting to follow the line of ordinary high water, that the meander line is merely a representation of the upper limit of tidal flow and was not intended to be a fixed location. This is supported by recognition of the "moving boundary" rule in federal law applicable prior to statehood. Therefore, the actual location of mean high water would take precedence in determining modern property boundaries.]

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

Street Ends

RCW 35.79.035 prohibits a city or town from vacating any road which abuts a body of salt or fresh water unless the street or road is not currently used or suitable for boat moorage or launching site, or for park, viewpoint, recreational, educational or other public purposes.

RCW 35.79.035 sets forth a process and requirements which a

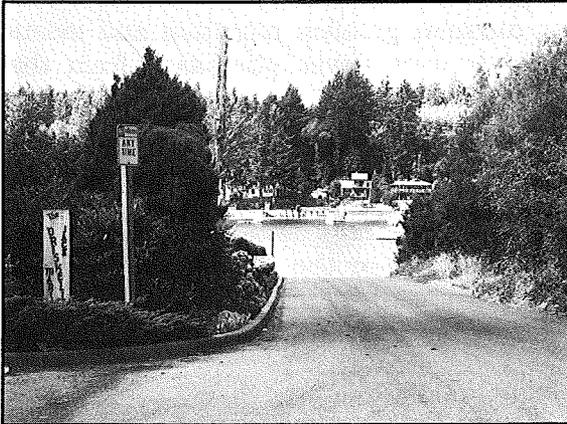


Photo 5, Street ends, such as this one developed into a boat launch, are important public access points.

city or town has to follow to vacate a street or alley if any portion abuts fresh or salt water:

- a) The vacation is sought to enable the city or town to acquire the property for public uses, such as port purposes, beach or water access purposes,
- b) The city or town, by resolution of its legislative authority, declares that the street or alley is not presently being used as a street or alley, and that the street or alley is not suitable for port, beach or water access, boat moorage, launching sites, public view, recreation, or education; or,
- c) The vacation is sought to enable a city or town to implement a plan, adopted by resolution or ordinance, that provides comparable or improved public access to the same shoreline area abutted by the streets or alleys sought to be vacated.

RCW 35.79.035 specifies a specific legal procedure which a city must follow to abandon streets, which includes holding public hearings. Also, RCW 36.87.130 regulates street vacations in a similar manner for counties.

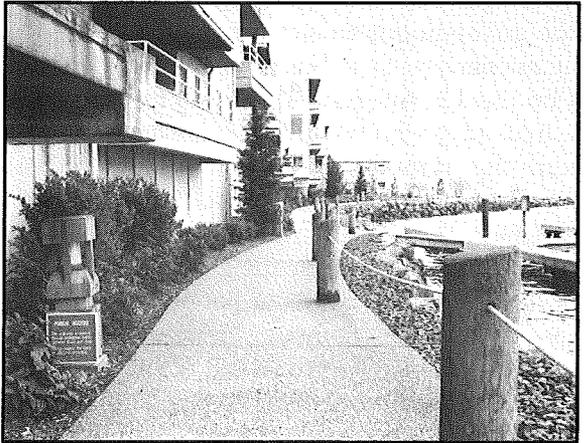
CONDITIONING DEVELOPMENT PERMITS

Affects of a Major Supreme Court Ruling

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

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

On June 26, 1987 the United States Supreme Court overturned a decision by the Court of Appeal of California, wherein the California Coastal Commission granted a permit to a private party, the Nollans, to replace a small bungalow on their beach



front lot upon the condition that they allow the public an easement to pass along their beach. The Supreme Court ruled that the permit condition for public access was improper.

Photo 6, This pathway was a required condition in the development permit for this condominium.

The Court ruling about the permit condition in this case did not end permit conditioning for public access altogether. Rather, the court clarified the procedures by which a government can attach conditions for public access to a permit.

Local shoreline permit administrators should take note: it is still proper to condition shoreline permits for public access.

To understand the *Nollan* decision, it is helpful to first look at the regulatory powers of government. Local government has very broad authority to regulate land use for legitimate public purposes such as health, safety, and general welfare concerns, without violating 5th amendment private property rights. The court had no problem with the notion that the public's ability to see the beach and to prevent congestion on the beaches were valid public purposes for regulating development. Courts have usually held that enforcement of land use regulations, in certain instances, may result in a reduction of the value of a parcel of land without corresponding compensation to the landowner which the *Nollan* case did not change.

However, the pivotal issue of *Nollan* was that government can not require a landowner to give all or part of his or her land to the government to serve a public benefit unless the donation is necessary to solve a problem the landowner is creating. The legal term "nexus" is used to describe the situation where a link exists between the impacts created by the development and the remedy. For example, if a landowner proposes a development which will block already existing access to a water body then that landowner may be required to provide for public access as a permit condition. Also, if a development is proposed that will draw people creating a demand for public use of the shoreline, a "nexus" condition may result which would justify a requirement for the provision of public access opportunities regardless of public use or interest in the shoreline prior to the development.

In *Nollan*, California's position had several strikes against it. First, California failed to relate the access requirement to a direct impact on public access caused by the *Nollan*'s proposed project. Second, while the state demonstrated the project's impact on view access, it did not condition the permit to provide compensating view access. Third, California could not make a case that, even though the public did have a long standing history of use of the beach area, the proposed development would impact that use. (Apparently the public had, over the years, been allowed to walk across the *Nollan*'s sandy beach below the bulkhead without any attempt by the landowner to block such use and there was no indication that would change with the development.)

The Supreme Court, in writing its majority opinion, made it clear that there must be a connection — a nexus — between the public interest sought to be protected by the government and the attached condition. In this case California demonstrated that the Nollan's development would reduce visual access to the water, but it conditioned the permit for physical access along the beach rather than for visual access.

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

It is also probable that if California had conditioned the permit for view access, the *Nollan* case may never have reached the Supreme Court. It is likely that the Nollans would have found the view access to be more objectionable and would have offered the lateral beach access in settlement. The message for permit administrators is that you should always go for whatever has a sound legal basis even if you would rather have something else, but for which a legal nexus can not be established.

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

Shoreline permit administrators in this state should not be discouraged by *Nollan*, but should continue to condition permits for public access while making sure a nexus does exist between the proposed condition and the public interest sought to be protected.

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

Shoreline Management Act Permits

The Shoreline Management Act requires that local governmental entities issue permits for substantial development on the shoreline. These developments must be consistent with the Act and with the approved master program for the area. In many instances, a permit is conditioned to provide some degree of public access to the shoreline. The terms of the condition are usually negotiated between the local government and the developer, but a review of permits by the State Department of Ecology serves to check that public access is adequate and consistent with the act and the master program. Ecology will also ascertain if there has been compliance with federal regulations. If a problem is found by Ecology, an appeal to the Shorelines Hearings Board could be filed, if necessary to resolve the problem. (In this regard, a private citizen also has the legal right to file an appeal.)

Some permits are handled as conditional uses or variances. There are provisions under the law that define when a permit must be treated as a conditional use or variance. In these instances, the permit must be approved by the Department of Ecology, not just reviewed. In this instance, the Department of Ecology may decide to attach conditions of its own for public access, if it determines that the local proposal for public access is inadequate.

[Author's Note: In the following discussion the term "dedication" means the granting to the public of an interest in real property for an express public purpose, such as public use and recreation. Dedications are normally initiated by permit condition, but should be recorded as easements against the deed of title to the property.]

Through the issuance of the permit, and the recording of the public access against the deed or on the face of the plat, the

local government legally accepts a dedication for access. State law (RCW 58.17.110) provides that a dedication for a public purpose can be recorded by showing the same on the face of the plat. If a plat map is not to be prepared, an easement will need to be recorded against the deed. RCW 58.17.020 provides that approval of a plat for filing by the appropriate governmental agency constitutes acceptance by the public. Recordation of an easement would establish the same acceptance.

Assumption of responsibility for the public access is not clearly defined by this law and permit administrators are well advised to place language in the easement document or as a note on the plat map, any provisions about maintenance, liability and the like. If the access is to be granted to an agency other than the permitting authority, such as a park department or an agency of state government a note or provision stating that fact should be incorporated in the legal documents.

Conditioning Permits: Negotiating with Developers

One of the first questions the shoreline permit administrator must deal with is a determination about whether or not conditioning a permit for public access is legally appropriate. And, from the perspective of maintaining good will with the development community, the permit administrator's decision in this regard must be logical, reasonable and fairly applied. This does not mean the rules should be bent to keep a particular developer happy, quite the contrary, it means the treatment must be equally and objectively applied.

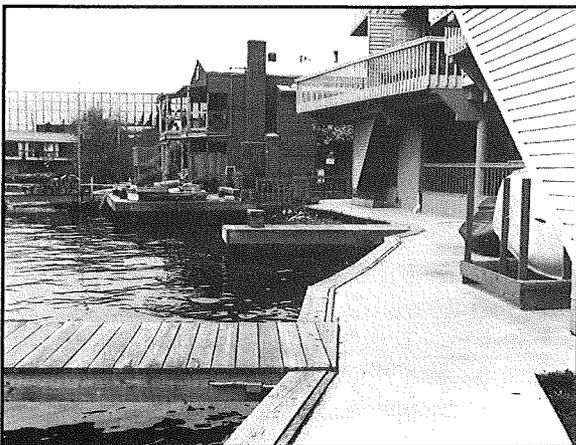


Photo 7, The developers of this condominium were required to grant an easement to the public for this pathway.

This question is dealt with at two levels. One is the local jurisdiction's master program, which provides specific requirements relative to the shoreline environment concerned and the proposed use. The master program, if not originally written to adequately cover public access, should be amended to provide for comprehensive treatment of public access. Model master program provisions are found in Part III of this handbook. Most desirably the master program provisions should be based on a comprehensive public access plan, but the absence of a plan does not obviate the need for public access provisions.

Master program requirements about public access should be constructed to meet the intent of case law about "legitimate public purposes" and provide a framework for establishing the essential nexus between the legitimate public purpose and the condition to be placed on the development. Having a framework for decision making is critical to being able to maintain objectivity and in providing for equal and fair treatment.

The second level, of public access decision making, is at the individual project/permit level. Public access permit conditions should be guided by the master program, overriding conditions in the law and by considerations about the basis for conditioning permits as discussed in this section.

There are a number of Shorelines Hearings Board cases which can serve to help guide public access decision making. Local permit administrators are advised to familiarize themselves with the *Digest of Decisions* published by the Shorelines Hearings Board. In addition the Department of Ecology, Shorelands and Coastal Zone Program staff can provide advice and assistance on public access problems.

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

It is important to have standards in place to provide for determining requirements about public access. Some of the standards may provide restrictions on the development such as bulk and setbacks and other standards may address the particular characteristics of the public access. Important issues, such as how much space, the kinds of facilities, street furniture, landscaping requirements may vary considerably from development to development, yet still meet the objectives of the access plan. These can be addressed if the local government adopts access standards, such as a requirement that a pathway be a certain width and hard surfaced. These kinds of standards add more strength to the negotiating position, and make it abundantly clear what is expected. Standards should be determined with care, for deviations from the standards may trigger variance permits, something that should only be done infrequently.

Conditions for Public Access Without Compensation

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

- 1) There needs to be a legitimate public interest in the particular body of water and its shoreline areas. For example, a public interest does exist if the water body is navigable. The Shoreline Management Act also finds a public interest in all "shorelines of the state" and an even more explicit priority in "shorelines of statewide significance." The public's right to use the shoreline area may also exist under the legal doctrines of prescription or custom, even if not directly established by the courts. And, overriding all of these may be a public trust interest in virtually all shorelines.
- 2) The project has an impact on the public's right of use of the water body. The impact may not be just on physical access. Blockage of the view and aesthetic enjoyment of the water may be sufficient justification for a permit con-

dition. The Shoreline Management Act clearly states that permitted shoreline uses will be done so as to minimize any interference with the public's use of water.

- 3) The actual conditions attached to the permit are presumed to "sufficiently correct" the impacts created by the proposed development; if they do not, the proper action is to deny the permit.
- 4) As a general rule, the amount of public access, ie. the burden placed on the developer to provide public access, must be commensurate with the degree of impact the project has on the public interest. The courts have also supported the notion of "cumulative impact" where the imposition of mitigating conditions may be based on the cumulative impacts of development and not just on the impacts generated by the particular project. For example, the government may deny (or impose remedy conditions) the proposal by reason of the cumulative impact of the project in combination with other construction.

Arguments are sometimes set forth about the proportion of a project's total cost that should be spent on public access improvements. Local permit administrators should not be swayed by these arguments. The proportion of a project funding spent on public access will vary widely. Any attempt to apply a fixed percentage of development cost does not have a sound legal basis. The amount to be spent on public access must be the amount necessary to sufficiently correct the impacts caused by the project irrespective of project cost. If the impacts can not be corrected, the only recourse for the permit administrator is to deny the permit.

- 5) The public's right does not necessarily have to be currently exercised. For example, a permit for re-development of a project which was done prior to the Shoreline Management Act that did not provide for public access may be legitimately conditioned for public access. This action restores the ability of the public to exercise its public trust (or other doctrine) right, which was incorrectly blocked by the earlier development.

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

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

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

Uses Under the Shoreline Management Act

The Shoreline Management Act recognizes that water dependent industrial and commercial (including ports) uses have a priority for shoreline locations. The only non-water dependent uses which are given priority are single family residences, shoreline recreational uses and those other uses that provide an "opportunity for substantial numbers of people to enjoy the shoreline."

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

"A water-dependent commerce or industry, to which priority should be given, is one which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations. A water-related industry or commerce is one which is not intrinsically dependent on a waterfront location but whose operation cannot occur economically without a shoreline location." (*Yount and Department of Ecol-*

ogy and Attorney General v. Snohomish County and Hayes, SHB No. 108, and Adams v. City of Seattle; Department of Ecology and Attorney General, SHB No. 156.)

In simple terms, there are three levels of allowable shoreline uses under the Shoreline Management Act: Water-dependent, Water-related and Water-enjoyment (the latter phrase coined by MAKERS et.al. in a report titled "*Urban Waterfront Policy Analysis*," available from the Department of Ecology). Water-dependency is explicitly defined in RCW 90.58.020, water-relatedness is not. Water-related use has been defined by the Shoreline Hearings Board case law cited above (SHB 108 and SHB 156) and is now a generally accepted concept of shoreline management. Water-enjoyment is described in RCW 90.58.020 as a public opportunity.

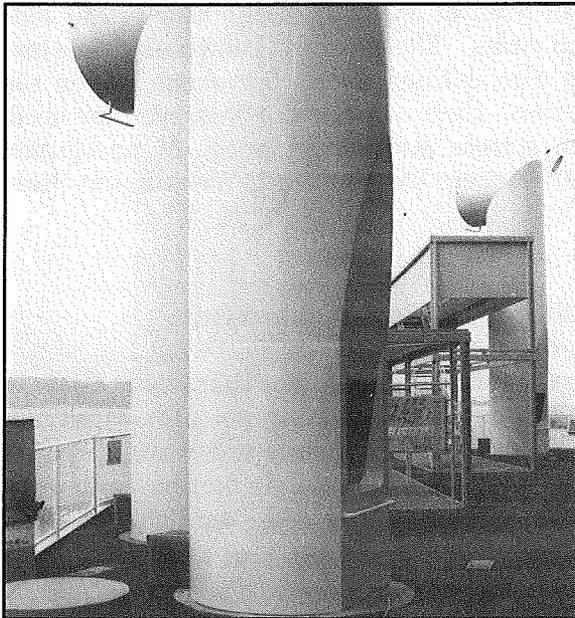


Photo 8, A major port district provided these periscopes and interpretive displays to provide view (below) access of the working port area.



The following working definitions of each of these three use categories are based on the Shoreline Act and on case law and are recommended for use by local programs:

Water-Dependent: A use or portion of a use that requires direct contact with the water and can not exist at a non-water location

due to the intrinsic nature of its operations. Example uses are, ship cargo loading and unloading areas, ferry terminals, barge loading facilities, ship building, and repair, servicing and dry docking of ships, aquaculture, float plane facilities, boating

services and marinas, hydroelectric dams (but not the generating plants), log booming and sewer outfalls (but not the treatment plant).

Water-Related: A use or portion of a use which is not intrinsically dependent on a waterfront location but depends upon a waterfront location for economic viability. These uses have a functional relationship to the water, or the use provides a necessary support service for a water-dependent use and physical separation is not feasible. Example uses are, fabrication of ship parts and equipment, warehousing of goods to be shipped by water, seafood processing plants, paper and wood products mills where materials are water transported, oil refineries where shipping is by tanker, hydroelectric generating plants, and energy generation plants requiring large volumes of cooling water.

Water-Enjoyment: A recreational use, or other use facilitating public access to the shoreline as the primary character of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general character of the use and which through the location, design and operation assure the public's ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline space of the project must be devoted to provisions that accommodate public shoreline enjoyment.

Primary water enjoyment uses may include, but are not limited to parks, piers, and other improvements facilitating public access to shorelines of the state; and general water enjoyment uses may include but are not limited to restaurants, museums, aquariums, scientific/ecological reserves, resorts and mixed use commercial; PROVIDED, that such uses conform to the above water oriented requirements and the provisions of the master program.

An additional working term — **water-oriented** — is useful for shoreline administrators. Water-oriented use means any one or a combination of water-dependent, water-related or

water- enjoyment uses and serves as a all encompassing definition for priority uses under the Shoreline Act.

In addition, the term **Non-water-oriented** serves to describe those uses which have little or no relationship to the shoreline and are not considered priority uses under the Shoreline Management Act. Any use which does not meet the definition of water-dependent, water-related or water-enjoyment is classified as non-water-oriented. Examples include, professional offices, automotive sales or repair shops, mini-storage facilities, multi-family residential development, department stores and gas stations.

Adding public access features to a non-water-oriented use does not necessarily change the use to a water-oriented use. A non-water-oriented use, such as a retail shop, may be found acceptable for a shoreline location if it provides for substantial numbers of the public to enjoy the shoreline, but in these instances the project would have to provide a significant amount of public benefit — a simple walkway allowing passage along the water may not be sufficient. Instead, substantial public facilities such as picnic tables, benches and the like will most likely be needed and considerably more shoreline space will have to be dedicated for public use. For a large development, a requirement that a public park be provided would not be an unreasonable requirement.

In all cases, the language of RCW 90.58.020 requires that priority shoreline uses except for single family residences, ports, or water-dependent commerce or industry either be public recreation uses or uses that providing an opportunity for substantial numbers of the people to enjoy the shoreline of the state. In addition, permitted uses are required to minimize, insofar as practical, any interference with the public's use of the water.

There should be no permits issued for shoreline development that do not meet these requirements. Even for preferred, but non-public kinds of uses (ie water-dependent industry or ports) provisions should be made to prevent or mitigate interference with the public's use of the water and to provide for public access. Therefore it is not unusual to see requirements for public access attached to permits for uses such as ports and water-dependent industry.

SPECIAL CONSIDERATIONS

Payment in Lieu of Dedicating Access

There is a law in Washington State, RCW 82.02.020, which allows "in lieu" payments instead of providing public facilities as a condition for approval of a development. In lieu payments are allowed where a dedication cannot be made, or where mitigation of a direct impact resulting from the development is necessary. However some strict rules in RCW 82.02.020 relating to in lieu payments have made the program unpopular for public access.

Nonetheless, there are some situations where an actual dedication may not be feasible and in lieu payments may be required. This situation would most likely surface in an industrial area, such as a port, where public access is unsafe.

The in lieu payments are subject to the following:

- 1) The payment shall be held in a reserve account and may only be expended to fund a capital improvement agreed upon by the parties to mitigate the identified, direct impact;
- 2) The payment shall be expended in all cases within five years of collection;
- 3) Any payment not so expended shall be refunded with interest at the rate applied to judgments to the property owner of record at the time of refund; however, if the payment is not expended within five years due to delay attributable to the developer, the payment shall be refunded without interest.

The law also stipulates that no payment shall be required unless it can be established that it is reasonably necessary as a direct result of the proposed development or plat. This requirement is similar to the "essential nexus" stipulation contained in the U.S. Supreme Court decision on *Nollan v. California* which is described fully in a previous section of this handbook.

Acquisition Considerations

Fee Acquisition Versus Less Than Fee

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

The rights and limitations of a less than fee acquisition must be clearly spelled out in the recorded documentation. Failure to adequately envision the "what ifs" may result in an easement of questionable value. The easement will run in perpetuity with the land and can not be easily changed once in place. Model easements are contained within this handbook. They may not meet all needs in a local situation so the local shoreline permit administrator should obtain legal counsel to ensure that the easement will be properly written.

A less than fee interest results from attaching a condition to a permit for shoreline development. If the condition appears only on the permit and is not recorded against the deed as an easement then the legal existence of the condition may be lost in the future. A development permit is usually only active during the period of construction and once the project is completed and certified for occupancy, the permit is filed as inactive, probably never to be looked at again. If a question arises in the future about a right of public access, a search of the records may not uncover the permit and the public interest may be lost forever. And, if new owners are involved, they may be able to successfully argue that they were not notified of the condition.

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

Solving the Liability Issue

The argument is often raised that if an owner is required to allow public use over his property, he will be held liable if someone becomes injured or otherwise harmed. This argument should be addressed with the following responses:

- 1) First of all, Washington State has a law (RCW 4.24.220-210) that limits the liability of landowners toward recreational users. The law was written to encourage landowners to make their lands available to the public for recreation. This law protects those landowners who allow public recreational use of their lands. This law does not apply if a fee is charged for the use. This law does not prevent liability where a known artificial dangerous condition exists for which warning signs have not been placed nor does it limit or expand the concept of "attractive nuisance."



Photo 9, Fears about liability are often the reason for no trespassing signs.

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

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

If the landowner charges a user fee, then the liability burden is assumed by the landowner. In all cases, a landowner who allows public access would be well advised to purchase comprehensive liability insurance. Insurance companies typically do not recognize the existence of RCW 4.24 and tend to have an exaggerated understanding of the liability involved which translates to high premiums. This insurance industry factor is one that needs to be dealt with in an objective and assertive manner to assure that reasonable premiums are charged for liability coverage.

To summarize the liability situation, if the public access is either voluntarily provided or is required by permit condition the landowner should be protected from all or most liability unless the landowner charges a fee for the use. The governmental agency will have to deal with the assumed liability, but this assumption should be consistent with its other liability associated with streets, sidewalks and public buildings and is a responsibility appropriately assumed by government.

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

PART II

SITE PLANNING

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

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

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

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

This discussion covers the art and science of planning the physical and physiological elements of a public shoreline area. The other factors that spell success for a public access site are of a legal nature, including how to write permit provisions that are clear and explicit and how to properly record the fact of the permit condition. These “legal” factors are discussed elsewhere in this handbook.

FUNDAMENTALS OF PUBLIC ACCESS

The usual role of the shoreline public access site planner is to fit public access elements into plans for an otherwise private development. This role is somewhat more narrowly focused than that of the recreation site planner; in the latter case, accommodating a non-public development is usually not an issue. Nonetheless, both planners are designing facilities for

public use, which should be built to similar design standards.



Photo 10, Public access sites can be attractive recreational resources.

Generally, the public access site planner must attempt to add public facilities under conditions that are less than ideal and provide some assurance that the facilities will

serve a useful purpose. The public access planner can be guided by a set of fundamentals to help accomplish this goal.

By looking at many different kinds of public access sites the author has observed that in some cases access facilities, although established as called for by a permit, are not used by the public. This is unfortunate and perplexing because of the great demand for water-based recreation. Certainly shoreline public access facilities ought to help satisfy this demand—otherwise why bother?

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

1. The public access area should be a comfortable place to visit, that is the visitors should feel they “belong.” This

feeling can be reinforced by signing, but signs cannot overcome the negative effects of inadequate space and design deficiencies.

2. There should be a physical separation of the public and private space so the public clearly will know the extent of their domain and know they are not infringing on private rights. This separation can be achieved by adequate space and through screening such as by landscape planting or fences. Often an elevation differential between the public and private space can be used to achieve separation objectives where space is limited.

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

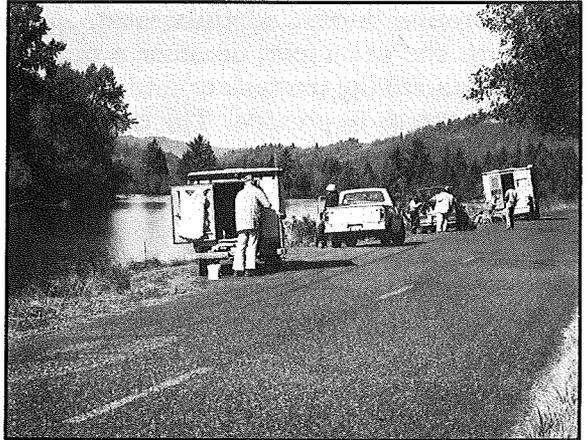


Photo 11, Public access is sometimes found by users even though the site was never designed for shoreline use.

4. The public access area should be designed so the visitors will feel safe from such things as industrial activities, biting dogs and irate homeowners.
5. There should be an attraction, like a scenic view, which will draw people to the site, although the mere presence of water may be sufficient.

These fundamentals will help make public access sites more successful.

One must realize that lack of frequent use does not necessarily condemn a particular site as ill-planned or unsuccessful. In some cases, it may take two or three years before a new area is

“discovered.” And, a low level of use may be very desirable at some locations, in order to provide a high quality recreational experience which the presence of many other users would destroy.

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

THE SITE PLANNING PROCESS

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

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

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

Steps to Site Planning

Site planning begins at the information gathering stage (which actually continues through final design). During this phase information is gathered from maps, reports and other pertinent

sources. Crucial to the process is a detailed examination of the proposed shoreline development which triggered the process and the laws and regulations which control the development.

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

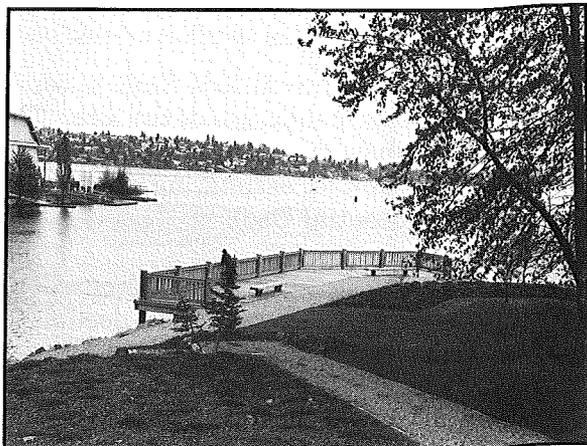


Photo 12, The site plan should be designed to take advantage of natural amenities such as the views afforded by this site.

In many instances, at the time the public access site planner (shoreline permit administrator)

receives the project there is sufficient information available to begin making some of these kinds of judgments without visiting the site. However, one should be cautioned that no final decisions should be made without a visit to the location and an "on site" evaluation.

Site Evaluation

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

At this stage the site planner checks topographic details: drainage courses, slope, aspect, etc. Particular attention must be given to what the existing or potential attraction is that would make it a desirable area for the public to visit. Is the shoreline/beach especially nice? Does the area lend itself to constructing

of the design may be required to achieve the desired relationships. The most desirable plan could be one that emphasizes the links while minimizing or eliminating the anti-links.

The fundamentals of public access provide the intent of the site planner. The first fundamental of public access applies to the links. Indeed the very function is to make the link user feel comfortable in the activity — the visitor should be encouraged to use the link, perhaps even be “drawn” along its course.

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

It is not enough to consider just the “on site” nodes and linkages. Adjacent features that may impact the site plan must also be brought into focus. Is there a nearby public park that the public access should link to? Is there a nearby industrial site that it should not link to? The site planner, rather than the

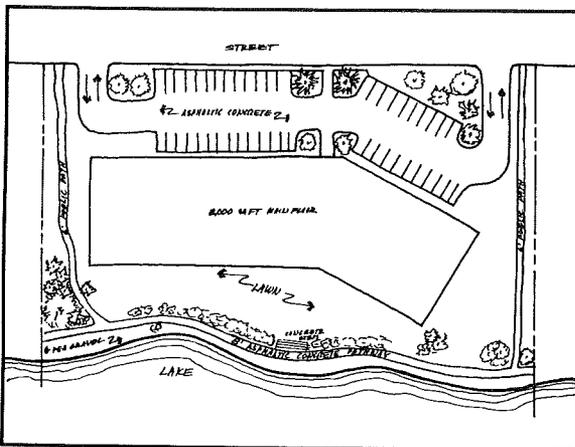


Figure 3, The detailed site plan provides the basis for issuing the permit and preparing the easement document.

developer’s architect, is responsible for considering these external factors. The architect is primarily concerned with the functionality and efficiency of the development itself — a consideration that is essentially driven by benefit-cost alone.

THE DETAILED SITE PLAN - DESIGN CONSIDERATIONS

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

Picnic Areas

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

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

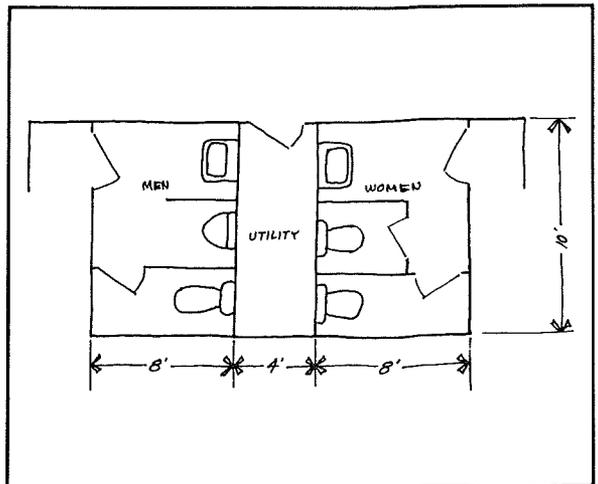


Figure 4, Floor plan for a small restroom building.

Figure 4 is a suggested floor plan for a small inexpensive restroom. It has capacity for a day use area receiving a peak day attendance to approximately 250 visitors.

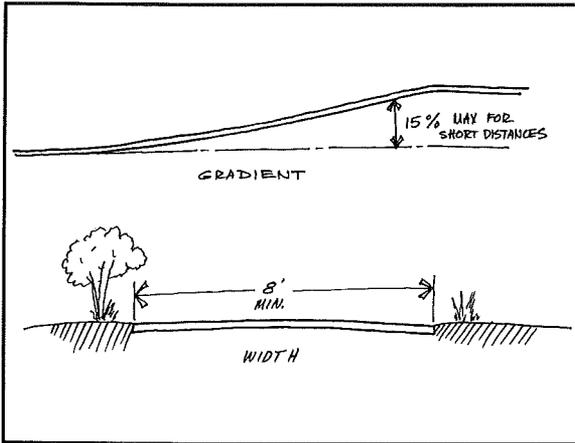


Figure 7, Typical bicycle path design.

concrete to a width of 10 or 12 feet because that is the width of most paving machinery and it is more economical to construct the wider path than it is to fuss with a narrow configuration. A bicycle path should not have long grades which are

greater than 10%. A very short steep gradient section of up to 15% is acceptable but only if interspersed by flat sections. A bicycle path should also be separated from vehicular traffic.

Handicapped Pathways

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



Photo 13, A bench can be very simple yet functional.

Benches

In a typical public access area benches will often be provided, so people can sit, rest and contemplate the view. A bench must be set back from the walkway so people will still have room to

walk by when other people are using the bench. Generally a bench will need a minimum of six feet front to back space. It would be better to have 8 or 10 feet. Benches may be built with or without backs. The former are the most comfortable for users, while the latter are the least expensive and easiest to maintain.

A typical bench may be 4 to 5 feet in length and require a 2 to 3 foot space front and back depending on where people's legs might extend. Long benches are not recommended as they will not be effectively utilized. One user or user couple occupying the bench will tend to discourage other users, even though there may be physical space.

Viewpoints

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

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

Parking, Roads And Turnarounds

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

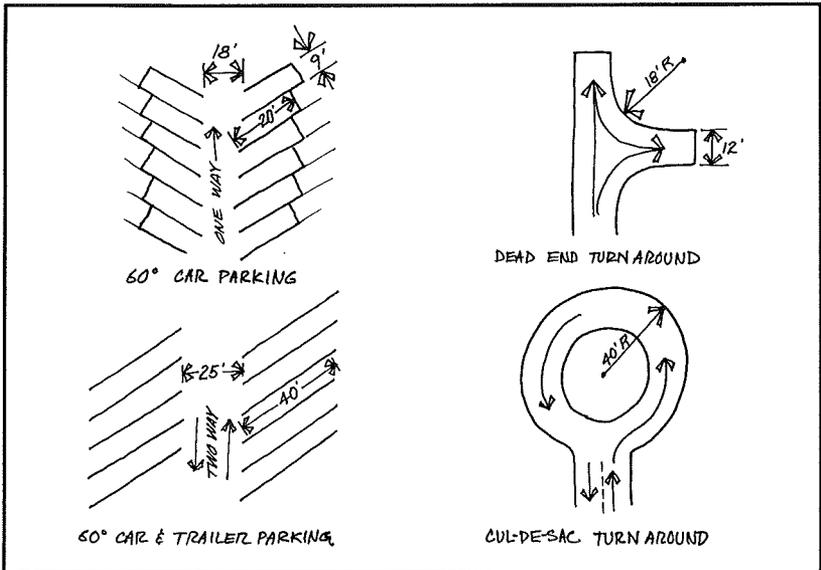


Figure 8, Diagrams for minimum parking and vehicle turnaround standards.

The lack of parking opportunity on site should never be used as an argument for not providing public access. Other options to accommodate automobiles should be explored including off site parking. Use estimates and parking standards should be carefully considered, and final decisions based on parking for the desired use level.

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

Parking lots need careful planning to accomplish logical traffic flow and to provide adequate maneuvering room. Typical parking diagrams are included to show how spaces can be arranged. Standards are also diagramed for turnarounds and other vehicular facilities. However, site topography and size may result in specialized parking arrangements which may challenge the site planner's skills. Generally a parking area should be on ground sloping no more than 5% although slopes of 10% can be tolerated.

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

Parking areas and roads may require visual barricades such as berms and vegetative screening in order to maintain the aesthetic values and to minimize intrusion by vehicles.

Stairways

Stairs are undesirable, "last resort" facilities, and should be avoided if there are any other feasible routing methods. They are generally more hazardous than walkways, are not handicapped accessible, and are difficult and costly to build and maintain.

However, any time a slope of more than 14% must be negotiated, steps or complete stairs will be needed. The safety and utility of a stairway will be determined by several factors including 1) the ratio of rise to run of the steps, 2) the width and 3) the presence or absence of railing. The installed heights of railings should be 30 to 34 inches above the landing surfaces and



Photo 14, In many locations, stairs are needed to descend bluffs to beach areas.

tread nosings. In addition, most building codes require that a 6" dia. ball cannot pass through the railing.

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

- 1) The sum of 2 risers and 1 tread should equal 25 inches.

- 2) The sum of 1 riser and 1 tread should equal 17 to 18 inches.
- 3) The product of multiplying the height of the riser by the width of the tread should equal approximately 75.

In any case the result is about the same. One important rule must prevail: all the treads and risers for a given flight of stairs must be consistent. It is never safe to change the width of the tread or the height of the risers mid-way in a set of stairs. In addition, long runs of stairs should be interrupted with landings.

Viewing Towers, Bridges And Elevated Structures

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



Photo 15, Viewing towers can be used to provide safe vantage points for unsafe areas like industrial areas.

vistas of the working port area and provide interpretive information for the visitors.

Sometimes view opportunities may be unplanned. A bridge built for a different purpose, may unexpectedly provide a high level view. In this case the

shoreline permit administrator needs great flexibility and visionary foresight to take advantage of the opportunity.

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

Restroom Facilities

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

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

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

The number of facilities can be determined by referring to the following table:

COMFORT STATIONS FOR PICNIC AREAS					
Number of car parking stalls	No. of Urinals	No. of Water closets		No. of Lavatories	
		men	women	men	women
1-40	1	1	2	1	1
41-80	2	2	4	2	2
81-120	3	3	6	3	3
COMFORT STATIONS FOR CAMP GROUNDS					
Number of sites	No. of Urinals	No. of Water closets		No. of Lavatories	
		men	women	men	women
1-20	1	1	2	1	1
21-30	2	2	3	2	2

Adapted from a table published by the Washington State Department of Social and Health Services

Swimming Beaches and Related Facilities

Swimming/sunning beaches and wading pools are popular public access facilities. Generally, swimming beaches are relatively simple: a gently sloping sandy beach down to about 6 to 8

feet of water at a distance of 50 to 100 feet from shore. A swimming beach can be developed with a floating boom to delineate the area, a diving platform, and a lifeguard station. If no lifeguard is provided, the area should be signed, cautioning users to swim at their own risk. In fact, some jurisdictions follow the strategy of signing them as un-patrolled beaches rather than as swim areas in order to lessen the liability and reduce operating cost.

Interpretation

Interpretive facilities are a good means of public education about particular aspects of an area. Interpretation can enhance a visitor's enjoyment of a shoreline visit while at the same time providing the visitor some information about shoreline management.

Interpretation:

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

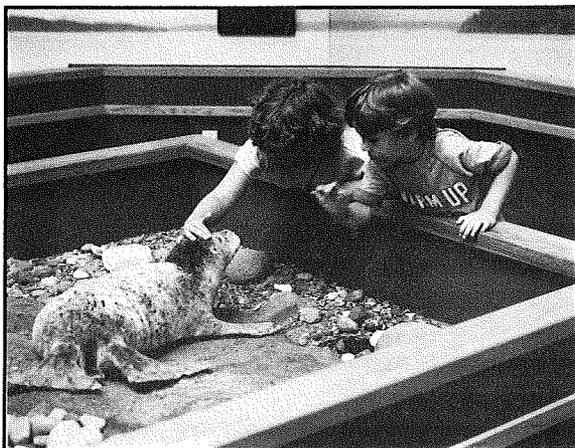


Photo 16, Interpretive programs can greatly enrich a visitor's experience.

According to Grant W. Sharpe, in his book *"Interpreting the Environment,"* interpretation has three objectives:

"The first and primary objective of interpretation is to assist the visitor in developing a keener awareness, ap-

preciation, and understanding of the area he or she is visiting. Interpretation should help make the visit a rich and enjoyable experience.

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

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

Shoreline access sites are places where people are naturally drawn, and they usually have interesting and varied features. The land-water interface provides one of the most interesting natural systems to study. People seem to have a natural propensity towards visiting the shorelines, and the unique assemblages of aquatic and terrestrial life can be highlighted through an interpretive program. The goal of an interpretive program is to assist people in discovering and appreciating the shoreland ecosystems.

Interpretive programs can include simple signs, guided nature walks, and/or self-guiding literature. Some information as to the effort necessary to maintain the site for public use can help visitors to develop a greater sense of personal responsibility for the public site.

Landscaping

Public access areas will normally be landscaped to some degree. Proper landscape design helps make them more attractive, provides screening and separation of use areas and facilitates maintenance. Generally, the preservation of natural

vegetation and the shoreline configuration is preferable to yielding to the landscape architect's fantasy. Natural shorelines are easier to maintain, better suited to support wildlife and encouraged by policy in the Shoreline Management Act. It is important for the planner and the governing body issuing the shoreline permit to determine if natural values are to be preserved or if artificial landscaping is allowed.

Landscape plantings may serve a dual role. In addition to creating a visually attractive setting, vegetation can be used as a means to reduce extraneous noise, provide erosion control and bank stabilization, or to provide screening and space separation.

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

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

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

Trees: Adequate growing space will depend on the species. Generally conifers will take up less horizontal space (about one-third to one-half the height), while deciduous varieties will spread to equal or 1-1/2 times the height. Native conifers, such as Douglas-fir, hemlock, and ponderosa pine, grow to a height of 150 to 250 feet at maturity, although the life of a project could well be extinct by the time this growth could be achieved. On a good site a height of 80 feet or so for a Douglas-fir within 30 years or so should be planned. Native deciduous trees such as alders, cottonwoods and maples will grow to mature height more quickly, but their life span is much shorter. For example, do not expect a healthy life of more than 25 to 30 years for an alder.

The introduction of exotic species into shoreline areas must be carefully weighed. Certain grasses, flowers and shrubs can quickly take hold and become dominant over native species. The proliferation of Scot's broom (*Cytisus scoparius*) is an

example of good intentions run amok. Although ivies can quickly beautify a particular area, they can lead to the decimation of the native flora, and subsequently the fauna.

Signs

The Department of Ecology has adopted a standard public access sign. It has been installed at numerous public access sites around the state. It has also been adopted by the state of Oregon. Local jurisdictions are encouraged to use the sign. The signs are available free of charge for qualifying public access sites.



Photo 17, The official Washington State Public Access sign.

Public access signs should be placed so the visitor will be headed in the direction of the access point when facing the signs. They will be needed on major highways and roads to provide advance warning and direction to public access sites. Normally such signs are installed in advance of the turn and at the point of the turn. Additional signs may be needed as reassurance at junctions and other locations where confusion as to route may exist. These signs should be installed in conformance with the Uniform Traffic Code and will usually be the responsibility of the state, county or city highway departments. The local parks and recreation departments or shoreline administrator should provide the appropriate specifications and recommendations for the installation of these signs.

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

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

Floats, Docks, and Other Water Access Facilities

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

- 1) Floats need to be anchored in place by piling. In most installations, a metal ring is used to fasten the float to the piling, although the piling may be placed through a hole in the middle of the float. Either arrangement allows the float to rise and fall with the water level.
- 2) In some instances, a fixed pier may be installed instead of a float. Piers are common as platforms for fishing and are

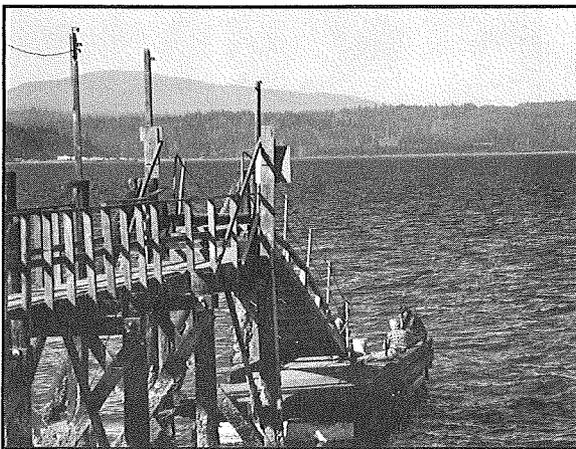


Photo 18, Floats are usefull public access facilities.

not normally suitable for boating facilities unless the water level is stable as on a lake.

Normally a water level float requires no hand rail, but should have a low "bull rail" to define the edge and to provide something to tie boats to. A

fixed pier will need a railing if it is more than 2 feet above the water surface. The rail should be built to building code standards.

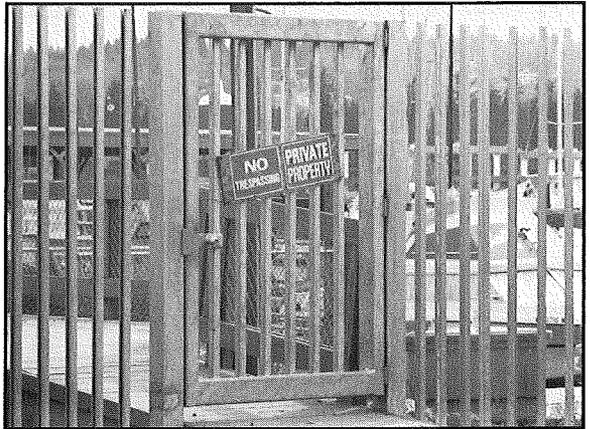
Floats may be constructed of hollow concrete vaults, or may be build with foam flotation cells under a wooden deck. Other materials have also been used successfully.

Promenades

A promenade is an elevated walkway which oversees a shoreline area and extends lineally along a distance of shoreline. Often it will be elaborately developed with planters, benches, landscaping. They are most often found in urban waterfront settings. A key design features of a promenade is to provide separation of uses to insure safety, and to provide adequate walking space to accommodate the anticipated level of use.

Fences

Fences can be used to provide separation of public and private spaces, provide for public safety and divide public use. The materials to use for a fence is largely an aesthetic issue. While a chain-link fence may be the most functional, it may be very obtrusive on the aesthetics of the shoreline environment.



A "fence" does not necessarily have to be a man-made structure. Vegetative barriers may in fact accomplish a needed result and be more aesthetically pleasing.

Photo 19, Fences are sometimes needed to establish a barrier in order to protect private property.

ESTIMATING POTENTIAL USE

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

Demand factors are, therefore, only of limited value to the public access site planner. What is important is determining

the inherent attractiveness and capacity of the site itself to accommodate people and to develop the best design to control public use of the site.

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

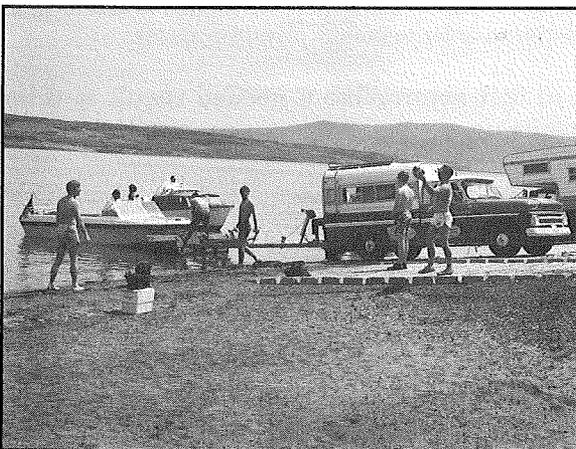
The number of visitors a site can handle is estimated by the instant load capacity, which is determined by the number and kind of facilities provided. If annual use estimates are needed then the instant load capacity must be adjusted by a daily turn over factor and by a peak day attendance factor.

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

Space Requirements

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

Picnic Tables: An average picnic table will require .10 acre of



space. This provides for the picnic table itself and buffer/separation from the next table or facility. If the picnic table is to have a barbecue grill or fire pit the space requirement should be increased to .15 acre.

Photo 20, Boat launch opportunities are inadequate in many locations.

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

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

Boat Launch: A single lane boat launch with support parking and buffer space will require 2 - 3 acres as long as the parcel is shaped for an efficient design.

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

Swimming Beach: A typical swimming beach should be no more than 150 feet in length, and will require about 1/2 to 1 acre of upland support area. In addition, space will be needed for a bathhouse/changing room.

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

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

Converting Instant Load Capacity To Daily and Annual Use

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

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

Instant Load Capacity and Daily Turnover

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

Swimming beach: estimate a peak capacity of 400 people per average beach unit (150 to 200 feet of beach). The daily turnover factor at a swimming beach is about 3. This is based on a peak period of 4 hours and an average stay of about 1.5 hours.

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

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

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

ECONOMIC ANALYSIS

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

Economic analysis is sometimes used as a method to value project impacts. In theory, public access requirements must be commensurate with the impacts of the project (please refer to the discussion of *Nollan* under the section on the basis for permit conditions). The measurement of the impacts may be aided by economic analysis, but in many instances the degree of impact and the proper amount of remedy can not be determined on the basis of economics alone.

Benefit/Cost Analysis

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

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

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

1) Determine benefit factors

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

a) General activities, which require the development of relatively simple facilities and do not require much individual user cost to enjoy, are valued at the lowest rates. These activities are walking, hiking, beachcombing, nature study, picnicking, sightseeing and the like. These activities should be valued at \$2.00 to \$6.00 per user day.

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

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

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

2) Determine Annualized Cost

Annual costs are aggregated by totaling the following items:

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

2) \$0.75 to \$1.00 per annual visitor for operation.

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

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

Evaluation of the Benefit-to-Cost Ratio

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

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

On shoreline access sites, there is usually no need for the public access elements to stand alone economically. In certain cases negative benefit-cost ratios may very well be justified. The most useful application of this procedure will be to evaluate alternative expenditures for public access and perhaps choose the one that will give the greatest return, although it is below the break even point.

The main deficiency of this entire process is the inability to assign value to the intangible benefits of having a public access/open space. In most instances these kinds of facilities add considerable value to a development and to the neighborhood — value that can not only be measured in terms of recreation visits but by the quality of life.

PART III

PERMIT ADMINISTRATOR'S GUIDELINES

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

The master program is prepared by a local jurisdiction under state guidelines in conjunction with and is adopted by the Department of Ecology. It provides the frame work for issuing permits for shoreline substantial development and conditioning them for public access. The master program should encompass the related implementing ordinances, and applicable zoning and building codes.

The primary vehicle for implementing the public access provisions is the permit issued by a local government for development on the shoreline.

SHORELINE PUBLIC ACCESS MODEL PROVISIONS

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

THESE PROVISIONS ONLY APPLY TO PUBLIC SHORELINE ACCESS. ADDITIONAL PROVISIONS ARE NECESSARY TO ADEQUATELY DEAL WITH OTHER ISSUES AND OTHER USE ACTIVITIES.

A local government should incorporate these or similar provisions in its master program. This will require an amendment of the master program which must be reviewed and approved by the Department of Ecology. The set of provisions presented here result in comprehensive treatment of public access. In some instances alternative language is offered, which may apply to a particular local situation. Provisions which are

substantially altered from those set forth here should be approached very cautiously, as Ecology's approval may be more difficult to obtain. In all cases, the local jurisdiction should work closely with the Department of Ecology Shorelands Program staff in tailoring the exact provisions to the local circumstances.

DEFINITIONS

Physical Public access: Unobstructed access with public use improvements which are available to the general public extending from the land to the ordinary high water mark or to the wetland directly abutting the ordinary high water mark. This includes access to tidelands (marine waters) and to the navigable waters of any water body.

Visual access: Access with improvements that provide a view of the shoreline or water, but does not allow physical access to the shoreline.

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

Restrictions may delineate times or allow access to only residents of a certain community or housing tract. *[The limitation to restrict access may not be based on race, sex, color, creed or physical disability.]*

For example it is not unusual to find restrictions that limit public use to daylight hours, to residents of a private community or from tidelands used for shellfish production.

Accessory uses: a use that is demonstrably subordinate and incidental to the principal use and which functionally supports the principal use. An accessory use might be an office, a parking lot or warehouse that is needed to support a primary water-oriented use.

[Author's Note: Throughout these provisions the word "feasible" is used. Feasible pertains to physical feasibility, not economic

feasibility. Cost alone is not a reason for not providing public access facilities.]

GOALS

The following goal statements are recommended for use by a city/county in its master program.

The rights of the general public to enjoy the physical and aesthetic qualities of the shoreline should be protected while allowing controlled development consistent with the public interest. Public access should include, where appropriate, activities ranging from camping and shellfish harvesting to the appreciation of a simple water view. Access can be to and from the uplands adjacent to the shoreline, to tidelands, beaches, stream corridors and to the water itself.

The intent of the city/county in carrying out the policies and regulations of the Shoreline Management Act and master program, is to plan, provide and maintain a comprehensive system of public access. Such a system should be designed to provide safe and abundant access to shoreline recreational areas, while preventing trespass onto private properties. Water-oriented uses and activities are encouraged that provide an opportunity for substantial numbers of the public to enjoy the shorelines of the state.

Discussion: While public access is most frequently gained over public land, it can also be a mitigating component in a development on private land. In such cases, the public may gain some form of access to or near the shoreline, while the developer is able to complete a project that otherwise may have unacceptable impacts on public views, access to and use of the shoreline and water. Most often, this right of public access is obtained via a development condition and is expressed in an easement. (a public access could also be conveyed in fee simple.) In addition to acquisition of public access on private lands, public access may also be achieved by developers contributing to the cooperative development of public properties such as street rights-of-way.

POLICIES

Local jurisdictions are encouraged to prepare policies which pertain to public access. A recommended list of policies follows:

- 1) Public access should be incorporated in all private and public developments. Exceptions may be considered for the following types of uses:
 - a. A single family residence
 - b. An individual multi-family structure containing fewer than three (3) dwelling units
 - c. where deemed inappropriate in accordance with regulation 1 below.
- 2) Development, uses and activities on or near the shoreline should not impair or detract from the public's visual or physical access to the water.
- 3) Public views from the shoreline and upland areas should be enhanced and preserved. Enhancement of views should not be construed to mean excessive removal of vegetation that partially impairs views.



Photo 21, Shoreline views should be protected.

4) Public access should be provided as close as possible to the water's edge and should be designed with provisions for handicapped and physically impaired persons.

5) Publicly-owned shorelines should be limited

to water-dependent or public recreational uses, otherwise such shorelines should remain protected open space.

- 6) Public access afforded by shoreline street-ends, public utilities and rights-of-way should be maintained, enhanced and preserved.
- 7) Public access provisions should be designed to provide for public safety and to minimize potential impacts to private property and individual privacy.
- 8) The public access area should be made a comfortable place to visit, that is the visitors should feel they "belong" by providing adequate space and features for public use.
- 9) There should be a physical separation of the public and private space so the public clearly will know the extent of their domain and know they are not infringing on private rights. This separation can be achieved by adequate space and through screening such as by landscape planting or fences.
- 10) The public space should be of sufficient size to allow passage and allow the visitors to stop, linger, and contemplate the setting.
- 11) The public access area should be designed so the visitors will feel safe from such things as industrial activities, biting dogs and irate homeowners.
- 12) Public access where required should be designed to protect sensitive shoreline areas such as wetlands and unstable bluffs, and should incorporate erosion control and wildlife habitat protection measures.

GENERAL REGULATIONS

Most master programs provide general regulations which apply to all developments. The following provisions are exemplary of general regulations pertaining to public access. Local jurisdictions are encouraged to adopt, at minimum, a set of general regulations that pertain to public access.

- 1) Public access shall be required for all shoreline development and uses except for the following: administrative ex-

ceptions may be authorized for a single family residence or residential projects containing less than three dwelling units. A shoreline development or use that does not provide public access may be authorized by approval of a shoreline variance permit provided it is demonstrated by the applicant and determined by the city/county in its findings that one or more of the following provisions apply:

- a. Unavoidable health or safety hazards to the public exist which cannot be prevented by any practical means;
- b. Inherent security requirements of the use cannot be satisfied through the application of alternative design features or other solutions;

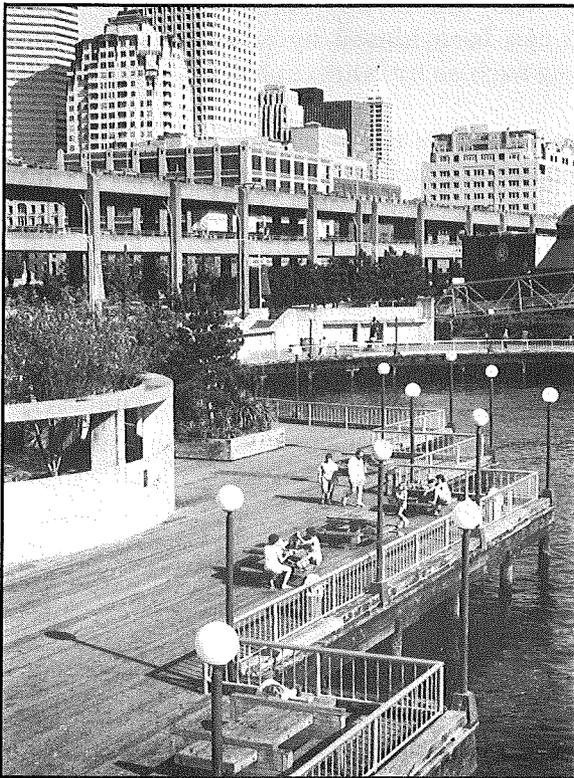


Photo 22, Even in dense urban settings, attractive shoreline facilities can be provided for public use.

- c. Unacceptable environmental harm will result from the public access which cannot be mitigated; or

- d. Significant undue and unavoidable conflict between the proposed access and adjacent uses would occur and cannot be mitigated.

Provided further, that the applicant has first demonstrated and the city/county has determined in its findings that all rea-

sonable alternatives have been exhausted, including but not limited to:

- f. regulating access by such means as limiting hours of use to daylight hours.
- g. designing separation of uses and activities, i.e. fences, terracing, hedges, landscaping, etc.
- h. provision of an access at a site physically separated from the proposal such as a nearby street end, an off-site view point or trail system.

Where the above conditions can not be met, a payment in lieu of providing public access shall be required in accordance with RCW 82.02.020.

- 2) Developments, uses, and activities shall be designed and operated to avoid blocking, reducing, or adversely interfering with the public's visual or physical access to the water and shorelines.
- 3) Public access sites shall be connected directly to the nearest public street.
- 4) Public access sites shall be made barrier free for the physically disabled where feasible.
- 5) Required public access sites shall be fully developed and available for public use at the time of occupancy or use of the development or activity.
- 6) Public access easements and permit conditions shall be recorded on the deed where applicable or on the face of a plat or short plat as a condition running in perpetuity with the land. Said recording with the County Auditor's office shall occur at the time of permit approval (RCW 58.17.110)
- 7) The standard state approved logo and other approved signs that indicate the public's right of access and hours of access shall be constructed, installed and maintained by the applicant in conspicuous locations at public access sites. In accordance with regulation 1(f,g,h), signs may control or restrict public access as a condition of permit approval.
- 8) Future actions by the applicant or other parties shall not diminish the usefulness or value of the public access site.

USE SPECIFIC REGULATIONS

Use specific regulations are presented here. These regulations provide for a very specific level of detail that may not be required in all cases. If a local master program provides use designations, or resource based categorization, the following regulations may be incorporated. The intent here is to provide a "laundry list" of possible regulations. A jurisdiction may pick and choose among these and use those that best fit its situation.

I. Agriculture: All methods of livestock, crop, vegetation and soil management. The SMA exempts normal agricultural practices from shoreline substantial development permit requirements, however some practices associated with agriculture, such as dikes would require a permit (see shoreline modifications/flood protection).

Although conditioning of a substantial development permit to allow public access is not normally an alternative, cooperative arrangements should be encouraged between farmers and public recreation agencies (Note: a conditional use permit may still apply.) There are often many opportunities for the public to enjoy scenic and/or historic values without creating a conflict with the normal operation of the agricultural pursuit.

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

Due to recent technological advances, the potential of aquaculture has increased enormously. There are perceived and actual conflicts in the use of water resources which has made the issue extremely sensitive. Policies for aquaculture are still in a dynamic stage of development and new information will be forthcoming from the Department of Ecology as experience is gained with this use. Meanwhile, the following statements should provide some guidance:

Policies

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

- 2) Aquaculture practices should not unreasonably interfere with public use of the water and shorelines.
- 3) Proposals for aquaculture activities should minimize adverse impacts on the area's aesthetic values and views from upland properties.

Regulations

- 1) In areas where aquaculture interests are established, site boundaries are required to be marked so public use of the surrounding waters and upland can occur without interfering with the operation.
- 2) Floating or submerged aquaculture structures:
 - a) Shall not unduly restrict navigational access to or along the shoreline or interfere with general navigation lanes and traffic.
 - b) Shall remain shoreward of principal navigation channels.
- 3) All floating aquaculture systems shall be marked for day and night visibility in accordance with U.S. Coast Guard requirements.
- 4) All aquaculture proposals shall include consideration of public access potential, and shall endeavor to provide some form of access or benefit to the public, if at all feasible. For example, requiring that an aquaculture development provide opportunities for educational tours, may be appropriate.

III. Forest Practices: Activities related to the growing, and harvesting of timber.

Permits are normally not required for forest practices, unless the maximum 30% harvest requirement on Shorelines of State-wide Significance is exceeded, or if the activity is a conversion to another use (land clearing). In the latter instance the new use may require public access and a permit should be reviewed and authorized prior to the forest practices activity occurring.

Ancillary activities such as road and bridge building for forest practices will require permits for substantial development (See SHB No. 155). In addition, log storage is considered an industrial use and is subject to permit requirements.

Policies

- 1) Shorelines having outstanding scenic qualities should be left in a substantially natural condition. Timber harvest in such areas should be limited to selective cutting which protects scenic views, and logging roads and accessory development which destroy scenic values should not be permitted.
- 2) All roads which may be permitted near streams and road crossings of streams should be designed to provide maximum opportunity for public access to the streams.

Regulations

- 1) Visual access to outstanding scenic areas shall be provided with the provision of roadside pullovers or broadening of road shoulders.
- 2) Roads at stream crossings shall provide wide shoulder parking and appropriate pedestrian access to the stream.
- 3) Roads which are located within close proximity to streams shall be constructed, if feasible, with wide shoulder or off road parking and associated pedestrian access opportunity to the stream edge.

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

Policies

- 1) Mining should not be allowed in unique and fragile areas, in prime agricultural areas or on marine beaches.
- 2) Mining operations should minimize adverse visual and noise impacts on surrounding shoreline areas. They should

provide safe visual access to shoreline areas when it is not possible to provide physical access.

Regulations

Mining operations adjacent to developed residential property, public parks, public shorelines and accesses and along streams, lakes and marine shorelines shall be obscured by a screen of compatible, native, self-sustaining vegetation. Earthen berms in conjunction with vegetation may be used as an effective barrier for mining operations. Screening and buffer vegetation shall be planted at the time of excavation or as soon thereafter as possible so as to be established within one year of commencing operation. Such screening shall be maintained in good, effective condition at all times.

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

V. Boating Facilities

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

Backshore marina: Located landward of the OHWM.

Wet moorage - requires a basin and entry to water dredged out of the land.

Dry moorage - has upland storage with a hoist, marine railway or ramp for water access.

Foreshore marinas: located in the intertidal or offshore zone and may require breakwaters of open-pile, floating or solid constructions, depending on location.

Boat ramp: Constructed of concrete or other material which extends waterward of the ordinary high water mark.

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

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

Policies

- 1) Boating facilities should be located and designed so their structures, other features and operations will be aesthetically compatible with or will enhance the area visually affected, and will not unreasonably impair shoreline views.
- 2) New marina facilities should be designed to accommodate public access and enjoyment of the shoreline locations, including provisions for walkways, view points, restroom facilities and other recreational uses according to the scale of the facility.

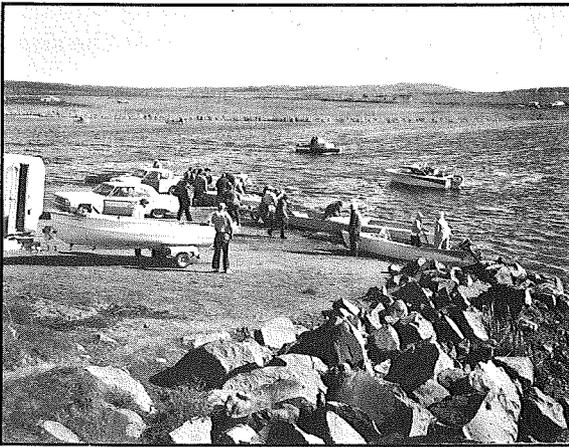


Photo 23, Boating is one of the most popular activities.

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

- 4) Marinas and public launch ramps should be designed so that existing or potential public access along beaches is neither unnecessarily impaired, blocked nor made dangerous. Public use of the surface waters below the ordinary high water mark should not be unduly impaired.
- 5) Accessory uses at marinas or public launch ramps shall be limited to those which are water-oriented and necessary for marina operation. Accessory uses shall be consistent in scale and intensity with the marina and surrounding uses.

Regulations

- 1) Provisions for public access, both visual and pedestrian, shall be an integral part of all marina development. Examples include artificial pocket beaches created by fore-shore defense structures, pedestrian bridges to offshore structures, fishing or viewing platforms, and underwater diving and viewing platforms.
- 2) Boat launches and marina entrances shall not be located near valuable commercial fishing areas or beaches commonly used for swimming unless it is demonstrated that no significant conflict or unsafe condition will occur.
- 3) Marine railways and boat ramps for launching shall be located on the existing grade where feasible and shall not obstruct access to or along the shoreline. Public facilities may be allowed to vary from this requirement, to the minimum extent practical, when it has been demonstrated that no significant adverse impact will occur.

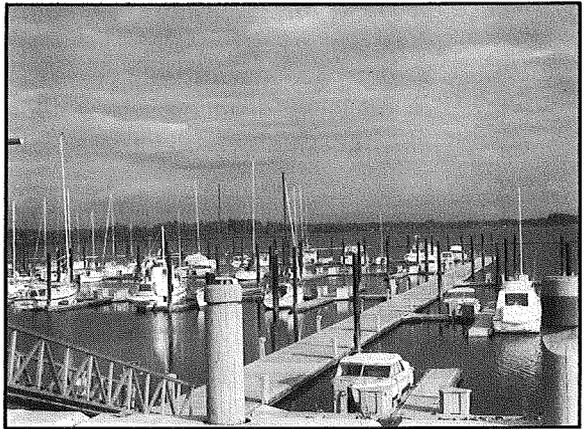


Photo 24, Marinas are water-dependent use.

- 4) Where views from uplands are adversely effected, public viewpoints or viewing areas should be provided by the developer so the public can observe marina activity and/or the shoreline area.
- 5) Parking requirements are as follows: Each public or quasi-public launch ramp will provide, for each ramp lane, at least ten (10) car and trailer spaces that measure at least nine (9) feet by forty (40) feet.
- 6) All marinas shall provide restrooms and pump out facilities for boaters' use.

Restrooms shall:

- a. be located within two hundred (200) feet from the dock or pier;
- b. have one (1) toilet and hand washing facility for each sex per fifty (50) moorage sites;
- c. have signs posted so that the restrooms are easily identifiable; and
- d. be kept in clean working order at all times.

Pump out facilities shall:

- a. be located so they are reachable from boats in the water; and
- b. provide a suitable connection for boater's holding tanks, and provide a means for dumping portable toilet tanks.

- 7) Swimming shall be prohibited within marina facilities unless the swimming area is adequately separated and protected.
- 8) Space for transient moorage shall be provided.
- 9) Where ramps are permitted, parking and shuttle areas shall not be located on accretion shore forms which are scarce and have high value for general shore recreation.

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

Policies

Proposed development must be made compatible with and not preclude permitted or planned water-oriented uses of the shoreline area or public use of the water, access along the shoreline and to the water.

All resorts and commercial recreational developments should maximize public access to the shoreline and water areas. Other commercial developments should provide maximum public access to the shoreline and water areas, unless it is demonstrated

to be physically infeasible or unsafe. In such instances alternate public access or "in lieu" payments (as prescribed in RCW 82.02.020) may be required.

Regulations

- 1) All commercial use developments on shorelines of the state shall provide general public access to the water's edge.
- 2) Only those commercial developments that are water-dependent or water-related shall be permitted on a shoreline of the state; EXCEPT, when:
 - a. The proposed site's topography, surrounding land uses, physical features or separation from the water make it unsuitable for water-dependent or water-related uses;
 - b. The proposed use will not interfere with adjacent water-dependent uses and does not usurp land currently occupied by or planned for a water-dependent use; and/or
 - c. The proposed use will meet criteria for water-enjoyment use by providing appreciable public use opportunity or access to the shoreline.

VII. Piers, Wharves and Floats: Structures which abut the shoreline, extend over the water and are used as a landing or moorage place for commercial and pleasure craft or as access over the water for public use, such as fishing. *[In general, structures which provide moorage for more than 10 watercraft are considered marinas, and are regulated under marina provisions.]*

Piers are fixed platforms above the water, perpendicular to the shoreline. A wharf is a fixed platform which runs parallel to the shoreline. Docks are attached to the shoreline proper and float on the water surface. Floats are not attached to the shoreline proper, but are detached anchored structures which are also free to rise and fall with water levels.

Policies

- 1) Piers, wharves, docks and floats should be designed to cause minimal interference with public use of the water and the shoreline. Whenever possible the design should enhance public access.
- 2) Multiple use and expansion of existing facilities should be required over the proliferation of new facilities. New projects should clearly demonstrate public benefit.
- 3) Pier, wharf, dock and float projects should provide public and recreational access, unless such use is incompatible with a water-dependent use.



Photo 25, Piers are used to reach deep water and can have great recreation benefits.

- 4) Views from surrounding properties should not be impaired.

Regulations

- 1) Piers, wharves, docks and floats shall be located and constructed so as not be obstruct or impair the navigational use of the surface waters.
- 2) Piers, wharves, docks or floats shall be located, designed and constructed so as to cause minimum interference with navigation and public use of the water surface and shoreline, and so as to cause no undue harm to adjacent properties.

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

- 1) Subdivisions shall provide community docks or floats or a binding site design for a community facility, as opposed to

allowing a proliferation of individual facilities. An easement shall be recorded providing access to the community facility by the residents. The development of piers or docks on individual lots shall be prohibited unless the site does not allow, at a minimum, community facilities of sufficient size to serve all the water front residents of the subdivision and said prohibition shall be placed on the face of the plat.

- 2) Community docks and piers shall include no more than one (1) moorage space per dwelling unit or lot.
- 3) Proposals for community piers and docks shall contain provision for recording maintenance agreements that will insure adequate maintenance of the structure and the associated upland area.
- 3) All recreational piers and docks which are intended for use by the general public shall comply with the following regulations:
 - a) An adequate number of approved solid waste containers shall be located conveniently for boater utilization.
 - b) The dock facilities shall be equipped with adequate lifesaving equipment such as life rings, hook and ropes.
 - c) Every facility shall be maintained in good repair and free from safety hazards.
 - d) Marine toilets are not to be used at moorage unless these toilets are self-contained or have an approved treatment device. Signs stating this shall be posted where they are readily visible to all boaters.
- 4) Community and public recreational piers and docks shall be required to provide facilities for emptying holding tanks, [*Author's note: This issue will probably be more prominent in the future, as new vessels are equipped with holding tanks in accordance with Coast Guard requirements.*]

VIII Ports and Industrial developments: Public or private enterprises providing services and facilities for waterborne

commerce, airborne (float planes) commerce and industrial development which is related to or dependent upon waterfront locations, including facilities for processing, manufacturing and storage of finished or semi-finished goods which meet the definitions of water-related or water-dependent use.

Policy

New development, particularly public ports, should be required to provide physical or visual access to shoreline, whenever possible and when such access does not cause interference with operations or hazards to life and property. If an unsafe situation exists on site for public access then such access should be required off site or



Photo 26, Industrial uses can be conditioned for public access.

a payment made in lieu of providing the access.

Regulation

Ports and water-dependent and water-related industry shall provide public access to the shoreline and/or provide opportunities for public viewing of the industrial activity whenever practical and safe. If an unsafe situation exists, the local jurisdiction may require provision of an off site public access facility or, at its option, a payment in lieu of providing the access.

or, at its option, a payment in lieu of providing the access.

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

Recreational use of shorelines is a stated priority in the Shoreline Management Act.

Developments for uses such as boating facilities, second home subdivisions, motels and resorts are excluded from this category and are handled under other uses.

Policies

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

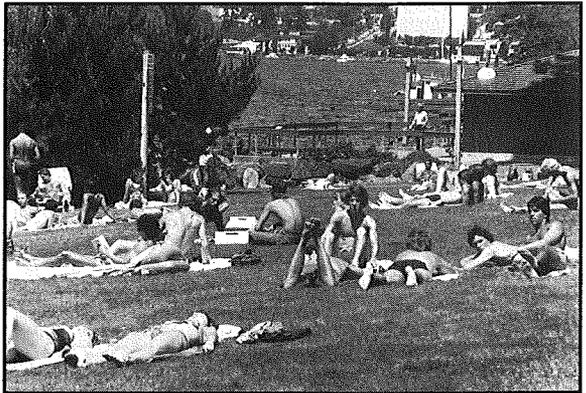


Photo 27, A public park provides significant opportunity for public shoreline benefits.

- 2) Recreational developments should be designed to preserve, enhance or create scenic views and vistas. Favorable consideration should be given to those projects that complement their environment.
- 3) The coordination of local, state and federal recreation planning should be encouraged.
- 4) Shoreline areas with a potential for providing outstanding recreation or public access opportunities should be identified as such and obtained by lease or public purchase.
- 5) A variety of recreational experiences and activities should be encouraged to satisfy diverse recreational needs and demands.
- 6) The location and design of shoreline recreational developments should relate to local population densities, charac-

teristics and special activity demands. These factors, as well as the possible need for public transit access, must be considered early in planning.

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

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

- 8) The development of smaller, dispersed recreation areas should be encouraged to avoid adverse impacts on popular points along the shoreline, particularly at fishing streams and in hunting areas.
- 9) The linkage of shoreline parks, recreation areas and public access points by linear systems, such as hiking paths, bicycle paths, easements and/or scenic drives, should be encouraged.
- 10) Non-structural recreational facilities should be encouraged on floodplains that are subject to recurring flooding.
- 11) Artificial reefs should be encouraged in order to provide increased opportunities for recreational enjoyment of aquatic life.

Regulations

- 1) Artificial reefs shall not contain materials toxic or otherwise hazardous to humans or fish and wildlife.
- 2) Underwater parks and artificial reefs shall include safety provisions to warn boating traffic of their location.
- 3) Accessory use facilities, such as restrooms, recreation halls and gymnasiums, commercial services, access roads and

parking areas shall be located inland from shoreline areas and linked to the shoreline by walkways. Facilities which are shown to be water-dependent or water-related may be excepted.

- 4) No recreational structures shall be built over water unless they are water-dependent.
- 5) The use of off-road vehicles is prohibited in all shoreline areas.
- 6) Recreational developments shall provide facilities for non-motorized access to the shoreline such as pedestrian, bicycle and/or equestrian paths.
- 7) Proposals for recreational developments shall include a landscape plan. Native self-sustaining vegetation is preferred.
- 8) The removal of on-site native vegetation shall be limited to the minimum necessary.
- 9) Proposals for recreational development shall include provisions for sewage disposal. The intensity of the development shall be limited to meet city, county and state sewage disposal requirements.
- 10) Restroom and shower facilities associated with swimming beaches shall not be located within the shoreline 200-foot jurisdiction except when these facilities are of vault type construction or connected to a properly constructed and maintained sewer system. In these cases such facilities may be located in the 200-foot jurisdiction, but shall be no closer than one hundred (100) feet from the ordinary high water mark.
- 11) In recreation use areas, roads running generally parallel to the shoreline shall not be allowed within two hundred (200) feet of the ordinary high water mark unless physical site characteristics are limiting. In such cases, the road should not be located closer than 100 feet of the ordinary high water mark.

X Residential Development: One or more buildings, structures or portions thereof which are designed and used as a place for human habitation. Included are, single or multi-family residences, apartment/condominium buildings, mobile homes, short and long subdivisions and other structures which serve to house people. Also included are accessory structures, such as garages, sheds, driveways, etc.

Exemption

The Shoreline Management Act exempts a residence from the requirement for a permit for substantial development, providing the residence is located landward of the ordinary high water mark and built by the owner, lessee or contract purchaser for his own use or the use of his family, and the residence does not exceed a height of 35 feet above average grade level. Although single family residences are exempt, compliance with the prohibitions, regulations and development standards is still required.

A conditional use or variance permit may be required for a single family residence if listed as a conditional use or if it does not comply with the standards for exempt residences. For example, if a set back requirement can not be met, a variance permit will be required.

Residential development is required to obtain a shoreline permit when speculative or tract development is involved, multi-family structures (generally three or more units) are built, and/or similar kinds of development occur which do not meet the above stated exemption.

Policies

- 1) Residential developments should be designed so as to protect water quality, shoreline aesthetic characteristics, view and normal public use of the water.
- 2) Residential developments should provide public access to the water in a manner which is appropriate to the site and the nature and size of the development.
- 3) Residential development with three or more dwelling units on shorelines of the state should provide general public access to the shoreline.

Alternative

In some instances, where general public access is not feasible, the local jurisdiction may consider the provision of public access by residents of the tract as a sufficient provision of public access. Under these circumstances there is usually a home owners association that assumes responsibility for maintenance of the public access area.

- 4) Joint use community docks in lieu of individual docks are preferred.

Regulations

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



Photo 28, A condominium development would be required to provide public access.

- 1) All residential structures, accessory uses and facilities shall be arranged and designed so as to preserve views and vistas to and from shorelines and water bodies and be compatible with the aesthetic values of the area.
- 2) New residential developments on Shorelines of Statewide Significance shall provide a pedestrian easement and improvements along the shoreline for public use.
- 3) New multi-family development will be permitted only if

general public access to and along the water's edge is provided.

- 4) New residential developments, except proposals containing less than three (3) dwelling units shall provide public access to and along the shoreline. The public access will be granted by recorded easement to the general public.
- 5) The subdivision and platting of property for residential development shall provide common areas of open space, easements for public access to and along shorelines and be laid out to maximize vistas of the water and access to the water by residents of the development and, if required, by the general public.

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

Policies

- 1) Public trail and bicycle path systems should be developed along shorelines to the maximum feasible extent.
- 2) Abandoned or unused road or railroad rights-of-way which offer opportunities for public access to the water should be acquired and/or retained for such use.
- 3) City/county road ends abutting water bodies should be reviewed for potential use and development for public access to the water and incorporated into the jurisdiction's comprehensive public access plan.
- 4) Street, roads and highways that run generally parallel to the shoreline should not be located within the 200 foot shoreline jurisdiction, if there is a feasible alternative. If located in the shoreline, these facilities should be designed to maximize access to the shoreline and to enhance and provide views of the shoreline and water.
- 5) Streets, roads and highways that cross shorelines should

be designed with accommodation for public access to the shoreline.

Regulations

Any abandonment of a road in a shoreline location should not occur until the jurisdiction has completed and adopted a comprehensive public access (and/or recreation) plan which shows that the subject right-of-way can not be use as a contributing element in that plan.

The following regulations apply to shoreline roads:

- a) RCW 36.87.130 prohibits counties from vacating any road which abuts a body of salt or fresh water except for port purposes, boat moorage or launching sites, or for park, viewpoint, recreational, educational or other public purposes, unless the area is zoned Industrial.
- b) RCW 35.79.035 prohibits a city or town from vacating any road which abuts a body of salt or fresh water unless the street or road is not currently used or is suitable for use as a port facility, beach or water access purposes, boat moorage or launching sites, or for park, viewpoint, recreational, educational or other public purposes.
- c) Streets, roads and highways which are located within 200 feet of a shoreline of the state shall incorporate public access facilities to the shoreline. Such facilities may include roadside parking areas and pathways.
- d) If a street, road or highway is located within the 200 foot shoreline jurisdictional area, any unused right-of-way shall be dedicated to open space and public access.

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

Policies

- 1) Public access consistent with public safety should be provided in utility corridors.
- 2) Utility structures and corridors should be designed in such a way as to offer maximum protection to scenic views. This can be accomplished by locating facilities away from shoreline areas, undergrounding, and combining facilities in already established utility corridors.
- 3) Hydroelectric facilities should be designed and constructed to insure public access to and along the shoreline. Such facilities should provide appropriate public access improvements and amenities such as trail systems and other access links, view points, picnic areas, as well as necessary ancillary facilities including parking, and sanitation facilities, etc., where recreational opportunities are created. Public access facilities may not be required where it can be demonstrated such improvements would create additional adverse environmental impacts, public health and safety problems, or facility security and operation conflicts.

Regulations

- 1) Utility development shall, through coordination with local government agencies, provide for compatible, multiple use of sites and rights-of-way. Such uses include shoreline access points, trail systems, and other forms of recreation and transportation, providing such uses will not unduly interfere with utility operations, endanger public health and safety.
- 2) Where major facilities must be placed in a shoreline area, the location and design shall be chosen so as not to destroy or obstruct scenic views. Facilities shall be placed underground whenever possible.

XIII Shoreline Modifications

Breakwaters: Protective structures, generally built offshore to protect harbor areas, moorages, navigation, beaches and

bluffs from wave action. They may be fixed, open-pile or floating.

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

Groins: A barrier type of structure extending from the back-shore or stream bank into a water body for the purpose of the protection of a shoreline and adjacent uplands by influencing the movement of water or deposition of materials.

Policies

- 1) Breakwaters, jetties and groins should not interfere with public access to publicly owned shorelines, and with navigational use of the water surface.
- 2) Breakwater, jetties and groins should provide public access or multiple use opportunities to increase public use and enjoyment of the shoreline as long as it is safely compatible.
- 3) Protection of the area's biological, geological and aesthetic resources should be given serious consideration in the review of proposals for breakwaters, jetties and groins.

Regulations

- 1) Breakwaters, jetties and groins shall be designed to minimize impediments to navigation and to visual access from the shoreline.
- 2) The design of breakwaters, jetties and groins shall incorporate provisions for public access where feasible and desirable.

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

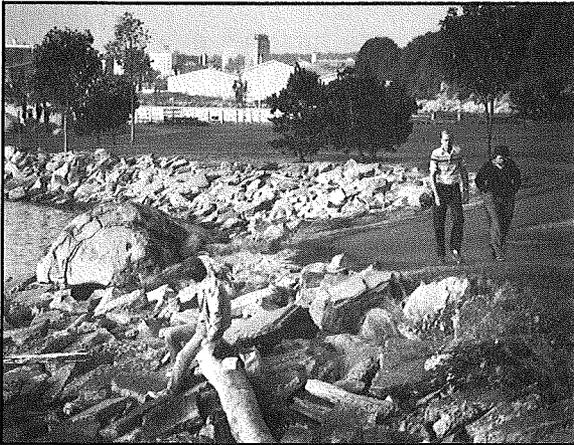
Policies

- 1) Protection of the area's scenic and aesthetic resource values, particularly the cumulative effect of similar structures within the same vicinity, should be given careful consideration when reviewing the location and design of bulkheads.
- 2) Bulkheads should not interfere with public access to publicly owned shoreline, to the water's surface or to other appropriate shoreline and water uses such as navigation, seafood harvesting or recreation.

Regulations

When a bulkhead is required at a public access site, provision for safe access, such as stairways, paths and ramps, to the water shall be incorporated in the design.

Landfill: The emplacement of earth, rock, sediment or other



authorized material (excluding solid waste) to create new shorelines or to raise the level of existing shorelines either landward or seaward of the ordinary high water mark.

Policies

Photo 29, Shoreline stabilization should not interfere with public access.

1) Landfills should not be authorized unless a

specific use for the site is evaluated and permitted. Speculative landfills should not be permitted.

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

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

Regulations

- 1) A landfill will be evaluated on the basis of the proposed use for the site and not permitted unless the use is water-dependent and other structural and upland solutions have been determined to be infeasible.
- 2) Landfills shall be composed of naturally occurring dredge spoils, earth, and rock. Solid waste, and man-made debris will not be permitted.
- 3) Erosion protection measures shall be incorporated during the placement of landfills to prevent damage to the adjacent waters and resources. Landfills shall be contained and stabilized such that erosion shall not damage adjacent water and resources.
- 4) Contaminated (with substances toxic to humans and other living organisms) materials shall not be permitted for disposal in landfills.

XIV Shoreline Modifications - Stabilization and Flood Protection

Shoreline stabilization and flood protection works include structures such as dikes, rip-rap and similarly armored banks, retaining walls, and drainage channels.

Policies

- 1) Shoreline stabilization and flood protection works should

be located, designed, constructed and maintained to preserve valuable recreation resources and aesthetic values such as point and channel bars, islands, braided streamway banks, and other shoreline features and scenery.

2) **Alternative A**

The design of stabilization or protection works should provide for public access to public shorelines and the long term multiple use of streamway resources.

Alternative B

In the design of publicly financed or subsidized works, public pedestrian access should be provided along the shoreline for outdoor recreation.

Regulations

- 1) The city/county shall require linear public access along new dikes unless the public access is determined to be infeasible according to the following criteria.
 - a) The dike structure, due to its design, would not provide a safe place for public access and use.
 - b) The dike structure is not located in a position to facilitate public access to the shoreline.
- 2) Rip-rap and similar erosion prevention measures shall consist of natural materials (example: rock) or materials that blend into the surrounding shoreline.
- 3) Planting and maintenance of native vegetation on shoreline modification structures in a manner that will lessen the visual impact of such structures shall be required.

Appendix A

SAMPLE EASEMENTS

The preferred method of recording public access permit conditions is by recorded easement. An easement provides the opportunity to spell out all provisions affecting the public access area. A face of the plat recording although allowed for in RCW 58.17, may result in future misunderstandings because it does not allow the opportunity to record provisions. However, a reference note on the face of the plat serves well to alert lot owners and prospective buyers of the existence of an easement.

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

PUBLIC ACCESS EASEMENT

DEDICATION OF PUBLIC ACCESS AREA ON PRIVATELY OWNED SHORELINE

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

1. AREA TO BE DEDICATED

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

2. PURPOSE OF DEDICATION

To allow pedestrian access and entry onto the dedicated area by the general public and all members thereof for their peaceful enjoyment of the dedication

area and the waters of [name of water body] adjoining.

3. LIMITATION OF DEDICATION

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

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

(c) The dedicated area may be temporarily closed to the public from time to time for the purpose of repairs and maintenance.

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

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

interests therein to the association of condominium owners shall be filed with the City of [name of city].

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

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

4. RECORDING

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

DEDICATOR:

[signature block]

Conservation Easement

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

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

CONSERVATION EASEMENT

CONSERVATION EASEMENT

THIS DEED AND AGREEMENT is made this _____ day
of _____, 198__, BY AND BETWEEN

[Developer's name and address]

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

WHEREAS:

- 1) The GRANTOR is the owner of a fee simple interest in the Lands described in Exhibit A which is attached hereto and incorporated herein by reference (the Land).
- 2) The parties recognize that the Land is currently in a substantially undisturbed natural and open state. The Land has important natural resource, fisheries, and wildlife habitat values. The Land has significant natural scenic beauty which is enjoyed by substantial numbers of the public.
- 3) The GRANTOR is willing to grant and convey to the

GRANTEE a Conservation Easement as defined by Chapter 64.04.070 RCW and that it desires to cooperate with the GRANTEE in preserving the natural values of the Land along the corridor of _____ Creek.

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

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

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

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

the rights reserved by the GRANTOR herein.

RESTRICTIONS ON THE USE OF THE LAND

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

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

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

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

4) Explore for or extract minerals, hydrocarbons, soils, gavels, or other materials except water.

5) Remove such quantities of water as would impair the maintenance of existing vegetation and plant habitat of the Land and the value of the property for fish and wildlife habitat.

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

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

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

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

RESERVATION OF RIGHTS

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

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

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

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

RIGHTS AND RESPONSIBILITIES OF THE GRANTEE

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

1) The GRANTOR grants to the GRANTEE, its successors and assigns, in perpetuity, the right to enter on the Land to

observe and enforce compliance with the terms of this grant.

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

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

4) The GRANTOR and the GRANTEE agree that the GRANTEE may build a pedestrian pathway, fences, viewing platform, interpretive signs and other such public use and control facilities as the GRANTEE may determine to be appropriate to protect the fisheries resources and inform the public of the Land's natural values.

5) The GRANTEE shall indemnify and hold harmless the GRANTOR against and from any and all claims arising from the GRANTEE's use of this property or the conduct of its fisheries activities or from any activity, work, or things done, permitted or suffered by the GRANTEE in or about the land, and shall further indemnify and hold harmless the GRANTOR against and from any and all claims arising from any breach or default in the performance of any obligation on the GRANTEE's part to be performed under the terms of this easement, or arising from any act, neglect, fault or omission of the GRANTEE, or of its agents or employees, and from and against all costs, attorneys fees, expenses and liabilities incurred in or about such claim or action or proceeding brought on account thereof and in case any action or proceeding be brought against the GRANTOR by reason of such claim, the GRANTEE upon notice from the GRANTOR shall defend the same at GRANTEE's expense by counsel reasonably satisfactory to the GRANTORS. The GRANTEE, as a material part of the consideration to the GRANTORS, hereby assumes all risk of damage to the land or injuries to person in or

about the land described in Exhibit A from any cause whatsoever except that which is caused by the failure of the GRANTOR to observe any of the terms and conditions of this easement and such failure has persisted for an unreasonable period of time after written notice of such failure, the GRANTEE hereby waives all claims in respect to or against the GRANTOR.

GRANTOR'S RESPONSIBILITIES

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

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

ADDITIONAL COVENANTS AND AGREEMENTS

The GRANTOR and GRANTEE further agree as follows:

- 1) The GRANTOR covenants that they have not done or executed, or allowed to be done or executed, any act, deed, or thing whatsoever whereby the Conservation Easement hereby conveyed, or any part thereof, now or at any time hereafter, will or may be charged or encumbered in any manner or way whatsoever.
- 2) If the GRANTOR, his heirs, successors, assigns, agents, or employees violate or allow the violation of any of the terms, conditions, restrictions, and covenants set forth herein, then the GRANTEE will be entitled to all remedies available at law or in equity, including, but not limited to, injunctive relief, rescission of contract, or damages, including attorneys' fees and court cost reasonably incurred by the GRANTEE in prosecuting such action(s). No waiver or waivers by the GRANTEE, or by its successors or assigns, of any breach of a term, condition, restriction, or covenant contained herein shall be deemed a waiver of any subsequent breach of such

term, condition, restriction, or covenant or of any other term, condition, restriction or covenant contained herein.

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

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

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

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

7) If any section or provision of this instrument shall be held by any court of competent jurisdiction to be unenforceable, this instrument shall be construed as though such section or provision had not been included in it, and the remainder of this instrument shall be enforced as the expression of the parties' intentions. If any section or provision of this instrument is found to be

subject to two constructions, one of which would render such section or provision invalid, and one of which would render such section or provision valid, then the latter construction shall prevail. If any section or provision of this instrument is determined to be ambiguous or unclear, it shall be interpreted in accordance with the policies and provisions expressed in RCW 64.04.130, as heretofore or hereinafter amended.

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

[Follows with signature block for GRANTEE and GRANTOR with notary certifications]

SCENIC EASEMENT

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

SCENIC EASEMENT

THIS DEED AND AGREEMENT is made this _____ day
of _____, 198__, BY AND BETWEEN

[Grantor's name and address]

hereinafter referred to as the "GRANTOR" hereby convey(s)
and warrant(s) to the _____,
hereinafter referred to as the "GRANTEE," an easement and
right in perpetuity to control and restrict, in accor-
dance with the terms and conditions hereinafter pre-
scribed, the use and development of the parcel of real
estate in the County of _____, in the State
of Washington, described as follows:

[Insert legal description]

The above described property is now being used for

and is hereinafter designated as the "SCENIC AREA." A
detailed documentation of the existing use, called the
"record of existing conditions," has been prepared,
copies of which have been filed with both parties.

The GRANTEE and its agents shall have the right to enter

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

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

- 1) No use or occupation other than the hereinafter permitted use shall hereafter be made, established or maintained within or upon the scenic area.
- 2) No dumping of ashes, trash, junk, rubbish, sawdust, garbage, or offal, or any other unsightly or offensive materials shall hereafter be allowed upon the scenic area. Existing use for any such purpose shall be terminated, and the above described materials shall be removed within ninety (90) days of the date of this instrument or in the event the area is leased, within (60) days after the expiration of the lease.
- 3) No trees or shrubs shall be destroyed, cut or removed from the scenic area except as may be required for reasons of sanitation and disease control and except for selective cutting of timber by methods prescribed by written permit from the GRANTEE's agent, provided that the GRANTEE may cut and remove brush, undergrowth and dead and diseased trees from the scenic area and may perform selective cutting and trimming in the scenic area.
- 4) No new installation of utility poles or pole lines shall be made upon or within the scenic area except as required for a permitted use and then only pursuant to a written permit from the GRANTEE's agent.
- 5) No new or additional structures shall be constructed upon the scenic area without a written permit from the GRANTEE's agent.

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

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

[list allowable development]

The GRANTOR and GRANTEE further agree as follows:

- 1) The GRANTOR covenants that they have not done or executed, or allowed to be done or executed, any act, deed, or thing whatsoever whereby the Conservation Easement hereby conveyed, or any part thereof, now or at any time hereafter, will or may be charged or encumbered in any manner or way whatsoever.
- 2) If the GRANTOR, his heirs, successors, assigns, agents, or employees violate or allow the violation of any of the terms, conditions, restrictions, and covenants set forth herein, then the GRANTEE will be entitled to all remedies available at law or in equity, including, but not limited to, injunctive relief, rescission of contract, or damages, including attorneys' fees and court cost reasonably incurred by the GRANTEE in prosecuting such action(s). No waiver or waivers by the GRANTEE, or by its successors or assigns, of any breach of a term, condition, restriction, or covenant contained herein shall be deemed a waiver of any subsequent breach of such term, condition, restriction, or covenant or of any other term, condition, restriction or covenant contained herein.
- 3) The terms, conditions, restrictions, and covenants contained herein shall not be altered or amended unless such alteration or amendment shall be made with the written consent of the GRANTEE, or its successors, or assigns, and any such alteration or amendment shall be

consistent with the purposes of this conservation easement and RCW 64.04.130.

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

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

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

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

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

[Follows with signature blocks for GRANTEE and GRANTOR with notary certifications.]