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2009 MAY -1 3:01

No. 80395-1

BY RONALD R. CALVERT

SUPREME COURT OF THE STATE OF WASHINGTON

CITY OF ARLINGTON, DWAYNE LANE and
SNOHOMISH COUNTY,

Appellants,

v.

CENTAL PUGET SOUND GROWTH MANAGEMENT HEARINGS
BOARD, STATE OF WASHINGTON; 1000 FRIENDS OF
WASHINGTON nka FUTUREWISE; STILLAGUAMISH FLOOD
CONTROL DISTRICT; PILCHUCK AUDUBON SOCIETY; THE
DIRECTOR OF THE STATE OF WASHINGTON DEPARTMENT
OF COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT;
AGRICULTURE FOR TOMORROW,

Respondents.

**SUPPLEMENTAL BRIEF OF
STILLAGUAMISH FLOOD CONTROL DISTRICT**

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I. INTRODUCTION

Some believe land-use decisions by public agencies unduly interfere with market forces. The inherent problems with market forces include that they tend to be short-term in outlook, do not take into account undesirable externalities, are often driven by distant money-center financial considerations oblivious to local impacts, and frequently result in extraordinarily dysfunctional outcomes.

As a result, there has been increasing land-use regulation to provide public direction to private development because public infrastructure investments are required to support development and it is important that development reflect broader societal concerns.

The Growth Management Act, Washington State's primary land-use planning tool, was severely weakened by the Court of Appeals decision below, *Dwayne Lane II*,¹ which this Court is requested to reverse.²

¹ *City of Arlington v. Central Puget Sound Growth Management Hearings Board*, 138 Wn. App. 1, 154 P.3d 936 (2007), hereafter referred to as "*Dwayne Lane II*".

² Appellant Stillaguamish Flood Control District joins in and adopts by reference the supplemental briefs of co-appellants Futurewise and the State of Washington Department of Community, Trade and Economic Development (CTED).

II. ASSIGNMENTS OF ERROR AND ISSUES FOR REVIEW

The Flood District assigns error to the Court of Appeals decision in *Dwayne Lane II* for declining to apply *res judicata* and/or collateral estoppel to the present Dwayne Lane round of litigation.

The Flood District presents the following issue for review: Are parties to a specific land-use controversy that was finally determined following judicial review bound by the outcome in a subsequent proceeding involving the same issues, properties and parties in the absence of a showing of changed circumstances that address and remedy the reasons that caused the proposal to be denied during the first proceeding?³

III. STATEMENT OF THE CASE.

The Stillaguamish River flood plain, which begins downriver from the City of Arlington, is one of the most fertile and productive agricultural areas in the world. Much of today's farmland has been farmed since the 1870's.

The Flood District, governed by an elected 3-member Board of Commissioners, was formed to support commercial agriculture in

³ *Satsop Valley Homeowners v. Northwest Rock*, 126 Wn. App. 536, 108 P.3rd 1247 (2005) (Requires, in a land-use application that was previously denied, a showing of changed circumstances that address and remedy the reasons that caused the proposal to be denied during the first proceeding.)

the lower Stillaguamish by mitigating flood damage and improving water quality. The Flood District maintains and operates extensive systems of drainage ways, eight miles of sea dikes, 22 miles of river levees, tidegates, flow maintenance facilities and other works to prevent salt-water intrusion, facilitate drainage, improve agricultural production, preserve agricultural lands, control flooding, improve water quality, and restore fish habitat.⁴

Preservation of the agricultural character of this area began long ago and was formalized in the 1970's. *These plans all emphasized that the lower Stillaguamish River flood plain should be limited to agricultural uses.* CP II, 299-3222, CP XIII, 2565, 2570-71, CP XV, 2891, 2901-03.

Periodic flooding greatly benefits agricultural production, if floodwaters are promptly drained, because floodwaters deposit fertile topsoils from the upstream watershed. On the other hand, intense urban residential, commercial or industrial development sustains unacceptable damages if inundated with floodwaters.

⁴ The Flood District's 2006 budget was \$34,513, based on the assessments of properties within its boundaries. It is able to perform its functions and undertake award-winning projects with the assistance of volunteers, grants for capital projects, and partnering with other governmental agencies.

Island Crossing floods with some frequency.⁵ The historic practice of raising the height of urban development in flood plains above the expected elevation of flood waters with fill is unacceptable because it is like putting a brick in a baking pan of water: It reduces the flood plains' flood water storage capability, increases the elevation and duration of floods for others and triggers demands for raising levees and dikes that further increase the damages of flooding and the destruction of fish and wildlife habitat.

Dwayne Lane relentlessly seeks to breach the compact to maintain the rural agricultural character of the lower Stillaguamish flood plain by encroachment of incompatible intense urban commercial uses. In the first round of the *Dwayne Lane* litigation between 1995 and 2001, the rural agriculture land-use of Island Crossing was restored by the County Council⁶ appealed by Dwayne Lane and his allies, affirmed by the Growth Board, affirmed by the Superior Court and affirmed by the Court of Appeals.

⁵ For example, five photos depict Island Crossing flooding on October 21, 2003, CP VI 1133-37. Island Crossing was also underwater during a September 2000 flood event, CP VII 1209 (Appendix, page A-15, attached).

⁶ After the Council's initial Island Crossing redesignation from rural agricultural to urban commercial was reversed by the superior court because it was unsupported by substantial evidence. The procedural history of this controversy is set forth in detail in the Flood District's opening brief submitted to the Court of Appeals on March 31, 2006.

The Flood District asserted below that where parties invoke judicial review and the process results in a final determination, the parties are bound on the issues determined unless and until the parties seeking a different outcome establish changed circumstances. Once litigation is invoked, the parties are bound by the issues decided. Otherwise the judicial review provisions of the Growth Management Act are mere surplusage and an enormous waste of time and judicial resources. When the judicial review is invoked and a final decision is rendered, the parties should not be permitted to disregard the judicial decision, pretend that nothing happened and get as many more bites of the apple as they want before the local legislative body.

The Snohomish County Council's attempts in *Dwayne Lane* // to avoid the requirements of the Growth Management Act was not only resisted by the appellants, but by County Executive veto, and when that was overridden, by the Growth Board, Gubernatorial sanctions, and the Superior Court. Nevertheless, the Court of Appeals reversed the Growth Board, and the Superior Court. The Flood District, CTED and Futurewise, now request the Supreme Court to reverse the Court of Appeals and affirm the Growth Board.

IV. ARGUMENT

- A. The Court of Appeals *Dwayne Lane II* decision, for which reversal is here sought, is contrary to the Growth Management Act and misapplies the doctrine of *res judicata*.

A central purpose of GMA is to conserve agricultural lands:

[T]he agricultural lands provisions (RCW 36.70A.020(8), .060, and .170) direct counties and cities (1) to designate agricultural lands of long-term commercial significance; (2) to assure the conservation of agricultural land; (3) to assure that the use of adjacent lands does not interfere with their continued use for agricultural purposes; (4) to conserve agricultural land in order to maintain and enhance the agricultural industry; and (5) to discourage incompatible uses.

Redmond II, 116 Wn. App at 56-57, quoting from *King County v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 14 P.3d 133 (2000).

The Court of Appeals decision in *Dwayne Lane II* severely, if not fatally, weakens the GMA mandate to conserve agricultural lands because it completely frees local governments' agricultural dedesignation decisions from effective review by both the Growth Boards and the courts. *Dwayne Lane II* should be reversed.

Further, the current *Dwayne Lane* redesignation application appears violative of *res judicata*.

"In order to prevent repetitious litigation and to provide binding answers, the *res judicata* doctrine bars reasserting the

same claim in a subsequent land use application.” *DeTray v. City of Olympia*, 121 Wn. App. 777, 785, 90 Wn.3d 1116 (2004).

The Snohomish County Council and the Growth Board in the prior 1995-2001 round of the *Dwayne Lane* litigation, following remand, found and determined that Island Crossing was agricultural land of long-term commercial significance. This determination resulted because the Council’s and the Board’s prior April 15, 1996 finding and determination redesignating Island Crossing from rural agricultural to urban commercial was remanded by the Superior Court in its November 19, 1997 decision on finding there was no substantial evidence to support removal of the agricultural designation from Island Crossing.⁷

The Court of Appeal’s observation in *Dwayne Lane II* “that situations may exist where a county could properly designate land either agricultural or urban commercial depending on how the county exercises its discretion in planning for growth, without committing clear error” (Slip Op. at 24) is *not* applicable to Island Crossing because on judicial review in the prior round of litigation, the dedesignation from rural agriculture was *not* affirmed but

⁷ *1000 Friends v. Snohomish County*, CPSCMHB Case No. 03-3-0019c, Final Decision and Order, pg 2-4, March 22, 2004, CP 2563-65.

remanded for lack of substantial evidence supporting the agricultural land dedesignation. Following remand, the Council denied Dwayne Lane's requested redesignation to urban general commercial and instead continued Island Crossing's rural agricultural designation.⁸ In the current round of the Dwayne Lane Island Crossing litigation, rather than making one of two equally viable but conflicting decisions under the same evidence, the Council chose to make an erroneous decision a second time, despite the previous finding by the Growth Board and the Superior Court that there was no substantial evidence to support it.

The Council's 1995 dedesignation of Island Crossing from rural agriculture was reversed on appeal by the Superior Court, and following remand, the Council's 1998 determination that Island Crossing's land use should remain rural agriculture was affirmed by the Growth Board, the Superior Court and the Court of Appeals. Therefore, in light of the prior litigation, Island Crossing in the current round is not one of those situations where the County could

⁸ "Res judicata and collateral estoppel, kindred doctrines designed to prevent relitigation of already determined causes ... res judicata is the more comprehensive doctrine, identifying a prior judgment arising out of the same cause of action between the same parties, whereas a collateral estoppel relates to and bars relitigation on a particular issue or determinative fact...." *Bordeaux v. Ingersoll Rand Co.* 71 Wn.2d 392, 396, 429 P. 2d 207 (1967). Under either doctrine (because the Snohomish County Council in 1998 re-affirmed that Island Crossing is agricultural land of long term significance), Dwayne Lane should have been precluded from re-litigating this issue in a subsequent application.

properly designate Island Crossing urban commercial without committing clear error, in the absence of substantial changed circumstances (which neither Dwayne Lane nor Snohomish County demonstrated or even attempted to demonstrate).

The Flood District's position is not that agricultural lands must remain agricultural lands forever, but where an application to dedesignate agricultural lands is denied, and that denial is affirmed following exhaustion of administrative and judicial appeals, then if an applicant subsequently wants to renew that application, the applicant has the burden to establish changed circumstances. That changed circumstances burden arises out of invoking judicial review and is inherent in judicial review because once fully litigated, the parties are bound by the outcome for the reasons set forth in the Flood District's March 31, 2007 respondents brief at 22-30 submitted to the Court of Appeals on March 31, 2006.

B. Flood plains are best reserved for rural agricultural use.

The clash between public necessity and private imperatives is dramatically illustrated by the instant case.

Why would a developer want to build in a flood plain? Why would a local government approve a variance, waiver, or exception,

despite clear laws against it? For a cash-strapped local government, more intense development usually results in up front development fees and increased tax or other revenues over time. For the developer, rural land is cheaper to acquire and flood plain land is flat and usually less expensive to build on.⁹ With luck, the developer has sold the parcel before the flood damage occurs. The buyer and its tenants will sustain flood damages, but they are often bailed out by public grants, low-interest loans and other subsidies. The developer, tenants and local governments make money in the short run—but at far greater public expense over time. Often state and federal governments foot order-of-magnitude larger bills for periodic flood damage claims and subsidies than if the development had occurred in appropriate non-flood plain locations.

The Growth Management Act, among other things, was intended to halt such dysfunctional development. It has not worked well as expected. Local government officials, going through the pretext of complying with the Growth Management Act's requirements, often approve ill-conceived development proposals.

⁹ Local regulations, based on Federal Emergency Management Agency (FEMA) requirements, generally require new development to be constructed above the 100-year flood elevation. Because 100-year flood maps are often outdated, "100-year" floods are occurring far more frequently in many developing areas. New development on fill decreases the flood plain's flood-water storage capacity, thus increasing the elevation and duration of floods for others in the flood plain.

The Growth Management Hearings Boards, intended to be the guardians of the Growth Management Act, have been battered by relentless litigation and undercut by appellate court decisions.

C. This Court is requested to take judicial notice of the December 2007 Lewis County Floods.

This court's *Lewis County* decision was in the Flood District's view misinterpreted by the Court of Appeals in *Dwayne Lane II*.

An instructive illustration of the consequences of allowing intense development within a flood plain, of which this Court is requested to take judicial notice, is the December 2007 Lewis County floods. Lewis County and the Cities of Centralia and Chehalis sustained devastating flood damage from a powerful December 3, 2007 storm, as set forth in extensive Seattle Times articles, one of which is attached in the appendix to this supplemental brief.

Farmers, residents and commercial properties suffered unprecedented damages. Silt and debris filled living spaces and basements and covered fields. Houses that had not previously experienced floods were damaged or destroyed. Livestock drowned and equipment was lost. The cost to individuals and businesses was much greater than it would have been had Lewis County

prevented flood plain development and implemented adequate logging safeguards on steep and unstable upstream slopes, as provided for in the Growth Management Act and under other requirements.

Lewis County's former Public Works director confirmed that much of the damage was due to human activity. The Centrailia-Chehalis area has experienced six serious floods in the past 20 years. After floods, levies were built and raised in the flood plain to "protect" developed properties. At the same time, logging of watershed upstream forests was permitted without adequate safeguards on steep and unstable slopes. In the rush to promote economic development, the cities and Lewis County permitted, and indeed encouraged, intense commercial development within the flood plain on ever-higher fill. I-5 in that area did not have adequate capacity to pass flood waters under it.

The levees worked until they were overtopped and then functioned to *contain* flood waters. Because of more fill and higher levees than before, more water was trapped and more properties were flooded. If the cycle continues, so-called flood control measures will perversely continue to *increase* flood damages. This happens because flood plain developers have made their profits

and are usually gone by the time the next flood hits. The owners and tenants sustain damages, but they and the county are bailed out by state and federal programs, reinforcing the cycle of ever increasing flood damages.

Seattle Times photographer Steve Ringman's images and Lynda V. Mapes, accompanying December 9, 2007 Seattle Times article, *Did development, logging set the stage for disaster?* (attached in the Appendix) captured the folly of present Lewis County policies.

Despite severe damages sustained by Lewis County in the December 2007 floods, local officials appear unlikely to change their policies of permitting intense urban development in flood plains. As this Court observed in *Lewis County v. Western Growth Mgt. Hrgs. Bd*, 157 Wn.2d 488, 139 P.3d 1096 (2006), "Lewis County has long struggled to meet GMA requirements to designate and conserve agricultural lands." Lewis County policies and its long struggle to comply with GMA contributed to the December 2007 flood devastation. This Court should assist Snohomish County to avoid the same fate as Lewis County by reversing *Dwayne Lane II*.

V. CONCLUSION

Toward that end, this Court is requested to reverse the Court of Appeals *Dwayne Lane II* decision, and affirm the Superior Court and Central Growth Management Hearings Board decisions below.

Respectfully submitted on May 1, 2008.

The Public Advocate

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CERTIFICATE OF SERVICE

I certify under penalties of perjury under the laws of the State of Washington that on the date entered below I served the foregoing Flood District supplemental brief by e-mail and by depositing into the mails of the United States, postage prepaid, in properly sealed and addressed envelopes, upon the following:

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The Seattle Times

Sunday, December 9, 2007 - Page updated at 02:37 PM

Did development, logging set the stage for disaster?

Photos by STEVE RINGMAN / THE SEATTLE TIMES



Mudslide photo spurs look at logging practices

The aerial photo of the bare slope and slide areas in the Stillman Creek drainage raised concerns at Weyerhaeuser, enough so that corporate officials did their own flyover, scouting landslides there and elsewhere in the Northwest.

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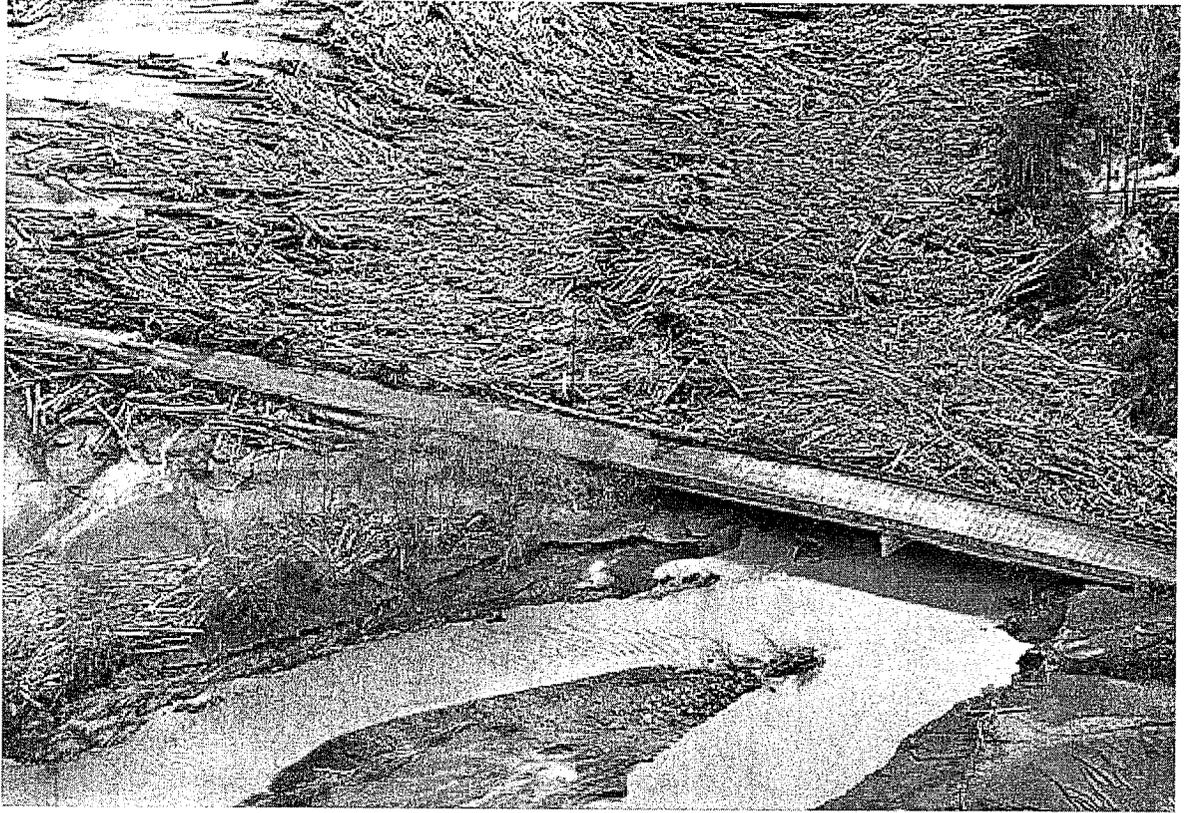


STEVE RINGMAN / THE SEATTLE TIMES

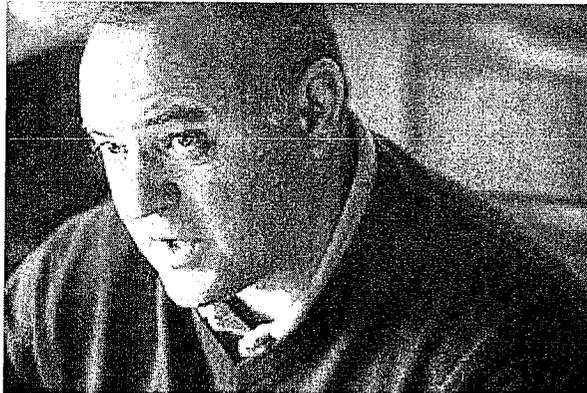
Flooded Chehalis A new automobile dealership, at bottom of photo, is being built just off Interstate 5 on an island of fill in the Chehalis River floodplain. Some nearby stores, including a Home Depot and Wal-Mart, were hard hit by last week's high waters.

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Stillaguamish Flood Control District's supplemental brief



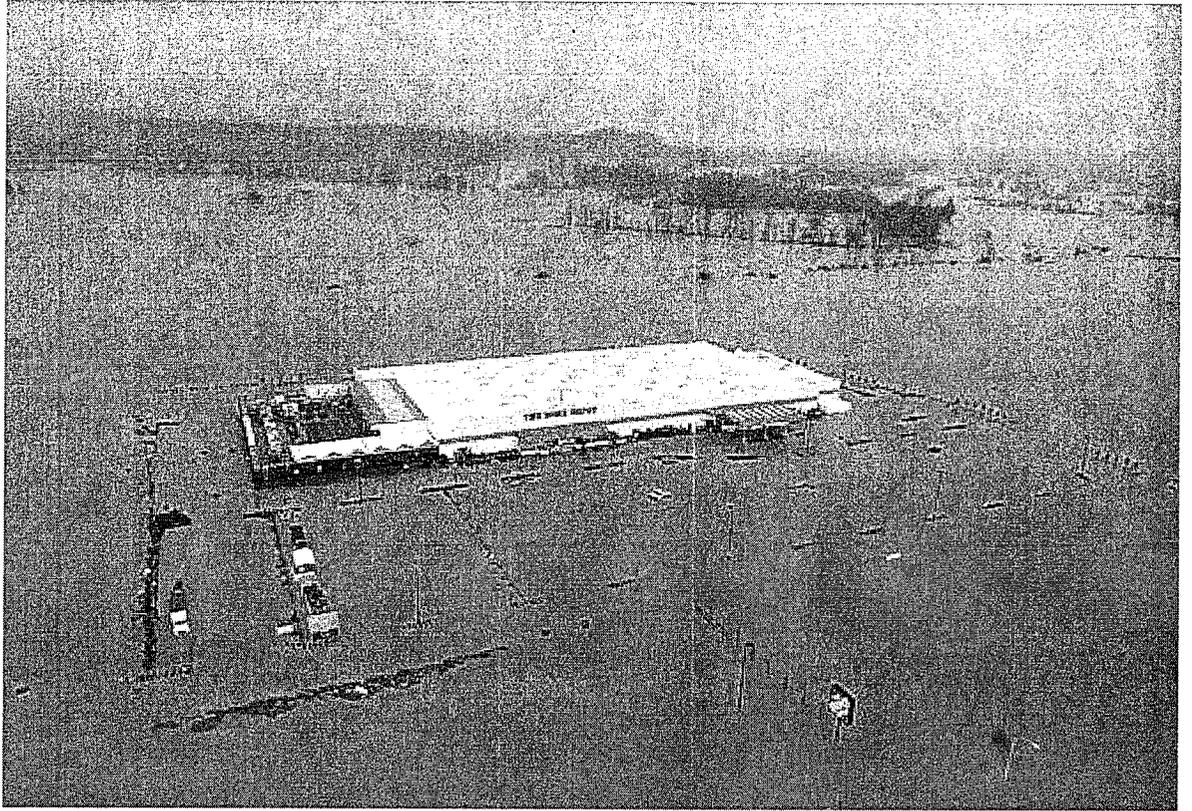
Acres of timber and debris backed up behind this bridge in the Boistfort Valley, which was inundated by the flooding of the south fork of the Chehalis River.



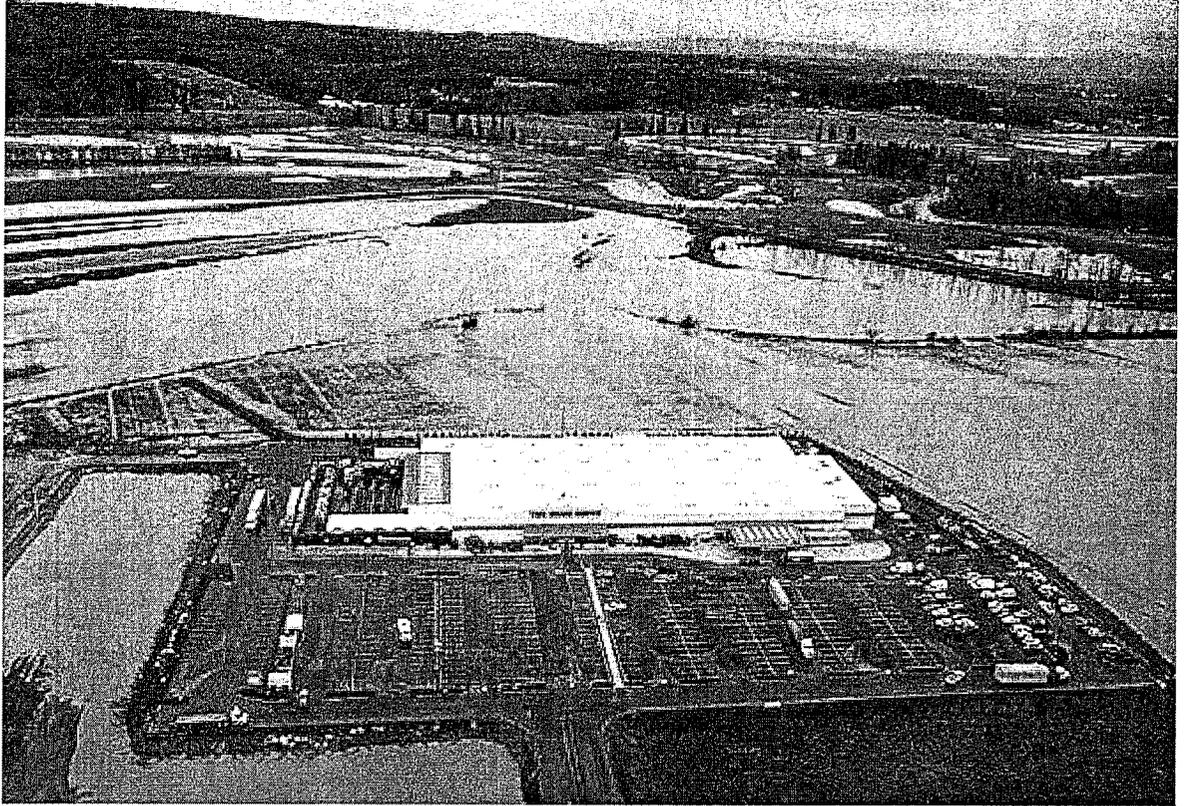
Former Public-works Director for Lewis County Mark Cook



Despite being built on a plateau of fill, this Walgreens pharmacy near the Chehalis River sustained water damage during last week's flooding.



A Home Depot store, above, along Interstate 5 resembles a floating barge in a photograph taken Tuesday.



In a photo taken on Friday, floodwaters have receded enough for employees to reach the store and begin cleaning up the mess.

Did development, logging set the stage for disaster?

By Lynda V. Mapes
Seattle Times staff reporter

For more than a decade in the Chehalis River watershed, developers have been allowed to roll the dice.

In 1996, the worst flood Lewis County had ever known blew through, drowning communities in muddy water high enough to close Interstate 5. Since then, the county has granted more than 100 permits for new development in the floodplain. The cities of Centralia and Chehalis added to the rush.

Big-box stores, restaurants and strip malls galore. A railroad line extension, parking lots for a church. A coal-unloading facility, a new natural-gas pipeline, a mine expansion.

And barns, homes, carports and shops. All built in the floodplain.

Then last Monday, heavy rain punched into the watershed from the southwest. Faster than anyone had ever seen before, torrents of water gouged hillsides, broke levees and overtopped dikes as flood gauges reached record highs and some blew out altogether. At the worst of it, some 10 feet of water covered parts of Chehalis, and hundreds of people watched their homes and belongings go under. One man was swept away in the deluge.

Now as the water recedes and residents of Lewis County take stock, many are looking back in time, wondering how much the legacy of development in the floodplain, and clear-cut logging in the upriver drainages, contributed to their woes.

Many state officials and regional experts, including a former county manager who says he was fired after criticizing floodplain development, say they have been warning for years that the hunger for development was running counter to common sense.

They note that while many counties, including neighboring Thurston, have either banned or seriously crimped development in the floodplain, Lewis County has not.

"It's kind of sad, we keep repeating the same mistakes, even when we know better," said Andy McMillan, a longtime wetlands

manager for the state Department of Ecology. "It's the same old things coming into play: There's money to be made, and people want to make the most money for their land."

But in the wake of the storm, Lewis County leaders still say it's unfair to blame them for nature's wrath. And they predict the development will go on.

"The floodplain in the Chehalis is so vast that the filling in the floodplain for local development has no significant impact," said Bob Nacht, the director of community development for the city of Chehalis.

Moratoriums considered

To a large degree, this latest debate is a bit of déjà vu to the people of Lewis County.

After the 1996 flood, arguments broke out about getting tough on development in the floodplain.

"Bans or moratoriums have been considered on many occasions," Nacht said. Locals had debated a moratorium after the flood in 1986, too. And again in 1990 and 1991, 1996 and 2000.

But such talk gets little traction in the "Twin Cities" of Centralia and Chehalis, where as much as 70 percent of the city limits are in the floodplain, according to the county. Cutting floodplain development means cutting economic development in communities that say they need all they can get.

Instead, city leaders focused on making sure new development was built on fill – enough to bring it above the 1996 levels.

It's not that they didn't expect more damage. It was just seen as acceptable risk. "We are certainly not going to guarantee any development won't get flooded here," Nacht said

And in their defense, they point out that their rules are actually tougher than existing state and federal rules.

"As long as the pressure is on the government to permit development in the floodplain, these kinds of events will continue to occur, and we will continue to have damage," Nacht said.

Effects are cumulative

Though Lewis County isn't the only place where floodplain development is allowed, others have cracked down.

While individual filling projects might not appear to have an impact, the cumulative effect of repeated development in a floodplain can mean big trouble, the experts argue. It's like putting bricks in a bathtub. One brick displaces a little water. But a lot of bricks can force the tub to overflow.

"The more stuff you put in a flood plain, the higher the water the will rise," said David Montgomery, a scientist at the University of Washington who has studied the history of rivers in Western Washington.

Some local jurisdictions have decided state and federal flood-prevention standards are not protective enough and have gone much further.

Fourteen years ago, even before the 1996 floods, Thurston County banned all new development in its floodplains.

"We had a lot of flooding problems and we didn't want to perpetuate the situation," said Mike Kain, Thurston County's manager of planning and environmental services.

It still floods every year in King County. But King has the best insurance rating of any county in the nation from the Federal Emergency Management Agency, according to Jim Chan, director of building services. That's because of restrictions on development in the floodplain.

While he was public-works director for Lewis County, Mark Cook pushed county commissioners for stricter building regulations in the floodplain. "The cities came unglued," said Cook, who lives in Centralia. "There is a way of doing business that has been around a long time."

The county commissioners fired Cook in May after about four years on the job. One commissioner said there had been a "clash of wills," the local paper reported. Cook now says there were a number of reasons, but one was his opposition to continuing to fill and develop the floodplain.

"Change is hard, and sometimes the messenger doesn't always survive the task," said Cook, who now works as a private consultant for a variety of clients, including Lewis County. "No one wants to hear their current allowable permitting practices could have adverse consequences."

Clear-cuts increase risk

All the while Lewis County has debated its floodplain development, logging has been chewing through the forests in the Chehalis watershed since the last flood.

Logging has declined overall in Western Washington in the past 15 years. But the most intensive cutting is still happening on the type of industrial forestlands that dominate the Chehalis watershed.

Since 2002 alone, about 230,972 acres of the watershed — up to 14 percent of the forestland there — have been logged, according to the state Department of Natural Resources.

It's only about 2.3 percent of the watershed a year. But the effects of clear-cuts and logging roads stick around for years, potential ticking time bombs for large landslides, said Gordon Grant, a hydrologist for the federal Forest Service's Pacific Northwest Research Station in Corvallis, Ore. Landslides can happen anywhere, including on forested ground. But forestland that has been clear-cut is up to five times more likely to slide in flood conditions, and forestland with logging roads is even more vulnerable, Grant said. Those landslides can bring down logs, creating debris flows that stop up streams, culverts and even rivers.

That means even more flooding when the big rains finally come. Last week, they did.

Chehalis watershed huge

This flood was far more damaging than the one in 1996. The water rose faster, and it flooded places that no one remembers being inundated before. There's no question Mother Nature threw her all at the watershed as a weather system barreled in from the southwest.

And geologically speaking, the Chehalis floodplain is a particularly bad place for that kind of punishment. It's broad and flat, and the watershed is huge — the second largest in the state. Drainage is

naturally problematic in many places because of a layer of impervious clay just below the shallow soil.

Floodwater high up the Chehalis River stripped gargantuan loads of silt and timber off the hills, and dumped it along with the water that swamped homes, garages and barns to depths of up to 12 feet in some upriver communities, far above levels anyone can remember.

As the high water has retreated, it has left thousands of pieces of wood scattered across fields in the Boistfort Valley, which straddles the south fork of the Chehalis. One rugged, heavily logged drainage was scarred with dozens of landslides that spewed into a creek. Some slides clawed deep ravines.

In one large clear-cut alone, nearly a dozen slides emptied into a creek. In some areas, log jams may have acted like small dams, temporarily holding back water until they toppled over or breached. Some upriver communities got slammed with the mess. Then the floodwater moved on, all the way to the cities of Chehalis and Centralia and the development in the floodplain along I-5.

"There's a lot of stuff in the floodplain that wasn't there in 1996," said Jim Park, senior hydrologist for the state Department of Transportation. "The water goes somewhere; it doesn't just disappear."

Some neighborhoods in Chehalis and Centralia were flooded for the first time ever.

More fill likely in future

As the floodwater recedes over much of Lewis County this weekend, it's too early to tell whether development policies will be different.

But in Chehalis, Nacht said the city plans at least one change: It will demand even more fill in the floodplain. Future development will have to be built on fill piled above the level of this latest disaster, he said.

The city's claims that continued building in the floodplain has no impact is baffling to some experts.

"Fill will have an effect, and those effects will be local," said Park. This flood needs to be analyzed to understand what happened, he said.

"For someone to stand up and say it didn't have any effect is premature, and to say so flies in the face of the whole basis for having regulations."

Dan Sokol, who coordinates flood-insurance programs for the state Ecology Department, said this flood should at least teach that development planning needs to take into account everything from clear-cutting in the headwaters to development in the floodplain.

Tougher restrictions on building are also needed where the river has been known to flood — and will surely flood again, Sokol said.

"The more things you put in the floodplain, the more things are at risk," Sokol said. "We can never assume we have seen the worst of what nature can do."

Montgomery, the UW scientist, argues that commercial and residential floodplain development ends up costing everyone else.

"We should not be subsidizing those land uses through flood-control measures and rebuilding things and bailouts," he said. "The question is why did we build there in the first place?"

Despite the devastation last week, the critics appear unlikely to change many minds in Lewis County.

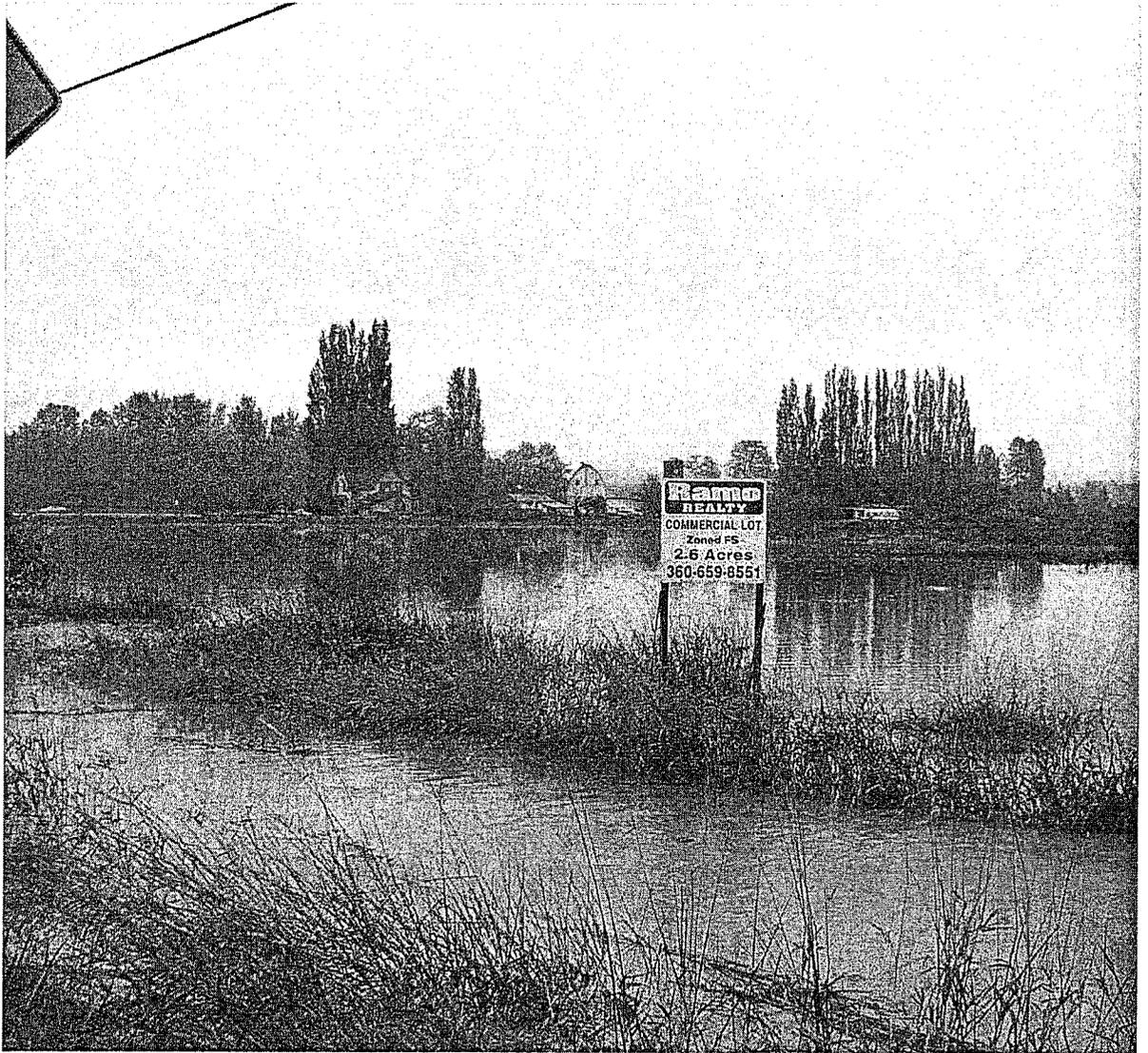
"If you didn't allow Wal-Mart to come in, people would say, 'Why are you stifling economic development?' " said Bob Johnson, the community-development manager for Lewis County. "It's a really hard balance. I understand why this development is happening."

The current attention on the floodplain ignores the fact that most building in the county is not in the floodplain at all, Johnson said.

"We try to put it where it's dry."

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Staff writer Hal Bernton contributed to this story.



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Attached for filing is the Stillaguamish Flood Control District's **supplemental brief** in *City of Arlington, et al., v. Central Puget Sound Growth Mgmt. Hrgs. Bd., et al.*, no. 80395-1.

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